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# COMMONWEALTH of VIRGINIA

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DEPARTMENT OF ENVIRONMENTAL QUALITY
Blue Ridge Regional Office
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## STATE WATER CONTROL BOARD

## ENFORCEMENT ACTION

## ORDER BY CONSENT

### ISSUED TO THE

### TOWN OF BROOKNEAL
### FOR
### FALLING RIVER LAGOON STP VPDES PERMIT No. VA0022250

### AND

### STAUNTON RIVER LAGOON STP VPDES PERMIT No. VA0022241

**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 Brookneal, for the purpose of resolving certain violations of the State Water Control Law and the applicable Permits and regulation.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings 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. "BRRO" means the Blue Ridge Regional Office of the DEQ, located in Lynchburg, Virginia.
3. "$BOD_5$" means Biochemical Oxygen Demand.
4. "Brookneal" or "Town" means the Town of Brookneal, a political subdivision of the Commonwealth of Virginia. The Town of Brookneal is a "person" within the meaning of Va. Code § 62.1-44.3.
5. Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality.
7. "DMR" means Discharge Monitoring Report.
8. "FR Lagoon" means the Falling River Lagoon Sewage Treatment Plant, located on State Route 600 (Dog Creek Road) in Campbell County, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of a portion of the Town of Brookneal.
9. "Notice of Violation" or "NOV" means a type of Notice of Violation under Va. Code § 62.1-44.15.
10. "O & M" means Operation and Maintenance.
11. "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.
12. "Permit" means VPDES Permit number VA0022241 for the Staunton River Lagoon STP; which was issued under the State Water Control Law to the Town on May 23, 2008, and which expires on May 22, 2013; or VPDES Permit number VA0022250 for the Falling River STP; which was issued under the State Water Control Law to the Town on May 25, 2008, and which expires on May 24, 2013.
13. "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.

14. "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.

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

16. "SR Lagoon" means the Staunton River Lagoon STP, located on Radio Road in Campbell County, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of a portion of the Town of Brookneal.

17. "STP" means Sewage Treatment Plant.

18. "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.

19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. "TSS" means Total Suspended Solids.
20. "TMDL" means Total Maximum Daily Load.
21. "USEPA" means the United States Environmental Protection Agency.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means the Virginia Pollutant Discharge Elimination System.
25. "Warning Letter" or "WL" means a type of Notice of Violation under Va. Code § 62.1-44.15.

**SECTION C: Findings of Fact and Conclusions of Law**

1. The Town owns and operates both the Falling River Lagoon STP and the Staunton River Lagoon STP located in Campbell County, Virginia. The Permits allows the Town to discharge treated sewage and other municipal wastes from the Falling River Lagoon STP to Falling River and from the Staunton River Lagoon STP to the Roanoke (Staunton) River, in strict compliance with the terms and conditions of the Permits.
2. Both Falling River and the Roanoke (Staunton) River are located in the Roanoke/Yadkin River Basin. The Roanoke River was designated as impaired for recreation by E. coli bacteria in the 2008 Integrated Report (IR), and listed as a Category 4A water (waters which are impaired or threatened for one or more designated uses but do not require the development of a TMDL because the TMDL for specific pollutant(s) is complete and approved by the USEPA and the Board. The Roanoke River was first listed in the 2006 IR. The source of the bacterial contamination is listed as livestock, unspecified domestic waste, wastes from pets, and wildlife other than waterfowl.
3. In submitting its DMRs, as required by the Permits, the Town has indicated that it has exceeded Permit effluent limits and failed to meet compliance deadlines and monitoring, response, or reporting requirements of the Permits as follows: 1) reporting deficiencies in March, October,

and December 2008 as well as April through July and September of 2009; 2) $BOD_5$, TSS, pH, chlorine, or E. coli effluent limit violations in May and June, August through October, and December of 2008, as well as May through July and October through November 2009; 3) monitoring deficiencies in November 2009; 4) inadequate response to lagoon inspections in August 2009; 5) late submission of the Significant Waste Discharger Survey due in January 2009; and 6) late submission of the O & M Manual verification due in September 2008.

4. BRRO issued the following Notices of Violation for the violations referenced above: W2008-11-L-0009, W2008-12-L-0001, W2009-02-L-0002, W2009-03-L-0003, W2009-10-L-0003, W2009-11-L-0002, W2009-12-L-0002, and W2010-1-L-0002.

5. Department staff met with Town officials on February 20, 2009, to discuss the chronic noncompliance at the SR Lagoon and corrective measures to be taken. Both the O & M Manual verification and Significant Waste Discharger Survey had been received by the Department, and the reporting deficiencies had been corrected with revised DMRs. The Interim Town Manager stated that the Town had experienced both turnover in personnel and equipment problems at the STP. Staff suggested additional maintenance procedures to lower solids in the contact tanks and improve overall performance.

6. Noncompliance continued into 2009 despite the maintenance changes made, and the Department held a follow-up meeting with the Town Manager on November 5, 2009, to discuss a proposed enforcement action to address the violations. The Town Manager informed staff that the Town would be upgrading both lagoons with new aeration and ultraviolet disinfection systems in 2010.

7. The Town's operating logs indicate that it discharged treated wastewater from the FR Lagoon and the SR Lagoon every day from March 1, 2008 through November 30, 2009.

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 Department has issued no permits or certificates to the Town other than VPDES Permit Nos. VA0022241 and VA0022250.
12. Both Falling River and the Roanoke River are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.
13. Based on the results of the DMRs submitted by the Town, the Board concludes that the Town of Brookneal has violated VPDES Permit No. VA0022241 and VA0022250, Va. Code § 62.1-44.5, and 9 VAC 25-31-50 by discharging treated sewage and other municipal wastes from the FR Lagoon and SR Lagoon while concurrently failing to comply with the conditions of the Permits, as described in paragraph C.3., above.
14. In order for the Town to return to compliance, Department staff and representatives of the Town 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 Town of Brookneal, 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 Brookneal for good cause shown by the Town, 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 Town of Brookneal admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Town of Brookneal 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 Brookneal 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 Town of Brookneal 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 Brookneal 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 Brookneal 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 Brookneal. 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 Brookneal 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 Brookneal 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 Brookneal 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 Brookneal 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 Brookneal voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____day of _____, 2010.

_____

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

(Remainder of this page intentionally blank)

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

Date: 03-18-10 By: Phyllis Campbell, Mayor

Phyllis Campbell — Mayor, Town of Brookneal

Commonwealth of Virginia
County of Campbell

The foregoing document was signed and acknowledged before me this 18th day of March, 2010, by Phyllis Campbell, who is Mayor of the Town of Brookneal on behalf of the Town.

Bobbie A. Waller
Notary Public

323375
Registration No.

My commission expires: 11-30-2010.

Notary seal: BOBBIE A. WALLER NOTARY PUBLIC REG. #323375 MY COMMISSION EXPIRES 11/30/2010 COMMONWEALTH OF VIRGINIA

# APPENDIX A

# SCHEDULE OF COMPLIANCE

1. The Town of Brookneal shall proceed with the proposed upgrade for both the Falling River and Staunton River lagoons in accordance with the previously submitted plans, specifications, and bids in a timely manner.

2. During the construction phase of the upgrade projects, the Town of Brookneal shall operate both facilities in a workmanlike manner in order to produce the highest quality effluent discharged to waters of the State.

3. The Town of Brookneal shall complete construction in accordance with the project schedule as expeditiously as possible, but in no case later than **June 21, 2011.**

4. The Town of Brookneal shall submit to the Department quarterly Progress Reports to the Department on or before **October 10, 2010; January 10, April 10, and July 10, 2011,** for the preceding quarter.

5. The Town of Brookneal shall submit a final compliance report documenting completion of the construction phase of the upgrade project within 30 days of completion of all construction activities but in no case later than **July 21, 2011.**

6. 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

# APPENDIX B

## INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

From the effective date of this Order until completion of the corrective action requirements contained in Appendix A, but in no event later than June 21, 2011, the Town of Brookneal shall monitor and limit the discharge from Outfall No. 001 of the Staunton River Lagoon (VPDES Permit Number VA0022241) 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 Regulation.

| Parameter Description | Parameter Limits | | | | | Monitoring Requirements | |
|---|---|---|---|---|---|---|---|
| | Quantity Average | Quantity Maximum | Concentration Minimum | Concentration Average | Concentration Maximum | Sample Frequency | Sample Type |
| $BOD_5$ | NA | NA | NA | NA | 69 mg/l | 1/W | 4-HC |
| TSS | NA | NA | NA | NA | 73 mg/l | 1/W | 4-HC |
| | | | | | | | |
| | | | | | | | |