Piedmont Regional Office
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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
CHARLES CITY COUNTY, VIRGINIA
for the
MT. ZION and RUSTIC WTP
VPDES Permit No. VA0085936

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Charles City County, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and/or regulation.

SECTION B: Definitions

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

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

2. "County" means Charles City County, Virginia a political subdivision of the Commonwealth of Virginia. The County is a "person" within the meaning of Va. Code § 62.1-44.3.

3. "Department" or "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 Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "DMR" means Discharge Monitoring Report.

6. "Mt. Zion Facility" means Charles City County Mt. Zion and Rustic Water Treatment Plant (WTP) located at Route 623, in Charles City, Virginia.

7. "Mt Zion Permit" means the VPDES Permit No. VA0085936 issued for the Mt. Zion Facility which became effective on September 3, 2002 and expired on September 2, 2007. The Mt. Zion Permit was re-issued on and became effective on July 14, 2008 and expires on July 14, 2013.

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

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

10. "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.

11. "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.

12. "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.

13. "Permit Regulation" means 9 VAC 25-31-10, *et seq.*, the Virginia Pollutant Discharge Elimination System Permit Regulation.

14. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

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. "TDS" means total dissolved solids.

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

19. "VAC" means Virginia Administrative Code.

20. "VPA" means Virginia Pollution Abatement.

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

22. "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 County owns and operates the Mt. Zion and Rustic Water Treatment Plant located at Route 623, in Charles City, Virginia. The Mt. Zion Facility is subject to the Mt. Zion Permit which allows the County to discharge treated wastewater into Morris Creek in strict compliance with terms, limitations and requirements outlined in the Mt. Zion Permit.

2. Morris Creek is located in the James River Basin (Lower). During the 2010 305(b)/303(d) cycle, tidal Morris Creek was impaired of the Recreation Use due to enterococci violations and of the Aquatic Life Use due to natural pH exceedances. In addition, the creek is considered fully supporting with observed effects of the Fish Consumption Use due to the Virginia Department of Health fish consumption advisory for kepone. Morris Creek is considered a Tier 2 water. The stream is not proposed for designation as Tier 3 Exceptional Waters.

   The Morris Creek bacterial TMDL was approved by the EPA on December 3, 2009 and by the Board on September 30, 2010. The Facility was not assigned a wasteload allocation because it is not permitted for bacterial control. The discharge was also addressed in the Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010. It was included in the aggregated total nitrogen, total phosphorus, and total

suspended solids wasteload allocations for non-significant wastewater dischargers in the Chickahominy River oligohaline estuary (CHKOH).

3. On May 25, 2007, the Department issued WL Number W2007-05-P-1003 to the County for its failure to submit an application for reissuance of the Mt. Zion Facility Permit. The County was required by Part II.M of the Mt. Zion Permit and 9 VAC 25-31-100.D to submit a permit application within 180 days before the expiration of the Mt. Zion Permit (by March 6, 2007). The Department did not receive a response to the WL from the County.

4. On September 2, 2007, the Mt. Zion Permit expired.

5. DEQ received the initial application on October 5, 2007. Additional application information was received on October 23, 2007, November 8, 2007, December 4 and 21, 2007, and January 9, 2008. The application was deemed complete on March 14, 2008. The Mt. Zion Permit was reissued on July 14, 2008.

6. A review of the DEQ Mt. Zion file revealed that between the time the Mt. Zion Permit had expired and the time it was reissued, the Mt. Zion Facility discharged wastewater to state waters without a valid VPDES permit, as prohibited by Va. Code §62.1-44.5.A.1. The DMRs submitted for the September through December 2007 monitoring periods and January through July 2008 monitoring periods all noted discharges of wastewater from the Mt. Zion Facility.

7. On August 14, 2008, the Department performed an inspection of the Mt. Zion Facility and reviewed the DEQ Mt. Zion Permit file. The following violations were noted as the result of the inspection and file review:

    a. Failure to calibrate and perform maintenance procedures on monitoring instrumentation, as required by Part II.A.3 of the Mt. Zion Permit. During the inspection Mt. Zion Facility staff could not provide Department staff with documentation to verify that calibration and maintenance on monitoring instrumentation were being performed at the Mt. Zion Facility.
    b. Failure to analyze and report permitted parameters, as required by Part I.A.1 and 2 of the Mt. Zion Permit. Department staff noted that the County was reporting conductivity rather than Total Dissolved Solids (TDS).
    c. Failure to maintain on site records of monitoring information, including all calibration records, as required by Part II.B.1 and Part II.B.2 of the Mt. Zion Permit. Department staff noted during the inspection that monitoring records were not located on site. Department staff reviewed the records at the County public works office and found that the sample records were not being maintained to the extent required.

8. On August 26, 2008, the Department sent the County the report from the inspection that was performed on August 14, 2008. The Department requested the County to respond to the Compliance Recommendations by September 30, 2008. The Department did not receive a response from the County.

9. On November 14, 2008, the Department issued NOV Number W2008-10-P-0002 to the County for the violations described in paragraphs C.7.a and c. The NOV also included a citation for the failure to provide a written response to the Compliance Recommendations made in the inspection report, as required by Va. Code §62.1-44.21 and Part II.D of the Mt. Zion Permit.

10. On February 3, and 12, 2009, DEQ staff and County representatives met to discuss the issues at the Mt. Zion Facility.

11. On March 13, 2009, the Department issued NOV Number W2009-03-P-0001 to the County. The violations described in paragraphs C.7.a and c that were observed during the August 14, 2008 inspection were listed again and further review of the Department's file revealed the following violations:

    a. Failure to analyze and report permitted parameters, as required by Part I.A.1and 2 of the Mt. Zion Permit. The DMR for the November 2008 monitoring period appeared to contain incorrect data for TDS. The DMR for the December 2008 monitoring period contained no maximum pH data and appeared to contain incorrect data for TDS. The DMR for the January 2009 monitoring period contained no pH data and appeared to contain incorrect data for TDS. A revised DMR for the January 2009 monitoring period was received on February 18, 2009, however, it did not contain data for maximum pH. DEQ staff noted that during the review of DMRs that Ammonia, Total Recoverable Zinc, Total Recoverable Mercury and Total Recoverable Hexavalent Chromium analysis were not being performed once every three months. The data from the analysis of Ammonia, Total Recoverable Zinc, Total Recoverable Mercury and Total Recoverable Hexavalent Chromium were due to DEQ by January 10, 2009, but were not received.
    b. Failure to submit a revised O&M Manual by October 13, 2008, as required by Part I.C.2 of the Mt. Zion Permit. DEQ staff noted during the file review that the Department had not received the O&M Manual from the County.

12. On April 16 and April 29, 2009, the Department performed a follow-up inspection of the Mt. Zion Facility and reviewed the DEQ Mt. Zion Permit file. The following violations were noted as the result of the inspection and file review:

    a. Failure to calibrate and perform maintenance procedures on monitoring instrumentation, as required by Part II.A.3 of the Mt. Zion Permit. Department staff noted that the violations observed during the March inspection had not been

corrected.

b. Failure to maintain on site records, as required by Part II.B.1 and Part II.B.2 of the Mt. Zion Permit. Department staff reviewed the records and found that the sample records were not being maintained to the extent required.
c. Failure to submit a revised O&M Manual by October 13, 2008, as required by Part I.C.2 of the Mt. Zion Permit. DEQ staff noted during the file review that the Department still had not received the O&M Manual from the County.
d. Failure to submit annual project summary reports by July 14, 2009, as required by Part I.B of the Mt. Zion Permit. DEQ staff noted during the file review that the Department had not received the annual project summary reports from the County.

13. On August 10, 2009, the Department issued NOV Number W2009-07-P-0003 to the County for the violations described in paragraph C.12.

14. On December 3, 2009, the Department issued NOV Number W2009-11-P-0005 to the County for its failure to analyze and report permitted parameters, as required by Part I.A.1and 2 of the Mt. Zion Permit. DEQ staff noted that during the review of DMRs that Ammonia, Total Recoverable Zinc, Total Recoverable Mercury and Total Recoverable Hexavalent Chromium analysis were not being performed once every three months. The data from the analysis of Ammonia, Total Recoverable Zinc, Total Recoverable Mercury and Total Recoverable Hexavalent Chromium were due to DEQ by October 10, 2009, but were not received. The County failed to submit an updated O&M Manual, as required by Part I.C.2 of the Mt. Zion Permit. The County also failed to submit annual project summary reports, as required by Part I.B of the Mt. Zion Permit.

15. On July 13, 2010, the Department issued NOV Number W2010-06-P-0004 to the County for its failure to submit an updated O&M Manual, as required by Part I.C.2 of the Mt. Zion Permit. The County also failed to submit an annual project summary report, as required by Part I.B of the Mt. Zion Permit.

16. On May 5, 2011, the Department issued NOV Number W2011-05-P-0001 to the County for its failure to adhere to permitted limits, as prohibited by Part I.A.1 of the Mt. Zion Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50. The monitoring results reported on the March 2011 DMR noted TDS average concentration of 3150 mg/L and maximum concentration of 3150 mg/L, versus a permit allowable average and maximum concentration of 2500 mg/L.

17. On June 21, 2011, the Department issued NOV Number W2011-06-P-0004 to the County for its failure to adhere to quantification levels (QL) when laboratory analyses were performed, as required by Part I.C.5.a of the Mt. Zion Permit. Supporting documentation provided with the DMRs submitted on January 10, 2011 and April 8, 2011 indicate laboratory analyses were performed for Zinc at a QL of .02 mg/L (20 ug/L) and for

Chromium VI at a QL of .01 mg/L (10 ug/L), versus a permit allowable maximum QL of 13 ug/L and 3.2 ug/L respectively.

18. On July 31, 2012, the Department received a compliance update from the County that it has implemented the practice of log books which the public works director is checking weekly and that disciplinary actions will be taken if employees fail to document appropriately. The County also submitted a policy for base-level and continued operator training, a certification that it had adequate funding for fiscal year 2012-2013 to operate, repair, and maintain the Mt. Zion Facility, and the 2009 annual project summary report.

19. On August 14, 2012, the Department issued NOV Number W2012-08-P-0005 to the County for its failure to adhere to quantification levels (QL) when laboratory analyses were performed, as required by Part I.C.5.a of the Mt. Zion Permit. The NOV also noted that DMR data that was reported did not use the correct units, as required by the Mt. Zion Permit.

20. On October 5, 2012, the Department received a response from the County regarding NOV No. W2012-08-P-0005, in which the County stated that corrected DMR data would be submitted.

21. Va. Code § 62.1-44.5 states that: "Except 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."

22. The Permit 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.

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

24. The Department has issued no permits or certificates to the County for this Facility other than VPDES Permit No. VA0085936.

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

26. Based on the Department records, the Board concludes that the County has violated the Mt. Zion Permit, the State Water Control Law and the Regulations, as described above.

27. 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

Accordingly, by virtue of the authority granted it in Va. Code §§62.1-44.15, the Board orders the County, and the County agrees to perform the actions described in Appendix A of this Order.

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.

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 occurrence. The County shall show 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 County intends 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, their 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 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 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

b. 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 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, Charles City County, Virginia voluntarily agrees to the issuance of this Order.

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

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

Charles City County, Virginia voluntarily agrees to the issuance of this Order.

Date: 3/28/13 By: _____, _____
Zach Trogdon County Administrator

Commonwealth of Virginia
~~City~~/County of Charles City

The foregoing document was signed and acknowledged before me this 28th day of March, 2013, by Zach Trogdon who is County Administrator of Charles City County, Virginia.

_____
Notary Public

7310887
Registration No.

My commission expires: 8/31/2014

Notary seal: GINA L. SANDY PATTERSON
NOTARY PUBLIC
REGISTRATION # 7310887
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
AUGUST 31, 2014

APPENDIX A

1. **The County shall immediately** comply with the provisions of the Mt. Zion Permit and the approved O&M Manual with respect to maintenance, monitoring, recordkeeping and reporting requirements.

2. **Until the Environmental Management System described in Appendix B of the Charles City County Administrative Building Consent Order is implemented, the County shall immediately** implement the Quality Assurance/Quality Control program as described in the November 2010 Corrective Action Plan (CAP) and in the general comments item 1 of the May 11, 2011 CAP response letter.

3. The County shall provide additional training to the operators of the Mt. Zion and Rustic WTP and the County Director of Public Works by requiring that these employees attend the following training courses as described in the DEQ Wastewater Operator Training Workshop Catalog:

   a) Basic Wastewater Licensure Review (ENV-40)
   b) Basic Lab Skills (DEQ-19)
   c) VPDES Permit Recordkeeping and Reporting (DEQ-16)
   d) Wastewater Math for Operators (DEQ-20)
   e) Sampling and Testing for Small Plants (DEQ-12)

   The employees shall attend and successfully complete all of the above referenced courses at the first date they are offered by the Department after the date of issuance of this Order. Documentation of the completion of the courses shall be maintained with the Mt. Zion and Rustic WTP records and made available to DEQ staff for review.

4. **Beginning May 10, 2013,** the County shall submit quarterly reports to DEQ, including, but not limited to, the following information:

   a. Any Mt. Zion and Rustic WTP repairs undertaken in the preceding calendar quarter.
   b. Calibration records (pH) and certificates of analysis (TDS)

   Updates shall be due every August 10, November 10, February 10, and May 10 while this Consent Order is in effect. In addition, the February 10th report shall include a certification to DEQ that the County has allocated the appropriate funding to operate, repair, update, and/or replace the Mt. Zion and Rustic WTP.

All requirements of Appendix A of this Order shall be submitted to:

Kyle Ivar Winter, P.E.
Deputy Regional Director
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5052
804-527-5106 (fax)
kyle.winter@deq.virginia.gov