COMMONWEALTH *of* VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

RUXTON HEALTH CARE X, LLC and
FORK UNION MEDICAL INVESTORS, L.P.

RUXTON HEALTH AT THE VILLAGE STP

(VPDES Permit No. VA0081639)

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code § 62.1-44.15(8a) and (8d) between the State Water Control Board, Ruxton Health Care X, LLCand Fork Union Medical Investors, L.P. to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.

3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the DEQ.

5. "VRO" means the Valley Regional Office of the DEQ.

6. "Ruxton" means Ruxton Health Care X, LLC.

7. "STP" means sewage treatment plant.

8. "Ruxton STP" or "the Facility" means the Ruxton Health at the Village STP, owned and operated by Ruxton.

9. "VPDES" means the Virginia Pollutant Discharge Elimination System.

10. "The Permit" means VPDES Permit No. VA0081639.

11. "VPDES Permit Regulation " means 9 VAC 25-31-10 *et seq.*

12. "Order" means this document, also known as a Consent Special Order.

13. "NOV" means Notice of Violation.

14. "FUMI" means Fork Union Medical Investors, L.P.

SECTION C: Findings of Fact and Conclusions of Law

1. Ruxton owns and operates the Ruxton STP. The Facility, which was formerly owned by FUMI, is located on Route 15, 0.3 mile south of the Route 15/Route 652 intersection near Fork Union, Fluvanna County.

2. The Ruxton STP is the subject of the Permit, issued July 19, 1999 to FUMI. Pursuant to 9 VAC 25-31-100.D of the VPDES Permit Regulation and Part II.M. of the Permit, FUMI was required to submit a complete application for reissuance of the Permit on or before January 21, 2004.

3. Based on FUMI's failure to submit the application for reissuance by January 21, 2004, DEQ issued a Warning Letter to FUMI on January 30, 2004.

4. Based on FUMI's failure to respond to the Warning Letter, on February 25, 2004, DEQ issued NOV No. W2004-02-V-0003 to FUMI citing FUMI's failure to apply for reissuance of the Permit in apparent violation of 9 VAC 25-31-100.D of the VPDES Permit Regulation and Part II.M. of the Permit.

5. On June 22, 2004, DEQ issued Notice of Violation No. W2004-06-V-0006 to FUMI citing the following apparent violations of the Permit, the VPDES Permit Regulation and State Water Control Law:

a. Discharge not in accordance with the Permit. Exceedance of the Permit's total suspended solids ("TSS") effluent limitation in April 2004 and carbonaceous biochemical oxygen demand ("$CBOD_5$")effluent limitation in October 2003 and April 2004 in apparent violation of Part I. of the Permit and 9 VAC 25-31-50.A of the VPDES Permit Regulation;

b. Discharge not in accordance with the Permit. Failure to submit a timely response to a request for information necessary to determine compliance with the Permit submitted as part of an inspection performed on September 4, 2003 in apparent violation of Part II.D of the Permit, Va. Code § 62.1-44.21, and 9 VAC 25-31-50.A of the VPDES Permit Regulation;

c. Discharge not in accordance with the Permit. Failure to comply with the schedule of compliance of the Permit pertaining to achieving final limits for seasonal $CBOD_5$ in apparent violation of Part I.D of the Permit, Va. Code § 62.1-44.21 and 9 VAC 25-31-50.A and of the VPDES Permit Regulation;

d. Discharge not in accordance with the Permit. Failure to submit a written report of noncompliance with Part I.D. of the Permit within 14 days of the noncompliance in apparent violation of Va. Code § 62.1-44.21 and 9 VAC 25-31-50.A of the VPDES Permit Regulation; and,

e. Discharge not in accordance with the Permit. Failure to submit a written report (10th Quarterly) of progress of achieving compliance with Part I.D of the Permit in apparent violation of Va. Code § 62.1-44.21 and 9 VAC 25-31-50.A of the VPDES Permit Regulation.

6. Based on FUMI's continuing failure to apply for reissuance of the Permit, on July 19, 2004, the Permit expired. Since July 19, 2004, the Facility has been discharging sewage to state waters without a permit in apparent violation of Va. Code § 62.1-44.5 and 9 VAC 25-31-50.A of the VPDES Permit Regulation. The unpermitted discharge violation is cited herein but was not cited in any NOV.

7. On July 13, 2004, DEQ staff met with the Executive Director of the Facility in an informal enforcement conference. During the meeting, DEQ was advised that ownership of the Facility had transferred from FUMI to Ruxton. DEQ was also advised that the senior official and person having signatory authority under FUMI would remain the same under Ruxton.

8. During the July 13, 2004 meeting, Ruxton submitted the application for reissuance of the Permit. On July 23, 2004, DEQ deemed the permit application to be complete. Staff anticipates that the Permit will be reissued in mid-October 2004.

9. During the July 13, 2004 meeting, Ruxton agreed to retain a consultant for the purpose of preparing a plan and schedule of corrective actions designed to return the Facility to compliance with the Permit. By letter dated August 11, 2004, Ruxton's consultant

provided the corrective action plan and schedule which is incorporated into Appendix A of the Order. As of October 5, 2004, the following items from the plan and schedule of corrective action were completed:

a. The Facility's blowers have been repaired;

b. The Facility's pumps have been repaired or replaced; and,

c. The Facility's flow meter has been replaced.

SECTION D: Agreement and Order

Accordingly the State Water Control Board, by virtue of the authority granted it pursuant to Va. Code §62.1-44.15(8a) and (8d), orders Ruxton and FUMI, and Ruxton and FUMI agree:

1. To perform the actions described in Appendix A of this Order; and,

2. To pay a civil charge of **$7,100** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

   Receipts Control
   Department of Environmental Quality
   Post Office Box 10150
   Richmond, Virginia 23240

   Ruxton and FUMI shall include their Federal Identification Numbers with the civil charge payment and shall note on the check that the payment is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Ruxton and FUMI, for good cause shown by Ruxton and FUMI, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Ruxton and FUMI admit the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Ruxton and FUMI consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Ruxton and FUMI declare they have received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and waive their right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Ruxton and/or FUMI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority as a result of such violations.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Ruxton and FUMI shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Ruxton and FUMI shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Ruxton and FUMI shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and,

   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Regional Director within 72 hours of learning of any condition above, which Ruxton and FUMI intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

9. This Order shall become effective upon execution by the Director or his designee, Ruxton and FUMI. Notwithstanding the foregoing, Ruxton and FUMI agree to be bound by any compliance date which precedes the effective date of this Order.

10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Ruxton and FUMI. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Ruxton and FUMI from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. By their signatures below, both Ruxton and FUMI voluntarily agree to the issuance of this Order.

And it is so ORDERED this 7 day of December, 2004.

R. Bradley Chewning

for Robert G. Burnley, Director
Department of Environmental Quality

Ruxton voluntarily agrees to the issuance of this Order.

By: Jane C. Pendergrass

Date: 10/13/04

Commonwealth of Virginia

City/County of Fluvanna

The foregoing document was signed and acknowledged before me this 13 day of October, 2004, by Jane C. Pendergrass (name), who is Administrator (title) of Ruxton Health Care X, LLC, on behalf of the LLC.

Angela H. David
Notary Public

My commission expires: 11/30/04.

FUMI voluntarily agrees to the issuance of this Order.

By: Jane C. Pendergrass

Date: 10/13/04

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 13 day of October, 2004, by Jane C. Pendergrass, who is
(name)

Executive Director of Fork Union Medical Investors, L.P., on behalf of the L.P.
(title)

Angela H. Davis
Notary Public

My commission expires: 11/30/04.

APPENDIX A
SCHEDULE OF COMPLIANCE

RUXTON HEALTH CARE X, LLC
FORK UNION MEDICAL INVESTORS, L.P.

RUXTON HEALTH AT THE VILLAGE STP

1. **By October 15, 2004**, Ruxton and FUMI shall replace the Facility influent bar screen.

2. **By November 15, 2004**, Ruxton and FUMI shall have scraped, cleaned and painted all exposed metal components of the Facility.

3. **By February 15, 2005**, Ruxton and FUMI shall complete repairs to or replacement of all of the Facility's drops (diffusers).

4. Beginning on the date when both Ruxton and FUMI have signed the Order and continuing throughout the period that the Order remains in effect, Ruxton and FUMI shall provide for on-site contract operator oversight on a frequency of once per week.

5. The on-site contract operator shall oversee operations of the Facility and develop a routine of Operations and Maintenance (O&M) to improve overall performance of the Facility.

6. **By January 17, 2005**, Ruxton and FUMI shall submit to DEQ's Valley Regional Office for review and approval, a revised O&M Manual for the Facility. The revised O&M Manual shall identify all physical repairs made to the Facility since the Manual's last revision and shall incorporate the recommendations for improved performance made by the contract operator pursuant to Paragraph 5 of this Appendix.