COMMONWEALTH of VIRGINIA

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

David K. Paylor
Director

Steven A. Dietrich
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CRAIG-NEW CASTLE PUBLIC SERVICE AUTHORITY
FOR
CRAIG-NEW CASTLE PSA WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0064599

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 the Craig-New Castle Public Service Authority, regarding the Craig-New Castle Public Service Authority Wastewater 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. "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-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

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 Craig-New Castle Public Service Authority Wastewater Treatment Plant located in New Castle, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of New Castle and Craig County, Virginia.

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

8. "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.

9. "Permit" means VPDES Permit No. VA0064599, which was issued under the State Water Control Law and the Regulation to the PSA effective March 23, 2009 and which expires on February 28, 2014.

10. "PSA" means the Craig-New Castle Public Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* The PSA is a "person" within the meaning of Va. Code § 62.1-44.3.

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

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

13. "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.

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

15. "VAC" means the Virginia Administrative Code.

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

17. "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 PSA owns and operates the Plant in New Castle, Virginia. The Permit allows the PSA to discharge treated sewage and other municipal wastes from the Plant through Outfall 001 to Craig Creek in strict compliance with the terms and conditions of the Permit.

2. Craig Creek and John's Creek are located in the James River Basin. Craig Creek and John's Creek are in the James River Basin. Craig Creek is listed in the Department's 305(b) report as impaired for recreational use due to the presence of *E. coli*. Sources of the impairment include livestock, septic systems, wildlife, pets, and unspecified domestic waste. John's Creek is not listed in the 305(b) report.

3. On July 16, 1996, the Board issued a Consent Order ("1996 Order") to the PSA to correct inflow and infiltration problems in the collection system for the Plant that were believed to be a cause of chronic overflows. The Department issued an Amendment to the 1996 Order on June 12, 2001 to add an additional project to the list of injunctive requirements required under the 1996 Order. The PSA successfully completed the requirements of the 1996 Order, as amended. The 1996 Order, as amended, was terminated on September 1, 2001.

4. The PSA has reported to DEQ a total of five overflows to John's Creek from Pump Station No. 4, which is part of the Plant's collection and transmission system, during the months of January, April, May and June 2009. The PSA described these discharges in letters to DEQ dated January 8, May 11, June 10 and June 18, 2009. These letters explained that each of the overflows was related to inflow caused by heavy rain that occurred during saturated conditions.

5. In submitting its DMRs, as required by the Permit, the PSA has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for total suspended solids (TSS), for the months of January, February and May 2009. The PSA indicated that it believed the exceedances were related to disturbance of sediment on the bottom of the lagoon by carp that are used as a part of the treatment process. The PSA explained that when carp grow larger, they need to be replaced with smaller fish.

6. BRRO-R issued a Warning Letter and a Notice of Violation for the unauthorized discharges as follows: WL No. W2009-07-W-1005, issued July 9, 2009; and NOV No. W2009-08-W-0006, issued August 10, 2009. The WL also cited effluent limit violations for the months of January, February, April, and May 2009.

7. The PSA responded to the Warning Letter and Notice of Violation by meeting with DEQ staff on August 28, 2009 and by submitting on September 11, 2009 a preliminary plan and schedule of corrective action to address the effluent quality and inflow problems. Elements of the preliminary plan and schedule are incorporated in Appendix A of the Order.

8. The PSA's operating logs indicate that it discharged treated wastewater from the Plant approximately five days per week from January 1, 2009 through June 30, 2009.

9. 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."

10. 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.

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

12. The Department has issued no permits or certificates to the PSA other than VPDES Permit No. VA0064599.

13. Craig Creek and John's Creek are surface waters located wholly within the Commonwealth and are "state waters" under the State Water Control Law.

14. Based on the PSA's DMRs for January, February, April, and May 2009 and its letters to DEQ dated January 8, May 11, June 10 and June 18, 2009, the Board concludes that the PSA has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant and from Pump Station No. 4 while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(4) and C(5), above.

15. In order for the PSA to complete its return to compliance, DEQ staff and representatives of the PSA 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 PSA, and the PSA agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

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

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

11. This Order shall continue in effect until:

    a. The PSA 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 PSA.

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

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 PSA voluntarily agrees to the issuance of this Order.

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

_____
Steven A. Dietrich, Regional Director
Department of Environmental Quality

The Craig-New Castle Public Service Authority voluntarily agrees to the issuance of this Order.

Date: 12-08-09 By: Donald W. Jones, Administrator
(Person) (Title)
The Craig-New Castle Public Service Authority

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 8th day of December, 2009, by Donald W. Jones who is Administrator of the Craig-New Castle Public Service Authority, on behalf of the Authority.

Cathy D. Kibler
Notary Public

361784
Registration No.

My commission expires: 8/31/13

Notary seal:

CATHY D. KIBLER
NOTARY PUBLIC
REG. #361784
MY COMMISSION EXPIRES 8/31/2013
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Unpermitted Discharges**

   a. **Septic Tank Replacement**. Not later than January 31, 2010, the PSA shall complete replacement of the septic tank at 167 Meadow Avenue in New Castle, as proposed in its letter to DEQ dated September 11, 2009.

   b. **Interim Plan and Schedule**. Not later than April 30, 2010, the PSA shall submit, for review and approval, a interim plan and schedule of corrective action to prevent overflows from the Plant's collection system and Pump Station No. 4 based on video investigation and/or smoke testing to be performed in the collection system during the fall and winter of 2009-2010. Implementation of corrective action under the interim plan and schedule shall be as expeditious as possible and shall in no event extend beyond December 31, 2011. Upon its approval, said interim plan and schedule shall become a part of and enforceable under the terms of this Order.

   c. **Collection System Evaluation and Final Plan and Schedule**. Not later than December 31, 2011, the PSA shall submit, for review and approval, a final plan and schedule of corrective action to prevent overflows from the Plant's collection system and Pump Station No. 4 based on a demonstrably systematic evaluation of the collection system to be completed before that date by the PSA. Implementation of corrective action (including post action monitoring) shall be as expeditious as possible and shall in no event extend beyond December 31, 2014. Upon its approval, said final plan and schedule shall become a part of and enforceable under the terms of this Order.

2. **DMR Exceedances**

   a. **Carp Removal**. Not later than January 31, 2010, the PSA shall remove the carp from the Plant's lagoon in accordance with the plan it proposed in its letter to DEQ dated September 11, 2009. It is expected that the PSA will be able to consistently meet TSS limits after the carp have been removed.

   b. **Upgrade Plan**. The PSA shall submit to DEQ, for review and approval, by 30 days after the effective date of this Order, a detailed plan of action (Upgrade Plan) addressing how the PSA will achieve consistent compliance with the effluent limits specified in the Permit. Said Upgrade Plan shall also include a schedule of implementation and a schedule for application for grants and/or loans to fund the upgrade of the treatment facilities at the Plant. The Upgrade Plan shall be based on the assumption that grants and/or loans will be obtained for upgrade of the treatment facility, but shall also include a contingency plan to achieve consistent compliance with the effluent limits specified in the Permit by the deadlines specified in this Order even if grants and/or loans are not

obtained for a facility upgrade. Upon DEQ approval said Upgrade Plan and schedule shall become a part of and enforceable under the terms of this Order.

c. The PSA shall complete corrective action in accordance with the Upgrade Plan as expeditiously as possible, but no later than December 31, 2012.

d. The PSA shall submit a final report documenting completion of corrective action, in accordance with the Upgrade Plan, within 30 days of completion of corrective action but no later than January 31, 2013.

3. **DEQ Contact**

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

Robert Steele
Regional Enforcement Coordinator
VA DEQ –BRRO-R
3019 Peters Creek Road
Roanoke, VA 24019
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