COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
Blue Ridge Regional Office
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Robert J. Weld
Regional Director

Lynchburg Office
7705 Timberlake Road
Lynchburg, Virginia 24502
(434) 582-5120
Fax (434) 582-5125

Roanoke Office
3019 Peters Creek Road
Roanoke, Virginia 24019
(540) 562-6700
Fax (540) 562-6725

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
THE MONTGOMERY COUNTY PUBLIC SERVICE AUTHORITY
FOR
RINER WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0024040

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 Montgomery County Public Service Authority, regarding the Riner Wastewater Treatment Plant, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

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-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

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 "Plant" means the Riner Wastewater Treatment Plant, located at 4351 Riner Road in Montgomery County, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of Riner.

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

12. "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.

13. "Permit" means VPDES Permit No. VA0024040, which was reissued under the State Water Control Law and the Regulation to the Montgomery County Public Service Authority on January 31, 2013. The Permit expires on September 30, 2017.

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: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) 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; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3.

16. "PSA" means the Montgomery County (Virginia) Public Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq*. The PSA is a "person" within the meaning of Va. Code § 62.1-44.3.

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

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 and 9 VAC 25-210-10.

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

21. "VAC" means the Virginia Administrative Code.

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

23. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The PSA owns and operates the Plant. The Permit allows the PSA to discharge treated sewage and other municipal wastes from the Plant, to Mill Creek, in strict compliance with the terms and conditions of the Permit.

2. Mill Creek is located in the New River Basin. Mill Creek is listed in the 303(d) Category 5 (Impaired) Waters List for recreational impairment because of elevated *E. coli* counts believed to be due to livestock grazing or feeding operations. A TMDL and Water Quality Standards have been established for Mill Creek.

3. In submitting its DMRs, as required by the Permit, the PSA has indicated that it has exceeded discharge limitations contained in Part I.A.1 of the Permit for Copper average concentration and Copper maximum concentration, for the month of October 2012.

4. In submitting its DMRs, as required by the Permit, the PSA has indicated that it has exceeded discharge limitations contained in Part I.A.1 of the Permit for Ammonia average concentration, Ammonia maximum concentration, for the month of November 2012.

5. In submitting its DMRs, as required by the Permit, the PSA has indicated that it has exceeded discharge limitations contained in Part I.A.1 of the Permit for BOD_5 average concentration, BOD_5 maximum concentration, Ammonia average concentration, Ammonia maximum concentration, for the month of December 2012.

6. In submitting its DMRs, as required by the Permit, the PSA has indicated that it has exceeded discharge limitations contained in Part I.A.1 of the Permit for TKN maximum loading, TKN average concentration, TKN maximum concentration, and Zinc maximum concentration for the month of January 2013.

7. In submitting its DMRs, as required by the Permit, the PSA has indicated that it has exceeded discharge limitations contained in Part I.A.1 of the Permit for TKN average concentration, TKN maximum concentration, BOD_5 average concentration, BOD_5 maximum concentration, Copper average concentration, and Copper maximum concentration for the month of February 2013.

8. In submitting its DMRs, as required by the Permit, the PSA has indicated that it has exceeded discharge limitations contained in Part I.A.1 of the Permit for TKN average loading, TKN maximum loading, TKN average concentration, TKN maximum concentration, BOD_5 average concentration, BOD_5 maximum concentration for the month of March 2013.

9. In submitting its DMRs, as required by the Permit, the PSA has indicated that it has exceeded discharge limitations contained in Part I.A.1 of the Permit for Copper maximum concentration for the month of April 2013.

10. In a letter dated November 7, 2012, the PSA explained that it had been having problems in October 2012 with its copper and zinc removal system due to fouling by solids of new copper and zinc removal columns that had been installed earlier in the month. The letter explained that, at the recommendation of a consultant, it was in the process of purchasing a bag filter be added upstream of the removal system.

11. A DEQ inspector inspected the Plant on December 11, 2012. His inspection report, dated January 4, 2013, indicated that TKN treatment problems in October and December 2012 may have been due to incomplete nitrification within the activated sludge system. The report suggested changes to sludge wasting practices and the return sludge rate in the secondary clarifiers. The PSA has implemented these suggestions. The report also noted that bag filters had been added and that they appear to have corrected the operational issues with the copper and zinc removal system.

12. In letters dated January 10, 2013 and March 22, 2013, the PSA explained that it has adjusted the sludge return rate, adjusted alkalinity and temperature, instituted additional alkalinity testing, and added nitrifiers in an effort to improve nitrogen removal.

13. On December 6, 2012, the Department issued Warning Letter ("WL") No. W2012-12-W-1002 to the PSA for Copper violations for October 2012. On January 10, 2013, the Department issued WL No. W2013-01-W-1002 to the PSA for Ammonia violations for November 2012. On February 7, 2013, the Department issued WL No. W2013-02-W-1002 to the PSA for BOD_5 and Ammonia violations for December 2012. On March 13, 2013, the Department issued Notice of Violation ("NOV") No. W2013-03-W-0001 to the PSA for TKN violations for January 2013 and the BOD_5 and Ammonia violations previously cited in WL No. W2013-02-W-1002 for December 2012. On May 17, 2013, the Department issued NOV No. W2013-05-W-0001 to the PSA for BOD_5 and TKN violations in March 2013. The May 2013 NOV also cited a release of 1,800-2,000 gallons of wastewater on March 12, 2013 due to failure of a sample port. On June 20, 2013, the Department issued NOV No. W2013-06-W-0001 to the PSA for violation of the copper maximum concentration limit in April 2013.

14. On April 9, 2013, Department staff met with representatives of the PSA to discuss the violations, including the PSA's written responses to the NOVs.

15. A letter from the PSA in response to the NOV dated May 23, 2013 explained that the March 12 release did not reach state waters. This letter also states that the PSA has maintained compliance with copper and zinc limits since initiating a pilot treatment study of an alternative method of metals removal on April 26, 2013. Because the alternative method appears to be successful, the PSA intends to apply for approval of this method in a permit modification upon completion of the pilot study.

16. The PSA's operating logs indicate that it discharged treated wastewater from the Plant every day from October 1, 2012 through April 30, 2013.

17. 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."

18. 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.

19. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

20. The Department has issued no permits or certificates to the PSA for the Plant other than VPDES Permit No. VA0024040.

21. Mill Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

22. Based on the results of the meeting on April 9, 2013 and documents submitted by the PSA on November 7, 2012, January 10, 2013, and March 22, 2013, the Board concludes that the PSA has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, as described in paragraphs C(3) through C(9), above.

23. The PSA has submitted documentation that verifies that the violations as described in Paragraphs C(3) through C(9) above have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the PSA, and the PSA agrees to pay a civil charge of **$2,891.00** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

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

The PSA shall include its Federal Employer Identification Number (FEIN) (54-6001430K) 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 PSA shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the PSA for good cause shown by the PSA, 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 PSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. The PSA 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. The PSA 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 PSA 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 PSA 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 PSA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The PSA 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 PSA 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 PSA 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 the PSA.

11. This Order shall continue in effect until:

    a. the Director or his designee terminates the Order after the PSA has completed all of the requirements of the Order;

    b. the PSA petitions the Director or his designee to terminate the Order after they have 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 PSA.

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

14. This Order constitutes the entire agreement and understanding of the PSA 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 PSA other than those expressed in this Order.

15. By its signature below, the PSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2013.

_____
Robert J. Weld, Regional Director
Department of Environmental Quality

The Montgomery County PSA voluntarily agrees to the issuance of this Order.

Date: OCT. 7, 2013 By: William H. Brown CHAIR
(Person) (Title)

Commonwealth of Virginia
~~City/~~County of MONTGOMERY

The foregoing document was signed and acknowledged before me this 7th day of OCTOBER, 2013, by WILLIAM H. BROWN who is CHAIR of the Montgomery County PSA, on behalf of the PSA.

Notary Public

277936
Registration No.

ROBERT C. FRONK NOTARY PUBLIC REG. # 277936 COMMONWEALTH OF VIRGINIA

My commission expires: OCT. 31, 2015

Date: _____ By: _____, _____
(Person) (Title)