COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO

Harrisonburg-Rockingham Regional Sewer Authority

VPDES Permit No. VA0060640

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a), (8d) and (11) between the State Water Control Board and the Harrisonburg-Rockingham Regional Sewer Authority 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 meanings 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 citizen 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. "HRRSA" means the Harrisonburg-Rockingham Regional Sewer Authority.

7. "North River WWTF" or "the Facility" means the North River Waste Water Treatment Facility, owned and operated by HRRSA.

8. "VPDES" means the Virginia Pollutant Discharge Elimination System.

9. "The Permit" means VPDES Permit No. VA0060640 issued to HRRSA for operation of the North River WWTF on September 1, 2006.

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

11. "VRO" means DEQ's Valley Regional Office.

SECTION C: Findings of Facts and Conclusions of Law

1. HRRSA owns and operates the North River WWTF, located in Rockingham County, Virginia. The North River WWTF provides treatment for wastewater generated by citizens, businesses and institutions in the City of Harrisonburg, the Towns of Dayton, Bridgewater and Mt. Crawford and in nearby portions of Rockingham County.

2. The Permit authorizes HRRSA to discharge treated sewage from the North River WWTF to the North River, Shenandoah River Subbasin, Potomac River Basin.

3. On the morning of July 23, 2007, DEQ received a complaint call from a citizen reporting a fish kill in the North River below the North River WWTF discharge outfall. Later that day, DEQ staff inspected the North River and observed hundreds of dead fish as described by the citizen. DEQ staff estimated that the fish kill zone extended to a point approximately one mile downstream of the Facility outfall and that, based on the degree of fish tissue decomposition, the kill had occurred on July 19th or 20th. DEQ staff suspected elevated chlorine levels in the Facility discharge as the cause of the kill after observing bleached submerged aquatic vegetation below the Facility outfall.

4. On the afternoon of July 23, 2007, DEQ received a faxed report from the Director of HRRSA describing the cause of the fish kill. In the report, HRRSA's Director explained that at a point prior to the fish kill the Facility had been experiencing unusual variations in chlorine residuals levels. HRRSA further explained in the report that it suspected this variation was based on the long lag time between its chlorine injection point and residual chlorine testing location.

5. On July 27, 2007, DEQ issued Notice of Violation No. W2007-07-V-0012 ("NOV") to HRRSA citing HRRSA for the unauthorized discharge to state waters resulting in a fish kill and for failure to report the unauthorized discharge in apparent violation of Va. Code §§ 62.1-44.5.A and 62.1-44.5.B, respectively.

6. By letter dated July 31, 2007, HRRSA expanded on its report of the cause of the fish kill and the steps being taken to prevent its recurrence. In the letter, HRRSA explained that on July 19th or 20th, manual adjustments were made in the Facility's hypochlorite feed system in response to an unusually high back pressure observed in the feed system. HRSSA explained that the operators making these adjustments failed to realize that the action would result in longer detention times in the pipeline delivering the hypochlorite solution to the disinfection basin. According to HRSSA, this action then produced a lag time between chlorine residual readings and chlorine delivery as well as an associated delay in the dechlorination process necessary to have prevented the resulting discharge of excess chlorine to North River and the fish kill. In its July 31, 2007 letter, HRSSA outlined actions being implemented to prevent recurrence of the conditions which caused the fish kill. Certain of these preventive actions have been incorporated into Appendix A of the Order.

7. On August 14, 2007, representatives of DEQ and HRRSA met in an informal enforcement conference to further discuss the issues surrounding the fish kill and preventive measures for the future. Based on these discussions and on the observations of DEQ staff made during the fish kill investigation, DEQ has concurred with the position of HRRSA as set forth in its letter dated August 1, 2007 in which HRRSA asserts that it notified DEQ of the unauthorized discharge / fish kill when HRRSA first learned of it thus satisfying the reporting criterion of Va. Code § 62.1-44.5.B.

8. The Order also settles additional violations which, although unrelated to the fish kill, were cited in the six month period immediately preceding the fish kill. These are as follows:
   a. On March 14, 2007, DEQ issued Warning Letter No. W2007-03-V-1038 to HRRSA citing failure to submit a progress report related to compliance with final nitrogen and phosphorus limits under Part I.C.1 of the Permit. The report was due on January 10, 2007 and was submitted by HRRSA on March 20, 2007, six days following issuance of the Warning Letter; and,
   b. On April 10, 2007, DEQ issued Warning Letter No. W2007-04-V-1013 to HRRSA citing: (i) missing Discharge Monitoring Report ("DMR") data for the month of February 2007; and, (ii) failure to submit a Significant Discharger Waste Survey Report ("SDWSR") pursuant to Part I.D of the Permit. By letter dated April 12, 2007, HRRSA responded to the Warning Letter and included the omitted February 2007 DMR data. In its letter HRRSA also asserted that the SDWSR had been hand delivered to DEQ prior to the due date for its submittal. A review of DEQ's files confirmed HRRSA's assertion on the SDWSR issue thus the violation was erroneously cited by DEQ.

   Based on the minor, administrative nature of these violations, DEQ elected to take no further action on the violations at the time of their citation and, applying the same rationale, DEQ seeks no relief for these violations under the Order.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a), (8d) and (11) orders HRRSA, and HRRSA agrees:

1. To perform the actions described in Appendix A of this Order;

2. To pay a civil charge of **$12,740** within 30 days of the effective date of the Order in settlement of the violations cited in this Order; and,

3. To pay, by two separate checks, within 30 days of the effective date of the Order one check in the amount of **$1,623.28** to cover the costs of the fish kill investigation and one check in the amount of **$2,660.00** to cover fish replacement costs.

Payments shall be by checks, certified checks, money orders, or cashier's checks payable to "Treasurer of Virginia" and delivered to:

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

HRRSA shall include its Federal Identification Number with all payments and shall note on the checks that the payments are being made pursuant to this Order.

SECTION E: Administrative Provisions

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

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice of Violation and Warning Letters. 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, HRRSA admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. HRRSA 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. HRRSA 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 HRRSA 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. HRRSA 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 act of God, war, strike, or such other occurrence. HRRSA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. HRRSA 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 Regional Director within 48 hours of learning of any condition above, which HRRSA 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 HRRSA. Notwithstanding the foregoing, HRRSA agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to HRRSA. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve HRRSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, HRRSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2007.

_____
Amy Thatcher Owens, Regional Director
Department of Environmental Quality

HRRSA voluntarily agrees to the issuance of this Order.

By: Curtis L. Poe

Date: 9-20-2007

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 20TH day of SEPTEMBER, 2007, by CURTIS L. POE (name), who is EXECUTIVE DIRECTOR (title) of the Harrisonburg-Rockingham Regional Sewer Authority on behalf of the Authority.

Nancy C. Showalter
Notary Public

My commission expires : 12-31-2008.

APPENDIX A
SCHEDULE OF COMPLIANCE

HARRISONBURG-ROCKINGHAM REGIONAL SEWER AUTHORITY
NORTH RIVER WWTF
VPDES PERMIT No. VA0060640

1. Beginning on the date of its entry into the Order and continuing throughout the period that the Order remains in effect, HRRSA shall conduct dechlorination efficacy monitoring on a minimum frequency of once every two hours. All data developed from this monitoring shall be subject to the provisions of Part II.C.3 of the Permit.

2. **By September 30, 2007**, HRRSA shall provide to DEQ a written description of the enhanced operations staff training concerning chlorination / dechlorination and associated monitoring being implemented to prevent recurrence of the conditions which resulted in the July 2007 fish kill on North River.

3. **By September 30, 2007**, HRRSA shall clear and maintain a pathway between the Facility and a point on North River located downstream of the Facility outfall. The pathway shall be located to allow HRRSA operations staff to visually observe North River for any adverse effects attributable to the Facility and to expedite associated response activities.