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# *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*
SOUTHWEST REGIONAL OFFICE
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Douglas W. Domenech
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
## Tazewell County Public Service Authority
## FOR
## Claypool Hill Sewage Treatment Plant
## VPDES Permit No. VA0064271

### 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 Tazewell County Public Service Authority, regarding the Claypool Hill Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and 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. The "303(d) report" is a subset of the "305(b) report".

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

3. "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.

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", "Plant" or "STP" means the Claypool Hill Sewage Treatment Plant, located on State Route 609, near Wardell, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Tazewell County Public Service Authority's Claypool Hill service area.

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. "Permit" means VPDES Permit No. VA0064271, which was reissued under the State Water Control Law and the Regulation to the Tazewell County Public Service Authority on July 1, 2011 and which expires on June 30, 2016.

15. "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.

16. "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.

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

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

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

20. "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.

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.

24. "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 Little River, in strict compliance with the terms and conditions of the Permit.

2. Little River is located in the Tennessee-Big Sandy River Basin. Little River is listed in DEQ's 2010 Water Quality Assessment Report [303(d) report] as impaired for the recreation use goal. The impairment is listed as Fecal Coliform and E. coli. The sources are unrestricted cattle access, with grazing in riparian or shoreline zones.

3. Warning Letter No. 2011-03-S-1015, issued April 4, 2011, cited the following outstanding technical and laboratory inspection deficiencies at the Plant: 1) Initial Demonstration of Capability for total residual chlorine for all operators; 2) repair of out-of-service pumps at pump stations 3, 4 and 5; 3) repair of the splitter box for the aeration units; and 4) repair of the pump stations' alarm horns.

4. NOV No. W2011-12-S-0003, issued December 16, 2011, cited two "loss of solids" events at the Plant which occurred on August 8, 2011 and September 13, 2011 as unusual or extraordinary discharges and failure to report those discharges. Investigation of the initial event was prompted by a complaint from the Virginia Department of Game and Inland Fisheries.

5. Warning Letter No. 2012-03-S-1003, issued March 5, 2012, cited the PSA's failure to submit a Survey of Industrial Users to DEQ within the timeframe specified in the Permit.

6. Warning Letter No. 2012-07-S-1004, issued July 31, 2012, cited exceedance of the discharge limitations contained in Part I.A.1 of the Permit, for average and maximum concentrations for Ammonia as Nitrogen for June, 2012. The WL also cited one overflow which occurred in March, 2012 at the Plant's influent pump station.

7. NOV No. W2013-01-S-0001, issued January 15, 2013, again cited exceedance of the discharge limitations contained in Part I.A.1 of the Permit, for average and maximum concentrations for Ammonia as Nitrogen for June, 2012. The NOV also cited the following overflows in the Plant's collection system: one overflow that occurred during the month of August, 2012, at Pump Station No. 3; one overflow that occurred during the month of October, 2012, at Pump Station No. 1; two overflows that occurred during the month of November, 2012, both at Pump Station No. 1; and two overflows that occurred during the month of December, 2012, also both at Pump Station No. 1. Each overflow was properly reported the same day, with written notification by 5-day letter, and by notation on each respective DMR. Also cited in the NOV were several outstanding technical inspection items.

8. NOV No. W2013-04-S-0002, issued April 5, 2013, cited exceedance of the discharge limitations contained in Part I.A.1 of the Permit, for average concentration for total suspended solids for February, 2013. The NOV also cited the following overflows: one overflow that occurred in February 2013 at Pump Station No. 1; and one overflow that occurred March 4, 2013 at Pump Station No. 1. The February overflow was properly reported the same day, with written notification by 5-day letter, and by notation on the February 2013 DMR. The March overflow was properly reported the same day, with written notification and by notation on the March 2013 DMR. The NOV also cited a "loss of solids" event which occurred February 26, 2013 at the Plant as an unusual or extraordinary discharge and failure to report that discharge. Also cited were several outstanding technical inspection items. In addition, the PSA reported an exceedance of the maximum concentration for Ammonia as Nitrogen for April, 2013 which was not cited in an NOV, but is included in this Order.

9. The PSA responded to each Warning Letter and Notice of Violation in writing. The PSA also submitted written responses to each inspection report, a corrective action plan dated March 6, 2012, and a Virginia Clean Water Revolving Loan Fund application with a revised Preliminary Engineering Report in July, 2012. A "Disinfection System, Influent Pump Station and Preliminary Inflow and Infiltration Evaluations" document and an "Analysis of Operational Performance and Documentation for the Claypool Hill Wastewater Treatment Plant" were also submitted. A revised schedule of construction for a new facility, submitted April 19, 2013, is incorporated in Appendix A of the Order.

10. The PSA's operating logs indicate that it discharged treated wastewater from the Plant every day from August 1, 2011 through April 30, 2013.

11. 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."

12. 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.

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

14. The Department has issued no permits or certificates to the PSA other than VPDES Permit No. VA0064271.

15. Little River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

16. Based on results reported on the monthly DMRs for the months noted, the results of technical and laboratory inspections on January 19, 2011, sampling and recon/compliance inspections on August 8, 2011, September 13, 2011, January 24, 2012 and February 26, 2013, and documentation submitted in response to these inspections, the Board concludes that the PSA has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging untreated sewage and municipal wastes from the Plant's collection system and treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(8), above.

17. On January 18, 2012, May 22, 2012 and April 19, 2013, Department staff met with representatives of the PSA to discuss the violations, including the PSA's written responses to WLs and NOVs.

18. In order for the PSA to complete its return to compliance, DEQ staff and representatives of the PSA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order. Virginia Clean Water Revolving Loan Fund money, in the amount of $9,255,550.00, has been authorized for construction of a new facility.

## SECTION D: Agreement and Order

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

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

2. Pay a civil charge of $10,290.00 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 Tazewell County Public Service Authority shall include its Federal Employer Identification Number (FEIN) 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 Tazewell County Public Service Authority 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, in NOV No. W2011-12-S-0003, issued December 16, 2011; NOV No. W2013-01-S-0001, issued January 15, 2013; NOV No. W2013-04-S-0002, issued April 5, 2013; WL No. 2011-03-S-1015, issued April 4, 2011; WL No. 2012-03-S-1003, issued March 5, 2012; and WL No. 2012-07-S-1004, issued July 31, 2012. The PSA also submitted a letter of verification of accuracy of the Plant's O and M Manual late and reported an exceedance of the maximum concentration for Ammonia as Nitrogen for April, 2013, neither of which was cited in a WL or NOV, but both of which are included in 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 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 the PSA. Nevertheless, the PSA 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 PSA has completed all of the requirements of the Order;

    b. the PSA 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 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 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 PSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8 day of November, 2013.

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

Tazewell County Public Service Authority voluntarily agrees to the issuance of this Order.

Date: 09-05-13 By: Dahmon Ball, ADMINISTRATOR
(Person) (Title)
Tazewell County Public Service Authority

Commonwealth of Virginia
City/County of TAZEWELL

The foregoing document was signed and acknowledged before me this 5TH day of SEPTEMBER, 2013, by DAHMON BALL who is ADMINISTRATOR of Tazewell County Public Service Authority on behalf of the Tazewell County Public Service Authority.

Tamara Shea Ringstaff
Notary Public

313220
Registration No.

My commission expires: 4-30-14

Notary seal:

TAMARA SHEA RINGSTAFF
COMMONWEALTH OF VIRGINIA
REGISTRATION NO. 313220
MY COMM. EXPIRES 4-30-14
NOTARY PUBLIC

**References**
Va. Code § 55.118.6
Va. Code §§ 47.1-2, -16
Notary Handbook (at Sec. of Commonwealth)

# APPENDIX A
# SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law and Regulations and the Permit, the Tazewell County Public Service Authority agrees to implement the following actions, as they relate to construction of the new Claypool Hill STP, by the dates noted below:

1. Submit final design plans and specifications.....August 16, 2013

2. Obtain DEQ Approval of Plans and Specifications*.....September 30, 2013

3. Project Documents available to Prequalified Contractors.....November 5, 2013

4. Bid Opening.....December 5, 2013

5. Issue Notice to Proceed.....February 5, 2014

6. Achieve Substantial Completion.....July 5, 2015

7. Achieve final completion, obtain CTO and place new STP in service .....August 4, 2015

8. Close the existing Claypool Hill STP, as required by VPDES Permit No. VA0064271, Part I, Section E(7), per the closure plan contained in the approved plans and specifications (Item 2 above) .....March 1, 2016

9. Notify DEQ in writing within ten days of completion of any item noted in Items 1 through 7 above.

10. Submit quarterly progress reports to the SWRO; the first report, for the reporting period July 1, 2013 through September 30, 2013, shall be due on October 10, 2013; subsequent quarterly reports shall be submitted in the same manner until the project is completed.

11. All reports submitted to the SWRO shall be mailed to the attention of Ruby Scott, Compliance Auditor, Virginia Department of Environmental Quality, 355-A Deadmore Street, Abingdon, VA 24210.

* Upon approval by DEQ, said documents/schedules shall become an enforceable part of this Consent Order, as stated in Item 12 of Section E, Administrative Provisions, above.