COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

AQUA LAKE HOLIDAY UTILITIES, INC. - THE SUMMIT STP

VA0027642

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and Aqua Lake Holiday Utilities, Inc. ("ALHU") for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

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

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

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. "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.

5. "Order" means this document, also known as a Consent Special Order.

6. "STP" means sewage treatment plant.

7. "ALHU" means Aqua Lake Holiday Utilities, Inc., a company certified to do business in Virginia.

8. "Facility" means the Summit STP located in Frederick County, Virginia.

9. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

10. "Permit" means Virginia Pollutant Discharge Elimination System Permit No. VA0027642, which became effective September 28, 2003 and expires September 27, 2008.

11. "NOV" means Notice of Violation.

12. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.

13. "PER" means preliminary engineering report.

14. "DMR" means discharge monitoring report.

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

16. "CTO" means certificate to operate.

17. "I&I" mean inflow and infiltration.

18. "SMP" mean sludge management plan.

SECTION C: Findings of Fact and Conclusions of Law

1. ALHU owns and operate the Facility serving a planned residential community, which has approximately 650 customers and is located in Frederick County, Virginia. The Facility is subject to VPDES Permit VA0027642 which allows the Facility to discharge treated wastewater to Isaacs Creek in the Potomac River basin.

2. The design capacity of the present Facility has been rated and approved as 0.24 MGD.

3. Under the previous owner/permittee, the Facility had a history of effluent limitation violations (primarily Cl2 residual violations and occasional BOD/TSS violations), unauthorized discharges and overflows from the collection system and exceedances of the Facility's design capacity. The BOD/TSS effluent violations are attributed to high

flows resulting from storm events. During the period from July 2005 through December 2006, 13 NOVs and 3 Warning Letters were issued to the previous permittee. In addition, the Facility regularly exceeded the Permit's 95% flow requirement.

4. Beginning in 2003, the previous permittee had begun planning an expansion of the Facility. In addition, the previous permittee commissioned a comprehensive infiltration/inflow detection and reduction study.

5. On January 19, 2007, the Permit was modified to reflect the sale of the Facility from Lake Holiday Estates Utility Company, Inc. to ALHU.

6. DEQ issued NOV No. W2007-02-V-0004 on February 6, 2007, to the ALHU for exceedances of the Permit's Cl2 effluent limitation violations during November and December 2006.

7. DEQ issued NOV No. W2007-03-V-0004 on March 15, 2007, to ALHU for exceedances of the Permit's Cl2 effluent limitation violations during January 2007, an incomplete DMR, and an unauthorized discharge on January 30, 2007.

8. DEQ issued NOV No. W2007-04-V-0006 on April 10, 2007, to ALHU for exceedances of the Permit's Cl2 effluent limitation violations during February 2007 and an unauthorized discharge on February 21, 2007.

9. On April 3, 2007, DEQ received ALHU's plan and schedule of corrective actions to address chlorination/dechlorination problems, install flow equalization, and expand I&I study and corrective actions. Sections of this plan and schedule have been incorporated into Appendix A of this Order.

10. DEQ issued NOV No. W2007-05-V-0009 on May 7, 2007, to the ALHU for exceedances of the Permit's BOD and TSS effluent limitation violations and an unauthorized discharge in March 2007.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders ALHU and ALHU agrees, to perform the actions described in Appendix A and Appendix B of this Order. In addition, the Board orders ALHU, and ALHU voluntarily agrees, to pay a civil charge of **$3200** 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 payable to the "Treasurer of Virginia", delivered to:

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

Either on a transmittal letter or as a notation on the check, ALHU shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

2. During the estimated one year's interim period during which Facility improvements will be completed, ALHU will operate the STP in a workmanlike fashion so as to produce the best quality effluent that the Facility is capable of producing.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of ALHU, for good cause shown by ALHU, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein in Section C. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, ALHU admits the jurisdictional allegations, but does not admit to the factual findings, and conclusions of law contained herein.

4. ALHU 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. ALHU declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 enforce this Order.

6. Failure by ALHU 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. ALHU 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. ALHU shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ALHU shall notify the DEQ Regional Director in writing 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 Director of the Valley Regional Office within 24 hours of learning of any condition above, which ALHU 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 ALHU. Notwithstanding the foregoing, ALHU 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. ALHU petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
   b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to ALHU.

   Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve ALHU from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of ALHU 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 ALHU to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of ALHU.

13. By its signature below, ALHU voluntarily agrees to the issuance of this Order. And it is so ORDERED this day of _____, 2007.

_____

Amy T. Owens, Regional Director
Department of Environmental Quality

Aqua Lake Holiday Utilities, Inc. voluntarily agrees to the issuance of this Order.

By: Gregory H. Odell

Title: President

Date: 7/2/07

Aqua Virginia, Inc. voluntarily agrees to the issuance of this Order.

By: Gregory H. Odell

Title: President

Date: 7/2/07

Commonwealth of Virginia
City/County of Rockville

The foregoing document was signed and acknowledged before me this

2nd day of July, 2007, by Gregory Odell,
(name)

who is President of Aqua Lake Holiday Utilities, Inc., on behalf of said corporation.
(title)

Patricia Ann Forsyth
Notary Public

My commission expires: Dec. 31, 2011.

Commonwealth of Virginia
City/County of Rockville

The foregoing document was signed and acknowledged before me this

2nd day of July, 2007, by Gregory Odell,
(name)

who is President of Aqua Virginia, Inc., on behalf of said corporation.
(title)

Patricia Ann Forsyth
Notary Public

My commission expires: Dec. 31, 2011.

APPENDIX A
AQUA LAKE HOLIDAY UTILITIES, INC. – THE SUMMIT STP
SCHEDULE OF COMPLIANCE

System Management and Control Plan

1. **By May 30, 2007,** ALHU shall submit to DEQ for review and approval a Facility management and control plan to eliminate reporting problems and minimize BOD and TSS effluent limitation exceedances.

Disinfection and Flow Equalization Upgrades

2. **By August 31, 2007**, ALHU shall submit to DEQ for review and approval the PER for the Facility's disinfection and flow equalization upgrades. ALHU shall respond to comments on the PER **within 30 days** of receipt of written comments on the PER.

3. **Within 150 days** of approval of the PER for the Facility's disinfection and flow equalization upgrades, ALHU shall submit to DEQ for review and approval the plans and specifications for those upgrades. ALHU shall respond to comments regarding the plans and specification **within 30 days** of receipt of written comments.

4. **Within 45 days** of plans and specifications approval, ALHU shall advertise for bid for the approved disinfection and flow equalization upgrades.

5. **Within 45 days** of receipt of the bids, ALHU shall award the contract for the construction of the approved disinfection and flow equalization upgrades.

6. **Within 30 days** of awarding the contract for the disinfection and flow equalization upgrades, ALHU shall begin construction of the approved upgrades.

7. **Within 210 days** of beginning construction of the disinfection and flow equalization upgrades, ALHU shall complete construction of the approved upgrades. At the same time, ALHU shall submit to DEQ for review and approval an updated O&M Manual and SMP covering the upgrades to the Facility.

8. **Within 30 days** of completing construction of the disinfection and flow equalization upgrades, ALHU shall request a CTO for those upgrades.

9. **Within 60 days** of completing construction of the disinfection and flow equalization upgrades, ALHU shall comply with the Permit's effluent limitations.

Inflow and Infiltration Reduction

ALHU agrees to institute an aggressive I&I rehabilitation plan. ALHU 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 ALHU may alter/substitute subbasin repairs into the schedule to reprioritize the I&I repairs/rehabilitation. ALHU shall submit to DEQ for review and approval any proposed reprioritization(s) and provide a basis for the revision.

10. **By September 30, 2007**, ALHU shall submit to DEQ for review and approval the following:
    - **a.** a report identifying I&I problem areas in the collection system;
    - **b.** targeted flow reduction amounts for the proposed I&I corrective actions; and
    - **c.** a prioritized list of subbasins having significant I&I problems with a schedule to address those problems. ALHU shall respond to comments on the report **within 30 days** of receipt of written comments.

11. **By December 31, 2007**, ALHU shall complete the I&I repairs prioritized for completion in 2007.

12. **By February 28, 2008,** ALHU shall submit to DEQ the list of prioritized I&I repairs to be completed in 2008.

13. **By December 31, 2008**, ALHU shall complete the I&I repairs prioritized for completion in 2008.

14. **By February 28, 2009,** ALHU shall submit to DEQ the list of prioritized I&I repairs to be completed in 2009.

15. **By December 31, 2009**, ALHU shall complete the I&I repairs prioritized for completion in 2009.

16. **By February 28, 2010,** AHLU shall submit to DEQ for review and approval an update of the success of the I&I corrective actions conducted to date and a schedule for any remaining priority repairs and its plan for conducting future ongoing I&I work and the annual budget for the next three years that will be allocated to conduct that work. ALHU shall respond to any questions concerning the plan within 30 days of receipt of written comments

17. ALHU shall submit quarterly progress reports to DEQ, with the first report being due **October 10, 2007**. Subsequent Progress Reports will be due by **January 10, April 10, July 10, and October 10**, along with the Facility's Discharge Monitoring Report 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.

18. No later than **14 days** following a date identified in the above schedule of compliance ALHU 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.

APPENDIX B: INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning with the effective date of this Consent Special Order and lasting until the completion of the Plant upgrade as required in Appendix A, ALHU shall limit and monitor the discharge from outfall 001 in accordance with the Permit except as specified below.

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS						MONITORING REQUIREMENTS	
	Monthly Average		Weekly Average		Min.	Max.	Frequency	Sample Type
	mg/l	kg/d	mg/l	kg/d				
BOD_5	NA	NA	59	42.3	NA	NA	3 Day/Week	8 HC
TSS	NA	NA	51	52	NA	NA	3 Day/Week	8 HC

NA = Not Applicable
NL = No Limit