COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FERRUM WATER AND SEWAGE AUTHORITY
FOR
TOWN OF FERRUM SEWAGE TREATMENT PLANT
VPDES Permit No. VA0029254

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and the Ferrum Water and Sewage Authority, regarding the Town of Ferrum Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable VPDES permit and regulations.

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" 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 Town of Ferrum Sewage Treatment Plant located in the Town of Ferrum, Franklin County Virginia, which treats and discharges sewage and other municipal wastes, for the residents and businesses of the Ferrum Water and Sewage Authority.

7. "FWSA" means Ferrum Water and Sewage Authority, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Ferrum Water and Sewage Authority is a "person" within the meaning of Va. Code § 62.1-44.3.

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. VA0029254, which was issued by authority of the Board to Ferrum Water and Sewage Authority on January 26, 2009 and which expires on January 25, 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. "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. FWSA owns and operates the Town of Ferrum Sewage Treatment Plant in Franklin County, Virginia. The Facility is operated under VPDES Permit No. VA0029254, which was most recently reissued on January 26, 2009. The Permit allows FWSA to discharge treated sewage and other municipal wastes from the Plant, to Storey Creek, in strict compliance with the terms and conditions of the Permit.

2. Storey Creek is located in the Roanoke River Basin. Storey Creek is listed in DEQ's 305(b) report as impaired for fecal coliform. The source of the impairment includes livestock, wildlife and waterfowl.

3. The Permit required FWSA to monitor for Nickel and Zinc and develop a plan to achieve compliance with the VPDES effluent limits by January 26, 2008.

4. FWSA began sampling for Zinc and Nickel in February 2004. This sampling was conducted so that FWSA could ascertain the level of Zinc and Nickel in the Plant's effluent and begin to develop a plan of action to achieve compliance with the VPDES permit limits.

5. Beginning in March 2007, FWSA began actively working to achieve compliance with the Nickel and Zinc limits which would become enforceable limits in February 2008. FWSA's actions included attending a seminar and hiring a consultant, adjusting the operations of its drinking water plant, and adjusting operations at the Plant. Despite these efforts, FWSA failed to comply with the Zinc and Nickel effluent limits once they became effective in February 2008.

6. In submitting its DMRs as required by the Permit, FWSA has indicated that it exceeded the Nickel and Zinc effluent limitations of Part I.A.1 of the Permit for the following months:

a. Zinc – February, April, June through August, November and December 2008 as well as January through March, April and August through November 2009 and January 2010;
b. Nickel – July through December 2008 and January and February 2009.

7. In addition FWSA indicated that it exceeded the Copper effluent limitations of Part I.A.1 of the Permit during: November 2008, January, 2009, February 2009, August 2009, October 21009, November 2009, and January 2010.

8. FWSA also indicated that it exceeded the Ammonia, Biochemical Oxygen Demand ("BOD") and Total Suspended Solids ("TSS") effluent limitations of Part I.A.1 of the Permit for the following months:

   a. Ammonia – April 2008, January through April 2009, and January 2010
   b. BOD – January and November 2009
   c. TSS - November 2009

9. The Department issued the following NOVs and WLs to FWSA for the above referenced violations: W2008-11-W-0001 issued on November 5, 2008; W2008-12-W-001 issued on December 12, 2008; W2009-01-W-0001 issued on January 13, 2009; W2009-02-W-0002 issued on February 19, 2009; W2009-03-W-003 issued on March 12, 2009; W2009-04-0005 issued on April 9, 2009; W2009-05-W-0004 issued on May 7, 2009; W2009-06-W-0004 issued on June 17, 2009; W2009-07-W-0002 issued on July 15, 2009; W2009-10-W-002 issued on October 14, 2009; W2009-12-W-1002 issued on December 2, 2009; W2010-01-W-1004 issued on January 6 2010; W2010-03-W-004 issued on March 10, 2010.

10. In a letter dated March 25, 2009, FWSA asserted that the copper effluent violations were related to chemical feed issues at the drinking water facility. FWSA added a caustic soda chemical feed system at the drinking water facility. This has helped reduce the number of copper effluent limit violations. If the pH ranges are not maintained on the finished drinking water, copper will be leached out of the distribution system due to corrosion. Operational issues occurred with the chemical feed system during January 2009 and this was the cause of the copper effluent limit violation. FWSA further asserted in the letter that a plant upset occurred in January 2009, which caused the effluent limit violations of BOD5 and Ammonia. The upset occurred due to the seasonal variations associated with Ferrum College (30-45 days of low load on the facility followed by a high organic load associated with the opening of Ferrum College for the spring semester). In addition, the extreme cold temperatures of January 2009 affected the surface aeration of the wastewater.

11. FWSA asserts that the February 2009 violation of the Ammonia and Copper effluent limit occurred due to the plant upset and chemical feed operational issues that first began in January 2009 and outlined in Paragraph 11.

12. FWSA asserts that the March 2009 violation of the Ammonia effluent limit occurred due to the plant upset that first began in January 2009 and outlined in Paragraph 11.

13. FWSA asserts that the April 2009 violation of the Ammonia effluent limit occurred due to the plant upset that first began in January 2009 and outlined in Paragraph 11.

14. FWSA responded to the Warning Letters and Notice of Violations by submitting a plan and schedule of corrective action to address the effluent limit violations of nickel and zinc. The plan and schedule are incorporated in Appendix A of the Order. Appendix A also requires FWSA to develop a plan of action to address the effluent limit violations of Ammonia, BOD, and TSS.

15. 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."

16. 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.

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

18. The Department has issued no permits or certificates to FWSA other than VPDES Permit No. VA0029254.

19. 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". Storey Creek is a surface water located wholly within the Commonwealth and therefore is a "state water" under the statute.

20. Based on the DMRs submitted by FWSA, the Board concludes that FWSA has violated the Permit, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit.

21. In order for FWSA to return to compliance, DEQ staff and representatives of FWSA 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 FWSA, and FWSA agrees to:

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

2. Pay a civil charge of $2,200 in settlement of the violations cited in this Order. The civil charge shall be paid in four quarterly payments of $550. The first payment is due no later then 30 days after the effective date of the Order. The second payment is due no later then 120 days after the effective date of the Order. The third payment is due no later then 210 days after the effective date of the Order. The fourth payment is due no later then 300 days after the effective date of the 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

FWSA shall include its Federal Employer Identification Number (FEIN) 54-0895438 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 FWSA for good cause shown by FWSA, 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, FWSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. FWSA consents to venue in the Circuit Court of Franklin County for any civil action taken to enforce the terms of this Order.

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

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

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, FWSA 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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Ferrum Water and Sewage Authority voluntarily agrees to the issuance of this Order.

Date: 4/14/10 By: Darryl K Spencer, Chairman of the Board of Directors
Darryl Spencer
Ferrum Water and Sewage Authority

Commonwealth of Virginia
~~City~~/County of Franklin

The foregoing document was signed and acknowledged before me this 14th day of April, 2010, by Darryl Spencer who is Chairman of the Board of Directors of Ferrum Water and Sewage Authority, on behalf of the Authority.

Linda D. Reynolds
Notary Public

138065
Registration No.

My commission expires: 8-31-13

Notary seal:

LINDA D. REYNOLDS
NOTARY
PUBLIC
REG. #138065
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

FWSA shall:

1. No later than May 15, 2010, submit a plan of action to address the periodic influent fluctuations that occur at the Facility. The purpose and intent is for FWSA to develop operational procedures to manage the increase/decrease of influent which have resulted in permit effluent limit violations. The pollutants of concern are TSS, ammonia, and BOD5 but the plan of action should not be limited to these pollutants.
2. No later than May 15, 2010, complete the verification/certification process for the in-stream gauge located at the Facility. The purpose and intent is to obtain site specific stream flow data which may be used when calculating permit effluent limits.
3. No later than June 1, 2010, begin monitoring the stream flow at the stream gauge located at the Facility. The monitoring shall be conducted on a daily basis and continue for a period of no less than one year. FWSA shall submit the results of the monitoring to the Department on a quarterly schedule. The first report shall be submitted no later than July 10, 2010 and all subsequent reports shall be submitted no later than the 10th day of the first month of the quarter (October, January, April, and July) and contain the previous quarters data.
4. No later than June 1, 2010, submit to the Department for approval, an upstream sampling plan of Storey Creek. The purpose and intent is to obtain accurate, quality assured data that represents the physical and chemical properties of Storey Creek which may be used when calculating permit effluent limits.
5. No later than 30 days after receiving approval of the upstream sampling plan of Storey Creek, begin sampling and data collection as proscribed in the approved upstream sampling plan. The monitoring shall be conducted for a period of no less than one year. FWSA shall submit the results of the monitoring to the Department on a quarterly schedule. The first report shall be submitted no later than the 10th day of the first month of the next calendar quarter after the sampling has begun and continue thereafter.
6. No later than May 1, 2011, submit to the Department a technical review of the supporting documentation prepared by Department staff when preparing and issuing the VPDES permit in January 2009. The purpose and intent of the technical review is to review the supporting technical documentation and verify its results. The Department shall provide to FWSA all the supporting documentation no later than April 1, 2010.
7. No later than May 1, 2011, submit to the Department a technical review on the feasibility of reducing the permitted capacity of the plant to achieve compliance with the Copper, Zinc, and Nickel effluent limits.
8. No later than June 30, 2011, notify the Department of FWSA's intent to conduct a Water Effects Ratio ("WER") and/or Chemical Translator Study. The purpose and intent of the WER is to provide data which may be used when calculating permit effluent limits for Copper, Zinc, and Nickel. Alternatively, no later than June 30, 2011, FWSA shall notify the Department that FWSA will not conduct a WER and/or Chemical Translator Study.

9. If FWSA chooses to conduct a WER and/or a Chemical Translator Study, per paragraph 7 above, submit to the Department the results of the WER no later than June 30, 2012.

10. If, after submittal of the items and data required in Paragraphs 3, 5, 6, 7, and 9 (if FWSA chooses to pursue a WER), it becomes apparent that FWSA can not obtain revised permit effluent limits for Copper, Zinc, and Nickel, FWSA will submit a plan of action to achieve compliance with the permit effluent limits for Copper, Zinc, and Nickel. This submittal shall be made no later than December 31, 2012.

11. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Jerry Ford, Jr., Enforcement Specialist-Senior
Department of Environmental Quality
Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019

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 January 25, 2014, FWSA shall monitor and limit the discharge from Outfall No. 1 of FWSA in accordance with VPDES Permit Number VA0029254, 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
Total Recoverable Nickel	NA	NA	NA	20 µg/l	20 µg/l	1/month	Grab
Total Recoverable Zinc	NA	NA	NA	120 µg/l	120 µg/l	1/month	Grab
Total Recoverable Copper	NA	NA	NA	25 µg/l	25 µg/l	1/month	Grab