COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MR. KENNETH DOTSON AND MRS. LORA DOTSON
FOR
LOCUST GROVE TOWN CENTER SEWAGE TREATMENT PLANT
VPDES Permit No. VA0091961

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 Mr. Kenneth Dotson and Mrs. Lora Dotson, regarding the Locust Grove Town Center Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and 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. "CTO" means Certificate to Operate.

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. "DO" means Dissolved Oxygen.

10. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

11. "Facility" or "Plant" means the Locust Grove Town Center Sewage Treatment Plant located at 32301 Constitution Highway, Locust Grove, Virginia, which treats and discharges treated sewage and other municipal wastes, for the businesses of the Locust Grove Town Center.

12. "LOA" means Letter of Agreement.

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

14. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

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

16. "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.

17. "Permit" means VPDES Permit No. VA0091961, which was effective on March 9, 2007, modified on August 10, 2009 and expires on March 8, 2012.

18. "Permittee" or "Permittees" means Mr. Kenneth Dotson and Mrs. Lora Dotson (the Dotson's), currently residents of Orange County, Virginia. The Permittees are "person[s]" within the meaning of Va. Code § 62.1-44.3.

19. "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.

20. "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.

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

22. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

23. "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.

24. "TKN" means Total Kjeldahl Nitrogen.

25. "TP" means Total Phosphorous.

26. "TSS" means Total Suspended Solids.

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

28. "VAC" means the Virginia Administrative Code.

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

30. "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 Permittee owns the Plant in Orange County, Virginia. The Plant is operated by Dabney & Crooks, Inc. The Permit authorizes the Permittee to discharge treated sewage from the Plant, to an unnamed tributary to Flat Run, located within the Rappahannock River Basin, in strict compliance with the terms and conditions of the Permit.

2. Flat Run flows through the Lake of the Woods impoundment and then to the Rapidan River. The Rapidan River is within the Rappahannock River Basin. This receiving stream is not listed as an impaired water in DEQ's 305(b)/303(d) Integrated Report.

3. In submitting its DMR for the April 2009 monitoring period, the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TKN, TSS, and TP.

4. DEQ issued a NOV, dated June 9, 2009, for the reported Permit limit exceedances during the April 2009 monitoring period.

5. In submitting its DMR for the May 2009 and June 2009 monitoring periods, the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for DO.

6. DEQ issued a NOV, dated August 13, 2009, for the reported Permit limit exceedances during the May 2009 and June 2009 monitoring periods.

7. On August 6, 2009, the Permittee met with DEQ to discuss the NOV dated June 9, 2009.

8. In submitting its DMR for the September 2009 monitoring period, the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TP.

9. DEQ issued a NOV, dated November 9, 2009, for the reported Permit limit exceedances during the September 2009 monitoring period.

10. In submitting its DMR for the December 2009 monitoring period the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TKN and the operator failed to conduct sampling for pH, DO, and Chlorine on December 20 and 21, 2009 due to adverse weather conditions.

11. DEQ issued a NOV, dated February 17, 2010 for the reported Permit limit exceedances during the December 2009 monitoring period.

12. In submitting its DMR for the January 2010 monitoring period, the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TKN.

13. DEQ issued a NOV, dated March 15, 2010 for the reported Permit limit exceedances during the January 2010 monitoring period.

14. In submitting its DMR for the February 2010 monitoring period, the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TKN.

15. DEQ issued a NOV, dated April 8, 2010 for the reported Permit limit exceedances during the February 2010 monitoring period.

16. On April 8, 2010, the Permittee met with DEQ to discuss the new violations and proposed potential methods to correct the issues at the Plant. The changing of the current location of the alum feed, thought to have a negative effect on the TKN, was presented as a possible solution. The design change was incorporated into a pilot study submitted to DEQ on April 9, 2010 and approved by DEQ on May 13, 2010.

17. In submitting its DMR for the March 2010 monitoring period, the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TKN.

18. DEQ issued a NOV, dated May 21, 2010 for the reported Permit limit exceedances during the March 2010 monitoring period.

19. In submitting its DMR for the April 2010 monitoring period, the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TKN.

20. DEQ issued a NOV, dated June 15, 2010 for the reported Permit limit exceedances during the April 2010 monitoring period.

21. A LOA including the pilot study was entered into between the Permittee and DEQ on June 15, 2010.

22. On November 16, 2010, the Permittee was issued a NOV by DEQ for the late submittal of the O&M manual. The O&M manual was due to DEQ by September 28, 2010 as required by Part I, Page 6, Section C, Number 4 of the Permit. The O&M manual was received by DEQ on November 18, 2010.

23. In submitting its DMR for the January 2011 monitoring period, the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TKN.

24. DEQ issued a NOV, dated March 14, 2011 for the reported Permit limit exceedances during the January 2011 monitoring period.

25. On March 23, 2011, DEQ inspected the Plant and collected effluent samples. The samples indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TKN and TSS.

26. DEQ issued a NOV, dated June 24, 2011 for the Permit limit exceedances observed during the March 23, 2011 inspection.

27. In submitting its DMR for the February 2011 monitoring period, the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TKN.

28. DEQ issued a NOV, dated April 15, 2011 for the reported Permit limit exceedances during the February 2011 monitoring period.

29. In submitting its DMR for the March 2011 monitoring period, the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TKN.

30. DEQ issued a NOV, dated May 21, 2011 for the reported Permit limit exceedances during the March 2011 monitoring period.

31. In submitting its DMR for the April 2011 monitoring period, the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TSS and TP.

32. DEQ issued a NOV, dated June 10, 2011 for the reported Permit limit exceedances during the April 2011 monitoring period.

33. In submitting its DMR for the May 2011 monitoring period, the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TKN and TSS.

34. DEQ issued a NOV, dated July 15, 2011 for the reported Permit limit exceedances during the May 2011 monitoring period.

35. In submitting its DMR for the July 2011 monitoring period, the Permittee indicated that it exceeded discharge limitations contained in Part I, Page 1, Section A, Number 1 of the Permit, for TKN and TP.

36. 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."

37. 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.

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

39. The Department has issued no permits or certificates to the Permittee other than VPDES Permit No. VA0091961.

40. Flat Run is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.

41. Based on the DMRs and the March 23 inspection, the Board concludes that the Permittee has violated the Permit and Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal waste from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(37) above.

42. In order for the Permittee to complete its return to compliance, DEQ staff and the Permittee 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 Permittee, and the Permittee agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $3,150.00 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

The Permittee 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Permittee for good cause shown by the Permittee, 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 Permittee admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. The Permittee 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 Permittee 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 Permittee 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 Permittee 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 Permittee shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Permittee 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 Permittee 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 Permittee. Nevertheless, the Permittee 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 the Permittee has completed all of the requirements of the Order;

b. The Permittee petitions the Director or his designee to terminate the Order after they have 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 the Permittee.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Permittee from their 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 Permittee 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. Any documents to be submitted pursuant to this Order shall be submitted by the Permittee or an authorized representative of the Permittee.

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 their signatures below, Mr. Kenneth Dotson and Mrs. Lora Dotson voluntarily agree to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2011.

_____
Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

Mr. Kenneth Dotson and Mrs. Lora Dotson voluntarily agree to the issuance of this Order.

Date: 11/4/11 By: Lora Dotson
(Mrs. Lora Dotson)

Date: 11/4/11 By: Kenneth L Dotson
(Mr. Kenneth Dotson)

Commonwealth of Virginia
City/County of Culpeper

The foregoing document was signed and acknowledged before me this 4th day of November, 2011, by Mr. Kenneth Dotson and Mrs. Lora Dotson.

Joanie Y Lewis
Notary Public

7365355
Registration No.

My commission expires: Feb 28, 2014

Notary seal:

JOANIE Y. LEWIS
Notary Public
Commonwealth of Virginia
7365355
My Commission Expires Feb 28, 2014

APPENDIX A
SCHEDULE OF COMPLIANCE

The Permittee shall:

1. Within 30 days of the effective date of this Order submit to DEQ for review and approval, a plan to address how the Facility will meet the limits set forth in the Permit.

2. Monitor the influent monthly for TKN, $cBOD_5$, TSS, and TP for one calendar year beginning the month after the effective date of this order. Influent samples shall be collected simultaneously with the effluent samples and the subsequent analytical data submitted to DEQ with the Discharge Monitoring Report.

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

Virginia Department of Environmental Quality
Attn: Enforcement Staff
13901 Crown Court
Woodbridge, VA 22193