COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
THE COUNTY OF POWHATAN
FIGHTING CREEK WWTP
VPDES PERMIT NO. VA0089206

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and the County of Powhatan, for the purpose of resolving certain alleged violations of environmental law 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. "PRO" means the Piedmont Regional Office of the Department, located in Glen Allen, Virginia.

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

7. "County" means the County of Powhatan, Virginia, a political subdivision of the Commonwealth of Virginia.

8. "Fighting Creek WWTP" or "Facility" means the County's Fighting Creek Wastewater Treatment Plant, which is located at 3900 Old Plantation Rd., Powhatan County, Virginia.

9. "Permit" means VPDES Permit No. VA0089206, which was issued to Powhatan County for the Fighting Creek WWTP on September 19, 2001, and expires on September 19, 2006.

10. "NOV" means Notice of Violation which is a document citing alleged violations of the Permit issued by the Department to the County.

11. "DMR" means discharge monitoring report.

12. "SBR" means sequencing batch reactor.

13. "TKN" means Total Kjeldahl Nitrogen.

14. "TSS" means Total Suspended Solids.

15. "CBOD5" means Carbonaceous Biochemical Oxygen Demand.

16. "DO" means dissolved oxygen.

17. "Cu" means total recoverable copper.

18. "Zn" means total recoverable zinc.

SECTION C: Findings of Fact and Conclusions of Law

1. The County of Powhatan owns and operates the Fighting Creek Wastewater Treatment Plant in Powhatan, Virginia. The Facility is the subject of VPDES Permit No. VA0089206, which allows the Fighting Creek WWTP to discharge treated wastewater into Fighting Creek in compliance with terms, limitations and requirements in the Permit.

2. On May 22, 2003, the Department issued a NOV to the County for exceeding the effluent limitations for TKN, TSS, and/or CBOD as reported on DMRs for October 2002 through March 2003.

3. On June 24, 2003, the Department met with the County to discuss the compliance issues at the Fighting Creek WWTP. The Facility has an SBR system and was designed to treat a large volume of flow in anticipation of future development that

has not materialized. To address this issue, the County hired a consultant and replaced the aeration system to assist in adjusting the Facility's run and fill times to maximize the treatment efficiency.

4. On October 24, 2003, the Department issued a NOV to the County for exceeding the effluent limitations for TKN, TSS, CBOD and/or DO as reported on DMRs for May through September 2003. Also, the County failed to report pH for February 2004, fecal coliform for August 2004, and exceeded the TKN effluent limit in September 2004.

5. On December 10, 2004, the Department issued a Warning Letter (WL) to the County for exceeding effluent limitations for TSS, fecal coliform, TKN, and CBOD as reported on the DMR for October 2004 and for failure to submit progress reports for Zn compliance as required by the Permit.

6. On March 24, 2005, the Department issued a NOV to the County for exceeding effluent limitations for TKN, CBOD, TSS, and/or fecal coliform as reported on the DMRs for September 2004 through January 2005. The County was also cited for failure to submit a progress report for Zn compliance. In addition, the County exceeded effluent limitations for TKN, CBOD, and/or TSS violations as reported on DMRs for February through May 2005.

7. On April 21, 2005, the Department met with the County to discuss the continuing compliance issues at the Facility.

8. On March 31, 2006, the Department issued a NOV to the County for exceeding the effluent limitation for TKN as reported on the DMR for September 2005 and for failure to submit a report on achieving compliance with the final effluent limitation for Zn.

9. On June 20, 2006, the Department met with the County to discuss the Order and permitting issues.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders the County, and the County agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders the County, and the County voluntarily agrees to pay a civil charge of **$7,980** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for the County. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

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

SECTION E: Administrative Provisions

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

2. This Order only addresses and resolves those issues specifically identified herein, including those matters addressed in the NOVs issued on May 22, 2003, October 24, 2003, March 24, 2005, March 31, 2006 and the WL on December 10, 2004 as listed above 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; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.

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

4. The County consents to venue in the Circuit Court of the County of Powhatan for any civil action taken to enforce the terms of this Order.

5. The County 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 the County 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 County 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 County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County shall notify the Department 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 24 hours of learning of any condition above, which the County 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 County. Notwithstanding the foregoing, the County 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 County 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

    b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to the County.

    Termination of this order, or of any obligation imposed in this Order, shall not operate to relieve the County 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, the County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2006.

_____
Gerard Seeley, Jr. Regional Director
Department of Environmental Quality

The County voluntarily agrees to the issuance of this Order.

By: Carolyn Cios

Date: Oct. 19, 2006

Commonwealth of Virginia
~~City~~/County of POWHATAN

The foregoing document was signed and acknowledged before me this 19 day of

October, 2006, by Carolyn Cios (name), who is

County Administrator (title) of the County of Powhatan, on behalf of the County of Powhatan.

Shirley J. Gains
Notary Public

My commission expires: December 31, 2009.

APPENDIX A

Powhatan County shall:

1. **Within 180 days** of the effective date of this Order, submit to the Department a survey of all Industrial/Commercial Users (including all schools and local government facilities) discharging to the POTW. The information shall be submitted on the Department Discharger Survey Form, or an equivalent form that includes the quantity and quality of the wastewater. Survey results shall include the identification of significant industrial users of the POTW.

Pursuant to this Order all communications regarding this Order and its requirements shall be addressed as follows:

Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060