



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

Douglas W. Domenech  
Secretary of Natural Resources

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David K. Paylor  
Director

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Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
NELSON COUNTY SERVICE AUTHORITY  
NELSON COUNTY REGIONAL STP  
VPDES Permit No. VA0089729**

## **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 Nelson County Service Authority, regarding the Facility, for the purpose of resolving certain violations of the State Water Control Law and the Permit and the 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. "CBOD" mean carbonaceous biochemical oxygen demand.
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" means the wastewater treatment plant located at 3660 Tye Brook Highway, Colleen Virginia, that treats and discharges treated sewage and other municipal wastes for the residents and businesses of the Towns of Lovingston and Colleen, and surrounding areas.
11. "I&I" means inflow and infiltration.
12. "NCSA" or "Authority" means Nelson County Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* NCSA is a "person" within the meaning of Va. Code § 62.1-44.3.
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
14. "O&M" means operations and maintenance.
15. "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.
16. "Permit" means VPDES Permit No. VA0089729, which was issued under the State Water Control Law and the Regulation to Nelson County Service Authority on June 1, 2013 and which expires on May 31, 2018.

17. "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.
18. "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.
19. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
21. "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.
22. "TMDL" means total maximum daily load.
23. "TSS" means total suspended solids.
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "VPDES" means the Virginia Pollutant Discharge Elimination System.
27. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

**SECTION C: The Board's Findings of Facts and Conclusions of Law**

1. NCSA owns and operates the Facility which serves the Towns of Lovington and Colleen, and surrounding areas including Hendersons Store and Piney River. The Permit authorizes NCSA to discharge treated sewage and other municipal wastes from the Facility to Black Creek, in strict compliance with the terms and conditions of the Permit.
2. Black Creek is located in the James (Upper) River Basin. Black Creek is listed as Tier 1 waters. Black Creek is not listed in DEQ's 305(b) report as impaired.
3. In submitting its DMRs, as required by the Permit, NCSA has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for ammonia for the months of June 2012 and September 2012. NCSA attributed the ammonia exceedance to high flows resulting from rainfall events.
4. On November 5, 2012, DEQ VRO issued Warning Letter No. W2012-11-V-1002 to NCSA for ammonia effluent limitation violations in June 2012 and September 2012.
5. In submitting its DMRs, as required by the Permit, NCSA has indicated that it failed to sample TSS as required in Part I.A.1 of the Permit, for the month of November 2012.
6. On January 15, 2013, DEQ VRO issued Warning Letter No. W2013-01-V-1007 to NCSA for failure to sample and report TSS in November 2012.
7. In submitting its DMRs, as required by the Permit, NCSA has indicated that it exceeded a discharge limitation contained in Part I.A.1 and Part II.C. of the Permit, for ammonia for the month of December 2012. NCSA attributed the ammonia exceedance to high flows resulting from rainfall events.
8. On February 15, 2013, DEQ VRO issued a Warning Letter No. W2013-02-V-1013 to NCSA for an ammonia effluent limitation violation in December 2012.
9. In submitting its DMRs, as required by the Permit, NCSA has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for ammonia and total hardness for the month of January 2013. NCSA attributed the ammonia exceedance to high flows resulting from rainfall events and the hardness violation was attributed to a malfunction of the alkalinity adjustment pump.
10. On March 13, 2013, DEQ VRO issued Notice of Violation No. W2013-03-V-0001 to NCSA for ammonia and total hardness effluent limitation violations in January 2013. In addition, there was a failure to take all of the CBOD effluent samples required by the permit which was attributed to a contract laboratory error.
11. In submitting its DMRs, as required by the Permit, NCSA has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for total hardness and an

improperly completed DMR for the month of March 2013. NCSA attributed the hardness violation was attributed to a malfunction of the alkalinity adjustment pump. On May 8, 2013, DEQ VRO issued Notice of Violation No. W2013-05-V-0003 to NCSA for a total hardness effluent limitation violation and improper DMR (frequency of analysis for CBOD) in March 2013.

12. On March 28, 2013, DEQ staff met with representatives of NCSA to discuss the NOV and the Facility's compliance issues, the problems that led to the violations and corrective actions needed to address the violations. During those discussions, NCSA laid out the corrective actions taken to address violations, including adjusting timing cycles on the Sequencing Batch Reactor ("SBR") units to improve the ammonia treatment during high flow events, changing operating procedures to ensure proper sampling and reporting, and flow pacing the alkalinity pump to address alkalinity adjustment problems. NCSA also indicated that it had contacted the Facility's manufacturer to discuss potential modifications to improve treatment.
13. NCSA's operating logs for the Facility indicate that it discharged treated wastewater every day during the months of June 2012 through March 2013.
14. By letters dated April 19, 2013 and April 25, 2013, NCSA submitted a plan of further corrective actions to address I&I in its collection system for inclusion in Appendix A of this Order.
15. 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."
16. 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.
17. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
18. The Department has issued no permits or certificates to NCSA authorizing the discharge of wastewater from the Facility other than VPDES Permit No. VA0089729.
19. Black Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
20. Based on NCSA's letter(s) to DEQ, the Warning Letters, and NOVs, the March 28, 2013 meeting, and a file review, the Board concludes that NCSA has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging wastewater to state waters while concurrently failing to comply with the conditions of the Permit, as described in Section C above.

21. In order for NCSA to provide for compliance with the Permit, Regulation and Va. Code § 62.1-44.5, DEQ and representatives of NCSA 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 NCSA, and NCSA agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$4,100 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

NCSA shall include its Federal Employer Identification Number (FEIN) [(54-1390357)] 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, NCSA 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 NCSA for good cause shown by NCSA, 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, NCSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. NCSA 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. NCSA 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 NCSA 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. NCSA 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 unforeseen occurrence beyond its control and not due to a lack of good faith or diligence on its part. NCSA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NCSA 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 NCSA 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, 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 NCSA. Nevertheless, NCSA 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 NCSA has completed all of the requirements of the Order;
    - b. NCSA 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 NCSA.
- Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NCSA 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 NCSA 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 NCSA 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 NCSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NCSA.
  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, NCSA voluntarily agrees to the issuance of this Order.

HAND COPY  
TO FOLLOW

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Amy T. Owens, Regional Director  
Department of Environmental Quality

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

Date: July 15, 2013 By: George T. Miller Jr., EXECUTIVE DIRECTOR  
(Person) (Title)  
Nelson County Service Authority

Commonwealth of Virginia

City/County of Nelson

The foregoing document was signed and acknowledged before me this 15<sup>th</sup> day of  
July, 2013, by George T. Miller Jr who is

Executive Director of Nelson County Service Authority on behalf of Nelson  
County Service Authority.

Jill Lynne Fitzgerald  
Notary Public

7125843  
Registration No.

My commission expires: 9/30/2015

Notary seal:



**APPENDIX A**  
**SCHEDULE OF COMPLIANCE**  
**NELSON COUNTY SERVICE AUTHORITY**

1. **By August 1, 2013**, NCSA shall complete installation of flow measurement/monitoring equipment and begin monitoring the flows received from the Lovington/Colleen, Hendersons Store and Piney River sewer subbasins to evaluate I&I from those subbasins.
2. **By December 1, 2013**, NCSA shall submit to DEQ for review and approval a report containing the influent flow and collection system sampling data collected to date by NCSA. The report shall also contain a progress report detailing and evaluating the process control corrective actions that NCSA has taken to address the ammonia treatment problems associated with high flow events. In addition, the report shall contain a plan and schedule of additional corrective actions to address ammonia treatment problems. NCSA shall respond to comments regarding the report **within 30 days** of receipt of written comments.

**Inflow and Infiltration Reduction**

NCSA agrees to institute an aggressive I&I rehabilitation plan. NCSA shall repair/rehabilitate collection system deficiencies on the following schedule. DEQ recognizes that the prioritization of the I&I deficiencies in this schedule may need to change during the evaluation and rehabilitation process based on new information. DEQ agrees that with prior approval from DEQ, NCSA may reprioritize the I&I schedule for repairs/rehabilitation. NCSA shall submit to DEQ for review and approval any proposed reprioritization(s) and provide a basis for the revision.

3. NCSA has begun smoke testing and manhole inspections in the Lovington/Colleen collection system basin as part of its comprehensive I&I study of the Facility's collection system. This collection system basin encompasses approximately 100 gravity manholes and 12.5 miles of sewer mains.
4. **By November 1, 2013**, NCSA shall complete the smoke testing/manhole inspections and identify and locate areas needing repairs within the Lovington/Colleen collection system basin.
5. **By December 1, 2013**, NCSA shall submit to DEQ for review and approval a Corrective Action Plan for repair of identified problems. NCSA shall respond to comments regarding the plan and schedule **within 30 days** of receipt of written comments. Upon approval of the plan and schedule, the plan and schedule shall be incorporated by reference into the Order and becomes enforceable under the Order.
6. **By January 1, 2014**, NCSA shall begin smoke testing and manhole inspections of the Hendersons Store collection system basin. This collection system basin contains 12 manholes and approximately 5 miles of sewer mains.

7. **By April 1, 2014**, NCSA shall complete the smoke testing/manhole inspections and identify and locate areas needing repair.
8. **By May 1, 2014**, NCSA shall submit to DEQ for review and approval a Corrective Action Plan for repair of identified problems. NCSA shall respond to comments regarding the plan and schedule **within 30 days** of receipt of written comments. Upon approval of the plan and schedule, the plan and schedule shall be incorporated by reference into the Order and becomes enforceable under the Order.
9. **By April 1, 2016**, NCSA shall submit to DEQ for review and approval an update of the success of the I&I corrective actions conducted to date and provide a schedule for any remaining priority repairs and its plan for conducting future I&I work and the annual budget for the next 3 years.
10. NCSA shall submit quarterly progress reports to DEQ, with the first report being due **October 10, 2013**. Subsequent Progress Reports will be due by **January 10, April 10, July 10, and October 10**, until the cancellation of this Order. The quarterly progress reports shall contain:
  - a. a summary of all work completed since the previous progress report in accordance with this Order;
  - b. a projection of the work to be completed during the upcoming quarterly period in accordance with this Order; and
  - c. a statement regarding any anticipated problems in complying with this Order.
11. No later than **14 days** following a completion date identified in the above schedule of compliance NCSA shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

**DEQ Contact**

Unless otherwise specified in this Order, NCSA shall submit all requirements of Appendix A of this Order to:

**Steve Hetrick  
Enforcement Specialist Sr.  
VA DEQ –Valley Regional Office  
P.O. Box 3000  
Harrisonburg, VA 22801**

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Nelson County Service Authority  
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**[Steven.hetrick@deq.virginia.gov](mailto:Steven.hetrick@deq.virginia.gov)**