



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Blue Ridge Regional Office

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## STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO COUNTY OF ALLEGHANY FOR UNPERMITTED DISCHARGES FROM THE INDIAN VALLEY PUMP STATION

### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the County of Alleghany, regarding the Indian Valley Pump Station, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

### SECTION B: Definitions

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

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

4. "The County" means the County of Alleghany, a political subdivision of the Commonwealth of Virginia. The County is a "person" within the meaning of Va. Code § 62.1-44.3.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
8. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "Facility" means the Indian Valley Pump Station located at 695 Potts Creek Road, Covington, Virginia which is a component of the sanitary sewer collection system owned by the County.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
13. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an

alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

14. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "VPDES" means Virginia Pollutant Discharge Elimination System.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The County owns and operates a sanitary sewer collection system in Alleghany County, Virginia. The Facility located at 695 Potts Creek Road, Covington, Virginia is a component of the sanitary sewer collection system.
2. Potts Creek is located in the James River Basin. Potts Creek is listed in DEQ's 305(b)/303(d) report as impaired for *Escherichia coli*.
3. On April 6, 2015 followed by a letter on April 13, 2015, the County notified the Department that there was a discharge of wastewater from the Facility into Potts Creek on April 3, 2015. The County estimated that the volume of the discharge was approximately 46,800 gallons of wastewater.
4. On April 9, 2015 followed by a letter on April 16, 2015, the County notified the Department that there was a discharge of wastewater from the Facility into Potts Creek on April 8, 2015. The County estimated that the volume of the discharge was approximately 57,600 gallons of wastewater.
5. On April 15, 2015 followed by a letter on April 22, 2015, the County notified the Department that there was a discharge of wastewater from the Facility into Potts Creek

on April 14, 2015. The County estimated that the volume of the discharge was approximately 93,600 gallons of wastewater.

6. On April 20, 2015 followed by a letter on April 29, 2015, the County notified the Department that there was a discharge of wastewater from the Facility into Potts Creek on April 19, 2015. The County estimated that the volume of the discharge was approximately 77,400 gallons of wastewater.
7. Potts Creek is a surface water located wholly within the Commonwealth and is a "state waters" under State Water Control Law.
8. The Department has issued no permits or certificates to the County that would authorize the discharge of wastewater into state waters.
9. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
10. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
11. The Department issued NOV No. NOV-15-06-BRRO-002 to the County on June 10, 2015 for the violations listed in paragraphs (C3) through (C6), above.
12. The County responded to the NOV by contacting the Department and outlining a plan and schedule of corrective actions to replace the Facility.
13. The County had additional unpermitted discharges of wastewater from the Facility into Potts Creek during the months of July 2015, September 2015, October 2015, November 2015, December 2015, and February 2016. For all discharges, the County notified the Department and followed up by letter, as required.
14. Based on the documentation submitted on April 13, 2015, April 16, 2015, April 22, 2015, April 29, 2015, and additional submittals during the time period of July 2015 through February 2016, the Board concludes that the County has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging untreated sewage and municipal wastes from the Facility, as described in paragraphs C(3) through (C6) and C(13), above.
15. In order for the County to return to compliance, DEQ staff and representatives of the County have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

**SECTION D: Agreement and Order**

By virtue of the authority granted it pursuant to Va. Code § 62.1-44.15 and upon consideration of Va. Code § 10.1-1186.2, the Board orders the County, and the County agrees:

1. To perform the actions described in Appendices A and B of this Order; and
2. To a civil charge of **\$4,550** in settlement of the violations cited in this Order, to be paid as follows:
  - a. The County shall pay **\$455** of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The County shall include its Federal Employer Identification Number (FEIN) 54-6001109 with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the County shall be liable for attorneys' fees of 30% of the amount outstanding.

- b. The County shall satisfy **\$4,095** of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.
    - c. The net project costs of the SEP to the County shall not be less than the amount set forth in Paragraph D.2.b. If it is, the County shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
  - d. By signing this Order the County certifies that it has not commenced performance of the SEP.

- e. The County acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by the County to a third party, shall not relieve the County of its responsibility to complete the SEP as described in this Order.
- f. In the event it publicizes the SEP or the SEP results, the County shall state in a prominent manner that the project is part of a settlement of an enforcement action.
- g. The Department has the sole discretion to:
  - i. Authorize any alternate, equivalent SEP proposed by the County; and
  - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

Should the Department determine that the County has not completed the SEP, or alternate SEP, in a satisfactory manner; the Department shall so notify the County in writing. Within 30 days of being notified, the County shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of the County for good cause shown by the County, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
  2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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; or (3) taking subsequent action to enforce the Order.
  3. For purposes of this Order and subsequent actions with respect to this Order only, the County admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
  4. The County consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
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5. The County declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the 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 modify, rewrite, amend, or enforce this Order.

6. Failure by the County 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.
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. The County 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days 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 verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties 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.

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

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10. This Order shall become effective upon execution by both the Director or his designee and the County. Nevertheless, the County agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after the County has completed all of the requirements of the Order;
- b. The County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the County and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the County certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the County.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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Robert J. Weld, Regional Director  
Department of Environmental Quality

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The County of Alleghany voluntarily agrees to the issuance of this Order.

Date: 04 MAY 2016 By: J.A. Lanford, Interim County Administrator  
**Jonathan A. Lanford**  
County of Alleghany

Commonwealth of Virginia  
City/County of Alleghany

The foregoing document was signed and acknowledged before me this 4<sup>th</sup> day of May, 2016, by Jonathan A. Lanford who is the Interim County Administrator of the County of Alleghany, on behalf of the corporation.

Melissa A. Munsey  
Notary Public

102575  
Registration No.

My commission expires: May 31, 2016

Notary seal:



**APPENDIX A  
SCHEDULE OF COMPLIANCE**

The County shall:

1. No later than June 30, 2016, begin construction of a new pump station at the Facility and notify the Department that construction has commenced.
2. No later than December 31, 2016, complete construction and obtain a Certificate to Operate for the new pump station at the Facility.
3. No later than January 10, 2017, notify the Department that operation of the new pump station has commenced.
4. Unless otherwise specified in this Order, the County shall submit all requirements of Appendix A of this Order to:

**Jerry Ford, Jr.**  
**VA DEQ - Blue Ridge Regional Office**  
**3019 Peters Creek Road**  
**Roanoke, VA 24019**  
**Phone: (540) 562-6817**  
**e-mail: [Jerry.Ford@deq.virginia.gov](mailto:Jerry.Ford@deq.virginia.gov)**

**APPENDIX B**  
**COUNTY OF ALLEGHANY**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**

In accordance with Va. Code § 10.1-1186.2, the County shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed by the County is to provide a 40 hour hazardous materials incident training program to the local emergency responders, in this case, the local fire departments. In addition, provide the local fire departments in Alleghany County with hazardous materials emergency response spill containment and clean up materials.
2. The SEP shall be completed by December 31, 2016.
3. The County shall submit invoices and payment documentation to the Department for verification, for the equipment purchased and training presented within 30 days of payment.
4. The County shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment within 30 days of the project completion date. For purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from the County's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
5. If the SEP has not or cannot be completed as described in the Order, the County shall notify DEQ in writing no later than 30 days of the determination. Such notification shall include:
  - a. an alternative SEP proposal, or
  - b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.
5. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

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**Jerry Ford, Jr.**  
**VA DEQ - Blue Ridge Regional Office**  
**3019 Peters Creek Road**  
**Roanoke, VA 24019**  
**Phone: (540) 562-6817**  
**e-mail: [Jerry.Ford@deq.virginia.gov](mailto:Jerry.Ford@deq.virginia.gov)**