COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE
355-A Deadmore Street, Abingdon, Virginia 24210
Phone (276) 676-4800 Fax (276) 676-4899
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Allen J. Newman, P.E.
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BVU Authority
FOR
Unpermitted Discharge
Incident Report ("IR") No. 2014-S-2962

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 BVU Authority, 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. "BVU" means BVU Authority, a political subdivision of the Commonwealth of Virginia. BVU Authority is a "person" within the meaning of Va. Code § 62.1-44.3.

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

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10

7. "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.

8. "DMR" means Discharge Monitoring Report.

9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

10. "Facility" or "collection system" means the sewage collection system located within the City of Bristol, Virginia and Washington County, Virginia, owned and operated by BVU Authority, which collects and transports untreated sewage and other municipal wastes, for the residential and business customers of BVU Authority.

11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

12. "O&M" means operations and maintenance.

13. "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.

14. "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.

15. "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.

16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

17. "SSO" means sanitary sewer overflow.

18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

19. "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.

20. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.

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

22. "VAC" means the Virginia Administrative Code.

23. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. BVU owns and operates a sewage collection system in Bristol, Virginia and Washington County, Virginia. Sewage is ultimately directed to and treated at a wastewater treatment plant located in and permitted by the State of Tennessee.

2. Little Creek is located in the Tennessee and Big Sandy River Basins, Holston River Subbasin, Section 4, Class IV. Little Creek is listed in DEQ's 305(b) report as impaired for Recreational Use due to fecal coliform, with sources listed as rural residential areas, unrestricted cattle access and wastes from pets. Little Creek is also listed as impaired for Fish Consumption Use due to PCB in fish tissue, with the source listed as inappropriate waste disposal.

3. On Monday, April 28, 2014, staff from DEQ's SWRO investigated a report of dead fish in Little Creek in Bristol, Virginia. Dead fish were found in Little Creek, next to the Food City on Euclid Avenue.

4. During field investigation of the fish kill, untreated sewage and toilet paper were observed in Little Creek, just downstream from a sewer manhole located at the intersection of Spurgeon Lane and I-381 (Commonwealth Avenue). DEQ staff observed that the manhole appeared to have overflowed recently. The outside of the manhole was covered with wet toilet paper and the surrounding ground was very wet. Staff observed numerous live fish, but no sewage or toilet paper, upstream from the manhole.

5. Per letter dated May 1, 2014, the BVU Authority provided a written account of the incident. The letter states that the SSO was discovered at 2:30 p.m. on Sunday, the 27th. BVU personnel determined that the SSO was caused by a blockage within a 15-inch sanitary sewer line. Further investigation revealed that the blockage was due to the accumulation of grease within the sewer line. The blockage was removed by use of a "jet-cleaner". Neither the length of time nor the total volume of sewage discharged during the SSO is known. BVU personnel are investigating to determine the origin(s) of the grease causing the blockage.

6. From counts taken during field investigation, an estimated total of 2,983 fish were killed within an approximate kill zone of 1.3 miles (2,115 meters) of Little Creek, from the location of the manhole to the confluence of Little Creek with Beaver Creek, a short distance into Tennessee. Replacement cost of the fish ($640.43) and the cost of staff investigation ($1,147.90) total $1,788.33.

7. This same manhole was the location of a SSO in February, 2013 which also flowed into Little Creek, but did not result in a fish kill. Duration and total volume of that SSO was not known. BVU personnel identified the cause of that SSO to be the buildup of grease in the 15-inch sanitary sewer line.

8. SWRO issued NOV No. NOV-006-0514-WA to BVU on May 23, 2014 for the SSO and resulting fish kill. Incident report ("IR") No. 2014-S-2962 was assigned to this incident.

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. Little Creek is a surface water located partially within the Commonwealth and is a "state water" under State Water Control Law.

12. On June 3, 2014, DEQ staff met with representatives of BVU to discuss the violations.

13. On June 19, 2014, BVU responded in writing to the Notice of Violation, detailing actions taken to determine the cause of the SSO and immediate actions being taken (visual and video inspections, and periodic cleanout) to address maintenance of the section of sewer line in question. BVU is also developing long-term operation and maintenance schedules for implementation within the entire BVU sewage collection system.

14. Based on the results of the April 28, 2014 field investigation, the June 3, 2014 meeting, and documentation submitted on May 1, 2014 and June 19, 2014, the Board concludes that BVU has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging untreated sewage and municipal wastes from its sewage collection system to state waters, as described in paragraphs C(3) through C(7), above.

15. In order for BVU to complete its return to compliance, DEQ staff and representatives of BVU have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the BVU Authority, and the BVU Authority agrees to:

1. Perform the actions described in Appendix A of this Order;

2. Pay a civil charge of $13,000.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order;

3. Reimburse DEQ $1,147.90 for DEQ fish kill investigative costs within 30 days of the effective date of the Order;

4. Reimburse DGIF $640.43 for DGIF fish replacement costs within 30 days of the effective date of the Order.

Payment shall be made by separate checks, certified checks, money orders or cashier's checks payable to:

1. the "Treasurer of Virginia" for the civil charge and for the DEQ fish kill investigative costs (one check);

2. the "Department of Game and Inland Fisheries" for the DGIF fish replacement costs (one check);

and delivered to:

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

The BVU Authority shall include its Federal Employer Identification Number (FEIN) with the payments and shall indicate that the payment of the civil charge is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF); that payment of the DEQ fish kill investigative costs is for reimbursement of DEQ expenditures; and that the payment of the DGIF fish replacement costs is for the Department of Game and Inland Fisheries.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of BVU for good cause shown by BVU, 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 and in NOV No. NOV-006-0514-WA dated May 23, 2014. 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, BVU admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. BVU consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. BVU 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 BVU 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. BVU 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. BVU shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BVU 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.

10. This Order shall become effective upon execution by both the Director or his designee and BVU. Nevertheless, BVU 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 BVU has completed all of the requirements of the Order;

   b. BVU 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 BVU.

   Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BVU 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 BVU 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 BVU 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 BVU to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of BVU.

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, BVU voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2014.

_____
Allen J. Newman, P.E., Regional Director
Department of Environmental Quality

BVU Authority voluntarily agrees to the issuance of this Order.

Date: 7/28/2014 By: Michael Bundy CEO
(Person) (Title)
BVU Authority

Commonwealth of Virginia
City/County of Washington

The foregoing document was signed and acknowledged before me this 28th day of July, 2014, by Michael Bundy who is Interim President & CEO of BVU Authority on behalf of the Authority.

Amanda Gail Mast
Notary Public

7504937
Registration No.

My commission expires: 12/31/2015

Notary seal:

AMANDA GAIL MAST
NOTARY PUBLIC
REG # 7504937
MY COMMISSION EXPIRES 12/31/2015
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. BVU shall continue to implement the maintenance plan for the specific section of sewer line where the SSO occurred, as outlined in the BVU submittal dated June 19, 2014, until long term operations and maintenance schedules for the entire BVU sanitary sewer collection system are developed and implemented (Item 2). BVU shall implement all necessary measures to ensure that overflows do not occur in the future.

2. BVU shall develop and implement long term operations and maintenance schedules for the entire BVU sanitary sewer collection system; copies of these schedules shall be submitted to DEQ, SWRO for informational purposes .....no later than January 10, 2015.

3. The schedules to be submitted to the SWRO (Item 2) shall be mailed to the attention of Ruby Scott, Compliance Auditor, Virginia Department of Environmental Quality, 355-A Deadmore Street, Abingdon, VA 24210.

4. BVU shall continue to enforce its pretreatment program to control industrial and significant users.