COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD

ENFORCEMENT ACTION

ORDER BY CONSENT

ISSUED TO

THE TOWN of APPOMATTOX
FOR
APPOMATTOX WATER RECLAMATION FACILITY

VPDES Permit No. VA0020257

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15 (8a) , between the State Water Control Board and the Town of Appomattox, for the purpose of resolving certain violations of the State Water Control Law and the applicable Permit and regulations.

SECTION B: Definitions

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

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
2. "Appomattox" or "Town" means the Town of Appomattox, a political subdivision of the Commonwealth of Virginia. The Town of Appomattox is a "person" within the meaning of Va. Code § 62.1-44.3.

3. "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.
4. "BRRO" means the Blue Ridge Regional Office of the DEQ, located in Lynchburg, Virginia.
5. "DMR" means Discharge Monitoring Report.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "O & M" means Operation and Maintenance.
10. "Order" means this document, also known as a Consent Special Order.
11. "Permit" means VPDES Permit number VA0020257; which was issued by authority of the Board to the Town on October 18, 2004, and which expires on October 18, 2009.
12. "Plant" or "Facility" means the Appomattox Water Reclamation Facility located at 216 Ethel Street in the Town of Appomattox, Virginia, which treats domestic sewage for the residents of the Town.
13. "Regulation" means the VPDES Permit Regulation at 9 VAC 25-31-10 *et seq.*
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, natural background loading and a margin of safety (MOS).
16. "VAC" means the Virginia Administrative Code.
17. "Va. Code" means the Code of Virginia (1950), as amended.

18. "VPDES" means the Virginia Pollutant Discharge Elimination System.
19. "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 Town of Appomattox owns and operates the Facility located in the Town of Appomattox, Virginia. The Permit allows the Town to discharge treated sewage from the Facility to the South Fork of the Appomattox River in strict compliance with the terms and conditions of the Permit.
2. The South Fork of the Appomattox River is located in the Appomattox River Sub-Basin, James River Basin (Middle). The Appomattox River was designated as impaired for Zinc in the 2008 Water Quality Assessment, and listed as a Category 4B water (impaired for one or more designated uses but does not require the development of a TMDL because other pollution control requirements, i.e., VPDES limitations under a compliance schedule, are reasonably expected to result in attainment of the Water Quality Standards by the next reporting or permit cycle). The Appomattox River is not a candidate for designation as exceptional waters.
3. The Permit was re-issued on October 18, 2004, and contained a four-year Schedule of Compliance for total recoverable zinc, with a final compliance deadline of October 18, 2008 and Permit effluent limits of 49 µg/l.
4. The Town submitted a Plan of Action (POA) as required by the Schedule on January 10, 2005, in which the Town informed the Department that compliance would be attained through chemical treatment and targeted O & M practices for the potable water distribution system and the sanitary sewer collection and treatment system. The Town was proactive in its efforts made towards compliance and performed sampling and analysis of the potable water supply and distribution system. A characterization study was conducted at the Facility to gather data on both

the influent and effluent, as well as removal efficiencies. According to effluent data supplied by the Town during the Schedule of Compliance, from January 1, 2007, to July 29, 2007, the Facility's average effluent zinc concentration was 217 µg/l.

5. In submitting its DMRs, as required by the Permit, the Town has indicated that it exceeded discharge limitations contained in Part I..A.1. of the Permit, for total recoverable zinc for the following reporting periods: October 2008; November 2008; December 2008; January 2009; February 2009; March 2009; and April 2009. The Town indicated that it believed the exceedances were related to the leaching of zinc from the potable water distribution system and infiltration of groundwater into the sewage collection system during wet weather.

6. BRRO issued the following Warning Letters and Notices of Violation for Permit violations as follows: WL W2008-12-L-1012, issued December 18, 2008; WL W2009-01-L-1003, issued January 7, 2009; NOV W2009-02-L-0003, issued February 12, 2009; NOV W2009-03-L-0004, issued March 11, 2009; NOV W2009-03-L-0015, issued April 7, 2009; NOV W2009-04-L-0001, issued May 4, 2009, and NOV W2009-06-L-0006, issued June 10, 2009.

7. The Town responded to the Warning Letters and Notices of Violation as required by meeting with BRRO enforcement staff on February 20 and April 9, 2009. Town personnel expressed their intent to perform a Site-Specific Water Effect Ratio (SSWER) Study to determine if the Permit limits for zinc should be modified. Alternative compliance methods were also discussed at this time, including additional chemical treatment pilot studies and ongoing O & M practices.

8. 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."

9. 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.

10. Va. Code § 62.1-44.15(5a) states that a VPDES Permit is a "certificate" under the statue.

11. The Permit allows the Town to discharge zinc only in compliance with the effluent limits contained therein. The Board has issued no other permits to the Town which allow zinc discharges from the Facility.

12. Va. Code § 62.1-44.3 defines "state waters" to include all waters "on the surface and under the ground, wholly or partially within or bordering the Commonwealth". The South Fork of the Appomattox River is a surface water located wholly within the Commonwealth and therefore is a "state water" under the statue.

13. Va. Code § 62.1-44.3 defines "sewage" to include "the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present."

14. Va. Code § 62.1-44.14 states that the Board may delegate its authority to issue certificates to the Director. The Board delegated this authority to the Director in 1976.

15. Based on the results of the meetings conducted on February 20 and April 9, 2009, and the DMR documentation submitted to the Department from October 2008 to March 2009, the Board concludes that the Town of Appomattox has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50 by discharging treated sewage from the Plant while concurrently failing to comply with the conditions of the Permit.

16. In order for the Town of Appomattox to return to compliance, DEQ staff and representatives of the Town of Appomattox have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

17. An interim effluent limitation for total recoverable zinc, calculated at the 95th percentile of confidence, which the Town must meet while performing the actions required by Appendix A of this Order is an integral part of this Order and incorporated herein as Appendix B.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders the Town of Appomattox and the Town agrees to perform the actions described in Appendix A and B of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Town of Appomattox for good cause shown by the Town, or on its own motion pursuant to the Administrative Process Act 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 Town of Appomattox admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Town of Appomattox 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 Town of Appomattox declares it has received fair and due process under the Administrative Process Act and the Virginia 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 factor 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 Town of Appomattox 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 Town of Appomattox 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 other such occurrence. The Town shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town of Appomattox 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 listed above, which the Town 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 Town of Appomattox. Nevertheless, the Town 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 Town of Appomattox 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 written notice to the Town.

    Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve the Town of Appomattox from its 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 Town of Appomattox and approved by the Department pursuant to this Order are incorporated into this Order. Any noncompliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of the Town of Appomattox 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 the Town to this

document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Town.

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 its signature below, the Town of Appomattox voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____day of _____, 2009.

_____

Steven A. Dietrich, P.E., Director
Blue Ridge Regional Office
Department of Environmental Quality

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The Town of Appomattox voluntarily agrees to the issuance of this Order.

Date: 8/11/09 By: Paul D. Harvey, MAYOR
Paul Harvey
Mayor
Town of Appomattox

Commonwealth of Virginia
Town of Appomattox

The foregoing document was signed and acknowledged before me this 11TH day

of August, 2009, by Paul Harvey, who is Mayor of the Town

of Appomattox on behalf of the Town of Appomattox.

Frances S. Murray
Notary Public

103176
Registration No.

My commission expires: June 30, 2013.

Notary seal:

FRANCES S. MURRAY
Notary Public
Commonwealth of Virginia
103176
My Commission Expires Jun 30, ~~2009~~ 2013

APPENDIX A

SCHEDULE OF COMPLIANCE

TOWN OF APPOMATTOX

VPDES PERMIT No. VA0020257

The Town of Appomattox shall:

1. **Not later than 60 days** from the effective date of this Order, select and retain the services of a licensed Professional Engineer (P.E.) for assistance in the preparation and submission of a **Plan of Action** to address the details of compliance with the Permit limits for zinc. The Town shall require the Engineer to subcontract an Environmental Consultant for the express purpose of conducting a Site-Specific Water Effect Ratio (SSWER) Study on the Facility's effluent and the receiving stream. The Consultant selected shall submit testing protocols to the Department for review and approval prior to the initiation of the Study. The Department shall be notified in writing of the selections by means of a letter from the Engineering and Consulting firms on company letterhead for verification on or before the deadline referenced above.
2. **Not later than 120 days** from the effective date of this Order, submit to the Department for review and approval a **Plan of Action** to achieve final compliance with the Permit limits for total recoverable zinc.
3. **Not later than 30 days** from notification of the Department's final approval of the **Plan of Action**, submit the testing protocols for the SSWER Study to the Department for review and approval.

4. **Not later than 30 days** from the Department's final approval of the SSWER Study testing protocols, initiate the Study utilizing the approved sampling and testing schedule.

5. **Not later than 180 days** from the Department's approval of the Study protocols referenced in Item #3 above, submit the results of the Study to the Department for review and approval.

6. **Not later than the tenth of the month** following the effective date of this Order, and on the tenth of each successive month, submit monthly Progress Reports to the Department. The Progress Reports shall contain:

    a. A summary of all work completed since the previous Progress Report in accordance with the requirements of this Order.

    b. A projection of the work to be completed during the upcoming period in accordance with the requirements of this Order; and

    c. A statement regarding any anticipated problems in complying with the requirements of this Order.

    Monthly Progress Reports are to be submitted independent of the Town's DMR submissions. Monthly Progress Reports will be required until such time as the Town achieves final compliance with the Permit limits for total recoverable zinc.

7. **Not later than 365 days** from the effective date of this Order, submit an Interim Measures Progress Report to the Department, for review and approval, detailing the Town's activities to date, as well as an evaluation of the Town's ability to achieve final compliance with Permit limits for total recoverable zinc by the compliance deadline in Item #8 below.

8. **Not later than two (2) years** from the effective date of this Order, achieve final compliance with the total recoverable zinc limits of the Permit.

9. Operate the Facility in a workmanlike manner that produces the best quality effluent of which it is capable in order to minimize potential impacts to water quality during the period of corrective action.

10. Submit all reports and correspondence required by this Order to:

G. Marvin Booth, III
Regional Enforcement Representative
Department of Environmental Quality
Blue Ridge Regional Office
7705 Timberlake Rd.
Lynchburg, VA 24502

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APPENDIX B

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

TOWN OF APPOMATTOX

VPDES PERMIT No. VA0020257

From the effective date of this Order until completion of the corrective action requirements contained in Appendix A, but in no event later than two years from the effective date of this Order, the Town of Appomattox shall monitor and limit the discharge from Outfall No. 001 of the Appomattox Water Reclamation Facility in accordance with VPDES Permit Number VA0020257, except as specified below. These interim limits shall retroactively apply, if applicable, as of the first day of the month in which this Order becomes effective.

These requirements shall be construed in light of the Regulations.

Parameter Description	Parameter Limits					Monitoring Requirements	
	Quantity Average	Quantity Maximum	Concentration Minimum	Concentration Average	Concentration Maximum	Sample Frequency	Sample Type
Zinc, Total Recoverable	N/A	N/A	N/A	N/A	223 µg/l	1/Month	8-HC