COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

LEXINGTON GOLF AND COUNTRY CLUB, INC.

(No Permit)

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 Lexington Golf and Country Club, 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. "Lexington GCC" means Lexington Golf and Country Club, Inc., the owner and operator of the Facility.

7. "Facility" means the Lexington GCC located in Rockbridge County, Virginia.

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

9. "NOV" means Notice of Violation.

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

11. "ppb" means parts per billion.

12. "ppm" means parts per million.

13. "D.O." means dissolved oxygen.

SECTION C: Findings of Fact and Conclusions of Law

1. Lexington GCC owns and operates a golf club in Rockbridge County, Virginia.

2. On August 3, 2006, DEQ received a pollution complaint regarding a fish kill on Woods Creek in Lexington, Virginia. On August 3, 2006, DEQ staff conducted an initial fish kill investigation during which staff observed dead fish. During the investigation, DEQ staff was informed that Lexington GCC personnel had performed a final rinse of a chemical (fertilizer/herbicide/fungicide) application tank on the Facility's parking lot for the maintenance/equipment shed. DEQ staff observed puddles in the parking lot at the maintenance/equipment shed and the probable path wash water product took to enter Woods Creek. Sampling of the parking lot pothole's contents showed a chlorothalonil concentration of 42,000 ppb, total nitrogen concentration of 1680 ppm and ammonia nitrogen concentration of 102 ppm. In-stream sampling at the upper end (<100 feet downstream of the discharge point) of the fish kill showed a chlorothalonil concentration of 520-ppb. According to the EPA's Pesticide Ecotoxicity Database, this is a sufficient concentration for mortality in sunfish. The sampling upstream (approximately 50 feet) of the spill did not demonstrate any significant concentrations of any of those same products. In-stream sampling (at five locations: one above the discharge point and four below the discharge point) also showed that D.O. got progressively lower (i.e. worse) downstream of the discharge point ultimately resulting in D.O. that was low enough to

kill fish (approximately 800 meters below the discharge point). Distressed fish gasping at the water's surface were noted alongside dead fish at this sampling point.

3. On August 4, 2006, DEQ staff continued the fish kill investigation and count on Woods Creek. DEQ staff determined that 2,636 fish were killed on a stream reach of approximately 100 meters. No dead fish were found upstream of where the spill entered Woods Creek at the Facility.

4. DEQ issued NOV No. W2006-08-V-003 on September 27, 2006, to Lexington GCC for an unpermitted discharge to State waters with a fish kill and failure to properly report the spill within 24 hours, in violation of Section 62.1-44.5 of the Code of Virginia which prohibits discharges in the absence of a permit and requires the reporting of such discharges within 24 hours of learning of the discharge.

5. On October 19, 2006, DEQ met with Lexington GCC in an informal conference to discuss the NOV and resolution of the violations. The October 19, 2006, meeting included discussions of Lexington GCC's chemical handling practices, corrective actions taken to date to prevent spills from reaching State waters and the need for a plan and schedule of corrective actions to ensure that violations do not reoccur.

6. On December 1, 2006, DEQ received Lexington GCC's written plan and schedule of corrective actions to prevent future spills from reaching State waters. Sections of this plan and schedule have been incorporated into Appendix A of this Order.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code §62.1-44.15 and upon consideration of Va. Code § 10.1-1186.2, the Board orders Lexington GCC, and Lexington GCC agrees, to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders Lexington GCC, and Lexington GCC voluntarily agrees, to pay a civil charge of **$13,000** in settlement of the violations cited in this Order.

1. Lexington GCC shall pay **$1,300.00** of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

   Receipts Control
   Department of Environmental Quality
   Post Office Box 10150
   Richmond, Virginia 23240

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

2. In addition, Lexington GCC shall provide 2 separate checks payable to "Treasurer of Virginia", one check for the amount of $2,899.08 to cover the costs of the fish kill investigation. Lexington GCC shall also provide a check for the amount of $637.09 to cover the fish replacement costs. Lexington GCC shall pay these fish kill costs within 30 days of the effective date of the Order.

3. Lexington GCC shall satisfy **$11,700** of the civil charge upon completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.

4. The net cost of the SEP to Lexington GCC shall not be less than the amount set forth in Paragraph D.3. If it is, Lexington GCC shall pay the remaining amount in accordance with Paragraph D. 1 of this Order, unless otherwise agreed to by the Department. "Net costs" means the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.

5. By signing this Order Lexington GCC certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.

6. Lexington GCC acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Lexington GCC to a third party, shall not relieve Lexington GCC of its responsibility to complete the SEP as contained in this Order. In the event it publicizes the SEP or the SEP results, Lexington GCC shall state in a prominent manner that the project is part of a settlement for an enforcement action.

7. The Department has the sole discretion to:

   a. Authorize any alternate SEP proposed by the Facility; and

   b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

8. Should the Department determine that Lexington GCC has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Lexington GCC in writing. Within 30 days of being notified, Lexington GCC shall pay the amount specified in Paragraph 3 above to DEQ as provided in Paragraph 1 above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Lexington GCC, for good cause shown by Lexington GCC, 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, Lexington GCC` admits the jurisdictional allegations, but does not admit to the factual findings, and conclusions of law contained herein...

4. Lexington GCC consents to venue in the Circuit Court of the Richmond for any civil action taken to enforce the terms of this Order.

5. Lexington GCC 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 Lexington GCC 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. Lexington GCC 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. Lexington GCC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Lexington GCC 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 Lexington GCC 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 Lexington GCC. Notwithstanding the foregoing, Lexington GCC 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. Lexington GCC 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 Lexington GCC.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Lexington GCC 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 Lexington GCC 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 Lexington GCC to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Lexington GCC.

13. By its signature below, the Lexington Golf and Country Club 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

Lexington Golf and Country Club agrees to the issuance of this Order.

By: Steve M. Paige

Title: General Manager

Date: 6/28/07

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 28th day of June, 2007, by Steve Paige.
(name)

who is General Manager of Lexington Golf and Country Club, on
(title)
behalf of said company.

Notary Public

My commission expires: October 31, 2010.

APPENDIX A
SCHEDULE OF COMPLIANCE
LEXINGTON GOLF AND COUNTRY CLUB

1. Lexington GCC shall not bring fertilizer/herbicide/fungicide to the maintenance/equipment shed's water supply for loading and mixing until such time as the maintenance/equipment shed and water supply are relocated away from the stream. Fertilizer/herbicide/fungicide may only be added to chemical sprayers and mixed at the chemical storage building after obtaining water at the maintenance/equipment shed.

2. **By June 30, 2007**, Lexington GCC shall submit to DEQ for review and approval a long term plan and schedule of corrective actions including:

    a. Move/relocate the maintenance/equipment shed; and/or
    b. Move/relocate the city water supply hose bib; and/or
    c. Install a small building for the storage of bagged fertilizer at a different location on site away from Woods Creek or other State waters.

    Upon approval of the long term plan of corrective action, the plan shall be incorporated by reference into this Order.

3. **By August 1, 2007,** Lexington GCC shall complete construction of a containment berm around the maintenance/equipment shed's parking lot.

4. **By August 1, 2007**, Lexington GCC shall submit to DEQ for review and approval a set of written procedures to ensure any spills are properly cleaned up and reported. Lexington GCC shall respond to comments on the procedures **within 30 days** of receipt of written comments.

5. **By August 1, 2007**, Lexington GCC shall conduct training for all turf grass management employees using the approved procedures described in paragraph 3 above on the proper handling of the Facility's chemicals and the proper cleanup and reporting of chemical spills. Lexington GCC shall, on an annual basis thereafter, conduct training meetings with the employees to review proper handling and cleanup of chemical spills at the Facility.

6. Lexington GCC shall submit semi-annual progress reports to DEQ, with the first report being due **October 10, 2007.** Subsequent Progress Reports will be due by **April 10, and October 10,** until the cancellation of the Order. The semi-annual 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 semi-annual period in accordance with this Order; and
c. a statement regarding any anticipated problems in complying with this Order.

7. No later than **14 days** following a date identified in the above schedule of compliance Lexington GCC 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
SUPPLEMENTAL ENVIRONMENTAL PROJECT
LEXINGTON GOLF AND COUNTRY CLUB

1. The SEP to be performed by Lexington GCC is delivery of a check for **$11,700** to the Director of Planning and Development of the City of Lexington to be used for the construction of stream restoration projects on Woods Creek and/or Willow Spring Creek in Lexington, Virginia. The City shall set up account number (8-1302-3002) for the deposit of these monies for specific expenditure on the construction of stream restoration projects as proposed in the City's letter to DEQ of May 25, 2007.

2. **Within 30 days** of the effective date of this Order, Lexington GCC shall send funds totaling not less than **$11,700** to the City of Lexington, Virginia ("Lexington") with the express provisions that: a) those funds shall be used only for construction of stream restoration projects on Woods Creek and/or Willow Spring Creek, as specified in the City's Director of Planning and Development's letter dated **May 25, 2007** to DEQ; b) that the stream restoration work shall be completed not later **than June 15, 2008**; and c) that **within 30 days** of completion of the stream restoration work, Lexington will submit to Lexington GCC a copy of the invoice(s) for the work conducted from the contractor, an itemized list of work conducted, and written and photographic verification of completion of the stream restoration work. If sufficiently detailed, the invoice may serve as the itemized list for purposes of this requirement. The photographic documentation shall show before and after pictures of each of the stream restoration sites.

3. Lexington GCC shall submit to the Department written verification of the final overall and net cost of the SEP in the form of a certified statement itemizing costs and proof of payment and shall submit invoices, itemized lists and written and photographic verification of the stream restoration work specified in Paragraph 2 above **within 30 days** of completion of the stream restoration work.