COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BATH COUNTY SERVICE AUTHORITY
FOR
HOT SPRINGS REGIONAL STP
VPDES Permit No. VA0066303

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and Bath County Service Authority, regarding the Hot Springs Regional STP, 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. "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.

2. "BCSA" means Bath County Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* BCSA is a "person" within the meaning of Va. Code § 62.1-44.3.

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, as described in Va. Code § 10.1-1185.

5. "DMR" means Discharge Monitoring Report.

6. "Facility" or "Plant" means the Hot Springs Regional Wastewater Treatment Plant located in Hot Springs, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Hot Springs, the Homestead Hotel and the surrounding area.

7. "I&I" means Inflow and Infiltration, which is a component of sewer flow contributed as a result of groundwater and precipitation that enters the sanitary sewer system.

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 operations and maintenance.

10. "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.

11. "Permit" means VPDES Permit No. VA0066303, which was issued under the State Water Control Law and the Regulation to BCSA on July 1, 2009 and which expires on June 30, 2014.

12. "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.

13. "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.

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

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

16. "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.

17. "STP" means sewage treatment plant.

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

19. "VAC" means the Virginia Administrative Code.

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

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

22. "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. Bath County Service Authority ("BCSA") owns and operates the sewage treatment plant ("Plant") and the sewage collection system serving the Town of Hot Springs and the surrounding area in Bath County, Virginia. The Permit allows BCSA to discharge treated sewage and other municipal wastes from the Plant, to Hot Springs Run, in strict compliance with the terms and conditions of the Permit.

2. The design capacity of the present sewage treatment plant has been rated and approved as 0.45 MGD.

3. Hot Springs Run is located in the James (Upper) River Basin. Hot Springs Run is not listed in DEQ's 305(b) report as impaired.

4. On June 8, 2009, DEQ issued Warning Letter Number W2009-06-V-1012 to BCSA citing in pertinent parts: an unpermitted discharge (pump station overflow) on December 21, 2008 and unauthorized discharges of solids (solids carryovers) on January 7, 2009, March 1, and April 3, 2009. The Warning Letter incorrectly cited an unpermitted discharge on January 9, 2009. Unauthorized discharges of solids (solids carryovers) on January 11, January 12 and January 29, 2009 were not cited in the June 8, 2009 Warning Letter.

5. On July 8, 2009, DEQ issued NOV Number W2009-07-V-0001 to BCSA citing unauthorized discharge of solids (solids carryovers) on May 3 and May 4, 2009. The NOV also noted BCSA's relevant compliance history including the issuance of the June 11, 2008, Warning Letter Number W2008-06-V-1018 citing unauthorized discharge of solids (solids carryover) and an unpermitted discharge (pump station overflow) on January 6, 2008 and unauthorized discharges of solids (solids carryovers) on February 1 and 2, and April 4, 2008. Unauthorized discharges of solids (solids carryovers) on June 4, 2008, June 12, and August 9, 2008 were not cited in the July 8, 2009 NOV.

6. On August 19, 2009, DEQ met with BCSA's representatives in an informal conference to discuss the July 8, 2009, NOV and resolution of outstanding violations. The August 19, 2009, meeting included discussions of the Plant's operations and BCSA's plans to improve treatment along with the status of I&I corrective actions. During these discussions, BCSA attributed a number of the solids carryovers to the loss of siphon during the operations of the Plant's traveling bridge.

7. By letter dated September 10, 2009, BCSA submitted to DEQ for review and approval plans and specifications for the improvements to the Plant and a plan and schedule for conducting I&I investigations on BCSA's collection system.

8. By letters dated October 23, 2009 and December 22, 2009, BCSA submitted to DEQ for review and approval a revised plan and schedule for conducting I&I investigations on the collection system.

9. On October 15, 2009, DEQ approved a Certificate to Construct application for the construction of modifications to the siphon associated with the traveling bridge operations.

10. In submitting its DMRs and supplemental documents as required by the Permit, BCSA has indicated that it experienced unauthorized discharges of solids (solids carryovers) and unpermitted discharges, as required by Part II.G of the Permit, for the time periods noted above. BCSA indicated that it believed the events were related to malfunctioning of the siphon associated the Plant's traveling bridges and to I&I events.

11. 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."

12. 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.

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

14. The Department has issued no permits or certificates to BCSA other than VPDES Permit No. VA0066303.

15. Hot Springs Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

16. Based on the August 19, 2009 meeting, and a file review, the Board concludes that BCSA has violated the Permit and Va. Code § 62.1-44.5 and 9 VAC 9 VAC 25-31-50, by discharging partially treated wastewater and untreated sewage and municipal wastes from the plant and the collection system while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C3 through C9, above.

17. In order for BCSA to return to compliance, DEQ staff and representatives of BCSA 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 BCSA, and BCSA agrees to:

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

2. Pay a civil charge of **$2646** 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

BCSA shall include its Federal Employer Identification Number FEIN 54-1131415 with the civil charge payment and 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).

3. This Order cancels and supersedes the March 16, 2007 Order

SECTION E: Administrative Provisions

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

4. BCSA 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. BCSA 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 BCSA 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. BCSA 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. BCSA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BCSA 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 BCSA 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 BCSA. Nevertheless, BCSA 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. BCSA 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 BCSA.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BCSA 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 BCSA 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. The undersigned representative of BCSA 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 BCSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of BCSA.

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, BCSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20____.

_____
Amy T. Owens, Regional Director
Department of Environmental Quality

Bath County Service Authority voluntarily agrees to the issuance of this Order.

Date: 1-20-10 By: _____, Chairman
(Person) (Title)
Bath County Service Authority

Commonwealth of Virginia
City/County of BATH

The foregoing document was signed and acknowledged before me this 20th day of January, 2010, by A. J. Trivett who is

Chairman of Bath County Service Authority on behalf of the Authority.

_____
Notary Public

7031760
Registration No.

My commission expires: November 30, 2010

Notary seal:

APPENDIX A
BATH COUNTY SERVICE AUTHORITY
SCHEDULE OF COMPLIANCE

Corrective Action Plan – Sewage Treatment Plant Modifications

1. **By January 20, 2010**, BCSA shall complete the construction/installation of the approved siphon modification and priming valves related to the Plant's traveling bridge to ensure the prevention of siphon malfunction and submit a Certificate to Operate ("CTO") application to DEQ for review and approval. BCSA shall respond to any comments or deficiencies noted by DEQ in the application expeditiously and shall, in no event, fail to secure the CTO by April 1, 2010.

Corrective Action Plan - I&I

2. **By December 15, 2009,** BCSA shall begin the collection system flow monitoring study as described in its letter dated December 22, 2009, and in addition, the flow study should include:

    a. produce a collection system map with sub-basins, pump stations and numbered manhole locations;
    b. conduct a public information program;
    c. conduct flow metering during day and night and wet and dry weather conditions;
    d. conduct smoke testing in the collection system to identify inflow areas as necessary;
    e. conduct manhole inspections in the collection system to evaluate I&I sources and structure conditions;
    f. conduct building plumbing inspections as necessary after smoke testing to confirm suspected inflow sources, such as roof leaders and foundation drains;
    g. conduct television inspection of lines to verify smoke testing or when temporary flow monitoring indicates excessive I&I;
    h. perform a data analysis and produce a project report, and
    i. continue the flow monitoring study through **September 15, 2010**.

3. **By January 31, 2010**, BCSA shall complete the preparations of a map of its collection system and submit it to DEQ. The map will identify the sewer sub-basins within the collection system along with the pump stations and numbered manholes located within the sub-basins. The map will be used for identifying sewer lines with excessive I&I flows.

4. **By September 15,** 2010, BCSA shall complete the flow monitoring study as detailed in Item #2 above.

5. By **September 15, 2010**, BCSA shall begin the evaluation of the individual sewer sub-basins identified by the flow monitoring study as having I&I to determine sewer lines and/or areas in need of repairs. BSCA shall complete this evaluation **by December 1, 2010**.

6. **By March 31, 2011**, BCSA shall submit to DEQ for review and approval a report on its flow monitoring studies and the I&I investigations of the Hot Springs collection system; describing the work conducted and the collection system defects found during its investigations. In addition, the Authority shall submit to DEQ for review and approval a detailed plan and schedule of I&I corrective actions to address the deficiencies identified. Upon approval, the plan and schedule of I&I corrective actions will be incorporated by reference into this Consent Order.

GENERAL REQUIREMENTS

7. BCSA shall submit quarterly progress reports to DEQ, with the first report being due **January 10, 2010**. Subsequent Progress Reports will be due by **April 10, July 10, October 10, and January 10**, along with the Facility's Discharge Monitoring Report until the cancellation of this Order. The quarterly 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 quarterly period in accordance with this Order; and
   c. a statement regarding any anticipated problems in complying with this Order

8. No later than **14 days** following a date identified in the above schedule of compliance **BCSA** 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.

9. **DEQ Contact**

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

Steve Hetrick
Enforcement Specialist Sr.
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7833 Phone
(540) 574-7878 Fax
Steven.hetrick@deq.virginia.gov