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
DARE TO CARE CHARITIES, INC.
FOR
DARE TO CARE CHARITIES, INC. WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0060909

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 Dare to Care Charities, Inc., regarding the Dare to Care Charities, Inc. 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "DMR" means Discharge Monitoring Report.

5. "Facility" or "Plant" means the Dare to Care Charities, Inc. Wastewater Treatment Plant located at 1029 Apple Butter Lane in Blue Ridge, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of Dare to Care Charities, Inc.

6. "DTCC" means Dare to Care Charities, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. DTCC is a "person" within the meaning of Va. Code § 62.1-44.3.

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

8. "O&M" means operations and maintenance.

9. "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.

10. "Permit" means VPDES Permit No. VA0060909, which was issued under the State Water Control Law and the Regulation to DTCC on May 27, 2008 and which expires on May 26, 2012.

11. "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.

12. "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.

13. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

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

18. "VAC" means the Virginia Administrative Code.

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

20. "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. DTCC owns and operates the Plant in Blue Ridge, Virginia. Until the spring of 2009, the Bedford County Public Service Authority assisted DTCC in Plant operations. The Permit allows DTCC to discharge treated sewage and other municipal wastes from the Plant, to an unnamed tributary of Day Creek, in strict compliance with the terms and conditions of the Permit.

2. Day Creek is located in the Roanoke River Basin. Day Creek is not listed in DEQ's 305(b) report as impaired.

3. In submitting its DMRs, as required by the Permit, DTCC has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for: dissolved oxygen minimum concentration, for the months of May and June 2008; ammonia average concentration, for the months of June 2008, July 2008, August 2008, December 2008, February 2009, March 2009, and May 2009; ammonia maximum concentration, for the months of June 2008, July 2008, August 2008, December 2008, February 2009, March 2009, and May 2009; total suspended solids average concentration, for the months of June and July 2008; total suspended solids maximum concentration, for the months of June and July 2008; total residual chlorine average concentration, for the month of January 2009; total residual chlorine maximum concentration, for the month of January 2009; biochemical oxygen demand average concentration, for the month of February 2009; biochemical oxygen demand maximum concentration, for the month of February 2009.

4. In its DMR for the month of August 2008, DTCC incorrectly reported frequency of analysis for ammonia, in violation of Part I of the Permit.

5. In its DMRs for the months of August, September, and October 2008, DTCC provided incorrect information on limits and parameters, in violation of Part I of the Permit.

6. In its DMR for the month of January 2009, DTCC did not report values for dissolved oxygen minimum concentration, in violation of Part I of the Permit.

7. In violation of Part II of the Permit, DTCC submitted its DMR for the month of June 2008 later than the due date for that DMR.

8. In violation of Part I of the Permit, DTCC incorrectly reported excursions for ammonia in its DMR for the month of March 2009.

9. DEQ staff have noted that neither a written verification that the existing Operations and Maintenance ("O&M") Manual is adequate nor a revised O&M Manual, as required by Part I.A.2 of the Permit to be submitted by DTCC on or before August 26, 2008, has been received by the Department. DTCC has repeatedly indicated that it would send a revised O&M Manual, but as of July 17, 2009, a revised O&M Manual from DTCC had not been received by the Department.

10. BRRO issued a Warning Letter for the dissolved oxygen minimum violations as follows: WL No. W2008-08-W-1003, issued August 4, 2008.

11. BRRO issued Warning Letters and Notices of Violation for the ammonia average concentration exceedances as follows: WL No. W2008-08-W-1003, issued August 4, 2008; WL No. W2008-09-W-1004, issued September 2, 2008; WL No. W2008-09-W-1008, issued October 6, 2008; NOV No. W2008-12-W-0003, issued December 12, 2008; NOV No. W2009-01-W-0003, issued January 13, 2009; NOV No. W2009-02-W-0004, issued February 19, 2009; NOV No. W2009-03-W-0005, issued March 11, 2009; NOV No. W2009-04-W-0007, issued April 9, 2009; NOV No. W2009-05-W-0006, issued May 7, 2009; NOV No. W2009-07-W-0003, issued July 15, 2009.

12. BRRO issued Warning Letters and Notices of Violation for the ammonia maximum concentration exceedances as follows: WL No. W2008-08-W-1003, issued August 4, 2008; WL No. W2008-09-W-1004, issued September 2, 2008; WL No. W2008-09-W-1008, issued October 6, 2008; NOV No. W2008-12-W-0003, issued December 12, 2008; NOV No. W2009-01-W-0003, issued January 13, 2009; NOV No. W2009-02-W-0004, issued February 19, 2009; NOV No. W2009-03-W-0005, issued March 11, 2009; NOV No. W2009-04-W-0007, issued April 9, 2009; NOV No. W2009-05-W-0006, issued May 7, 2009; NOV No. W2009-07-W-0003, issued July 15, 2009.

13. BRRO issued Warning Letters for the total suspended solids average concentration exceedances as follows: WL No. W2008-08-W-1003, issued August 4, 2008; WL No. W2008-09-W-1004, issued September 2, 2008.

14. BRRO issued Warning Letters for the total suspended solids maximum concentration exceedances as follows: WL No. W2008-08-W-1003, issued August 4, 2008; WL No. W2008-09-W-1004, issued September 2, 2008.

15. BRRO issued Notices of Violation for the total residual chlorine average concentration exceedances as follows: NOV No. W2009-03-W-0005, issued March 11, 2009; NOV No. W2009-04-W-0007, issued April 9, 2009; NOV No. W2009-05-W-0006, issued May 7, 2009.

16. BRRO issued Notices of Violation for the total residual chlorine maximum concentration exceedances as follows: NOV No. W2009-03-W-0005, issued March 11, 2009; NOV No. W2009-04-W-0007, issued April 9, 2009; NOV No. W2009-05-W-0006, issued May 7, 2009.

17. BRRO issued Notices of Violation for the biochemical oxygen demand average concentration exceedances as follows: NOV No. W2009-04-W-0007, issued April 9, 2009; NOV No. W2009-05-W-0006, issued May 7, 2009.

18. BRRO issued Notices of Violation for the biochemical oxygen demand maximum concentration exceedances as follows: NOV No. W2009-04-W-0007, issued April 9, 2009; NOV No. W2009-05-W-0006, issued May 7, 2009.

19. The late submittal of the DMR for June 2008 was cited in WL No. W2008-08-W-1003, issued August 4, 2008.

20. The incorrectly reported frequency of analysis for ammonia for the month of August 2008 was cited in NOV No. W2008-12-W-0003, issued December 12, 2008; NOV No. W2009-01-W-1003, issued January 13, 2009; NOV No. W2009-02-W-0004, issued February 19, 2009; NOV No. W2009-03-W-0005, issued March 11, 2009;

21. The incorrectly reported information on limits and parameters in the DMRs for the months of August, September, and October 2008 was cited in WL No. W2008-9-W-1004, issued September 2, 2008; WL No. W2008-10-W-1008, issued October 6, 2008; NOV No. W2008-12-W-0003, issued December 12, 2008; NOV No. W2009-01-W-1003, issued January 13, 2009; NOV No. W2009-02-W-0004, issued February 19, 2009; NOV No. W2009-03-W-0005, issued March 11, 2009; NOV No. W2009-04-W-0007, issued April 9, 2009

22. The failure to report dissolved oxygen minimum concentration in its DMR for the month of January 2009 was cited in NOV No. W2009-03-W-0005, issued March 11, 2009; NOV No. W2009-04-W-0007, issued April 9, 2009; NOV No. W2009-05-W-0006, issued May 7, 2009.

23. The failure to verify the existing O&M manual or submit a new O&M manual by August 26, 2008 was cited in WL No. W2008-10-W-1008, issued October 6, 2008; WL No.

W2008-11-W-1009, issued November 5, 2008; NOV No. W2008-12-W-0003, issued December 12, 2008; NOV No. W2009-01-W-1003, issued January 13, 2009; NOV No. W2009-02-W-0004, issued February 19, 2009; NOV No. W2009-03-W-0005, issued March 11, 2009; NOV No. W2009-04-W-0007, issued April 9, 2009; NOV No. W2009-05-W-0006, issued May 7, 2009; NOV No. W2009-07-W-0003, issued July 15, 2009; NOV No. W2009-08-W-0004, issued August 10, 2009.

24. DTCC's operating logs indicate that it discharged treated wastewater from the Plant every day from May 1, 2008 through May 31, 2009.

25. On March 5, 2009, DEQ staff visited inspected the Plant. A representative of DTCC was present during the inspection.

26. 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."

27. 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.

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

29. The Department has issued no permits or certificates to DTCC other than VPDES Permit No. VA0060909.

30. The unnamed tributary of Day Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

31. Based on the results of DMRs and accompanying documentation submitted by DTCC to the Department for the months May 2008 through May 2009, the Board concludes that DTCC has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(9), above.

32. In order for DTCC to return to compliance, DEQ staff and representatives of DTCC 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 DTCC, and DTCC agrees to:

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

2. Pay a civil charge of $7,000.00 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

DTCC shall include its Federal Employer Identification Number (FEIN) (54-0893636) 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).

SECTION E: Administrative Provisions

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

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

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

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, DTCC 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

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Dare to Care Charities, Inc. voluntarily agrees to the issuance of this Order.

Date: 12/9/09 By: Lynn M. Yntema LYNN M. YNTEMA, EXECUTIVE DIRECTOR
(Person) (Title)
Dare to Care Charities, Inc.

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 11th day of Dec., 2009, by Lynn M Yntema who is _____ of Dare to Care Charities, Inc., on behalf of the corporation.

Shashi Jain
Notary Public

342007
Registration No.

My commission expires: March 31, 2012

Notary seal:

OFFICIAL SEAL
NOTARY PUBLIC-COMMONWEALTH OF VIRGINIA
SHASHI JAIN
CITY OF ROANOKE
ID# 342007
My Commission Expires
March 31, 2012

OFFICIAL SEAL
NOTARY PUBLIC-COMMONWEALTH OF VIRGINIA
SHASHI JAIN
CITY OF ROANOKE
ID# 342007
My Commission Expires
March 31, 2012

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Not later than 30 days after the effective date of this Order, DTCC shall submit to DEQ, for review and approval, a plan and schedule of corrective action ("Plan") to install and operate an in-ground wastewater disposal system and eliminate the discharge from the Plant no later than December 31, 2010. The Plan shall include intermediate deadlines for submittal of plans and specifications to the Virginia Department of Health ("VDH"), project biding and awarding of a contract for construction, and commencement of construction. DTCC shall respond to any DEQ notice of deficiency regarding the Plan within fourteen (14) calendar days. Upon its approval, said Plan shall become a part of and enforceable under the terms of this Order. Upon DEQ approval of the Plan, DTCC shall begin implementation of the Plan in accordance with the schedule contained therein. Any changes to the approved Plan or schedule shall not be initiated without advance notice to and approval by DEQ. DTCC shall complete the Plan in accordance with its terms.

2. Not later than 30 days after the effective date of this Order, DTCC shall submit to DEQ and VDH a Treatment Works Closure Plan for the Plant in accordance with Part I(E)(10) of the Permit.

3. DTCC shall immediately comply with all interim limits specified in Part I(A)(1) of the Permit except ammonia.

4. The parties acknowledge that during the period of corrective action, DTCC may experience additional violations of ammonia permit limitations. Accordingly, pending completion of the corrective action, DTCC shall operate the Facility in a manner that produces the best quality effluent of which it is capable, in order to minimize such additional violations and minimize potential impacts to water quality.

5. Not later than 30 days after the effective date of this Order, DTCC shall submit to DEQ evidence that DTCC has employed or contracted for the services of a Class IV licensed wastewater works operator in accordance with the requirements of Part I(E)(6) of the Permit. The license of such operator shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board of Waterworks and Wastewater Works Operators and Onsite Sewage Professionals.

6. On or before 30 days after the effective date of this Order, DTCC shall:

    a. Submit correct and complete DMRs for the months of August, September, and October 2008.

    b. Submit a revised and corrected Operations and Maintenance Manual for the Facility in accordance with the requirements of Part I(E)(5) of the Permit.

7. Beginning April 10, 2010, DTCC shall submit quarterly progress reports to DEQ. Quarterly reports shall be due on January 10, April 10, July 10, and October 10 of each year. Quarterly

reports shall include a description of progress in completing the requirements of Appendix A of this Order, including the status of any required construction or closure projects and whether such activities are on schedule for completion within required timeframes.

8. Unless otherwise specified in this Order, DTCC 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
(540) 562-6777 (phone)
(540) 562-6725 (fax)
Robert.Steele@deq.virginia.gov