COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

TOWN OF FRONT ROYAL

(VPDES Permit No. VA0062812)

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 Town of Front Royal ("Front Royal") for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

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

2. "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.

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.

5. "Order" means this document, also known as a Consent Special Order.

6. "Front Royal" or the "Town" means the Town of Front Royal.

7. "VRO" means the Valley Regional Office of DEQ.

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

9. "NOV" means Notice of Violation.

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

11. "DMR" means Discharge Monitoring Report.

12. "O&M Manual" means operations and maintenance manual.

13. "CTC" means Certificate to Construct.

14. "CTO" means Certificate to Operate.

15. "I&I" means inflow and infiltration.

16. "RFP" means request for proposals.

17. "STP" mean sewage treatment plant.

SECTION C: Findings of Fact and Conclusions of Law

1. Front Royal owns and operates the sewage collection system serving the Town which conveys sewage to the Front Royal sewage treatment plant. The Town also owns and operates the Front Royal STP. Discharges of treated sewage from the STP are the subject of VPDES Permit No. VA0062812 (the "Permit"). The Permit authorizes the Town to discharge treated sewage from the STP to the South Fork of the Shenandoah River in strict conformance with the Permit's terms and conditions.

2. DEQ issued Warning Letter No. W2008-06-V-1021 on June 11, 2008, to Front Royal for the unauthorized bypasses / discharges of sewage on April 20 and April 21, 2008 to the Shenandoah River in violation of Virginia Code § 62.1-44.5. The bypasses were attributed to rainfall events. In addition, the Warning Letter cited the Town with the late submittal of the April 2008 DMR which was due on or before May 10, 2008, but was received May 21, 2008 in violation of the Permit Part II.C.

3. DEQ issued Warning Letter No. W2008-07-V-1016 on July 3, 2008, to Front Royal for the unauthorized bypasses / discharges of sewage on May 12, 2008 to the South Fork of the Shenandoah River in violation of Virginia Code § 62.1-44.5. The bypass

was attributed to rainfall events. In addition, the Warning Letter cited the Town with the failure to submit the "Industrial Users" Survey which was due by May 30, 2008 in violation of the Permit Part I.D.1.c.

4. On September 22, 2008, DEQ staff discovered an overflowing manhole. The sewage overflow initially entered a dry ditch and flowed about 60 meters through the ditch before entering Happy Creek. The manhole was located beside the Kmart Shopping Center parking lot. DEQ staff discovered this overflowing manhole while conducting routine biological sampling on Happy Creek. DEQ staff noted a distinct chlorine odor from the sewer overflow, but the discharge ceased before staff were able to take chlorine samples. The overflow occurred as a result of a sewer backup in the collection system during a surge release of backwash water from the Town's water treatment plant. The sewer backup apparently occurred due to root build up in the line.

5. DEQ staff also noted evidence that the manhole may have experienced overflows prior to the September 22, 2008 event.

6. DEQ received a "5-day letter" from the Town on October 6, 2008, regarding the unauthorized discharge from the manhole.

7. DEQ issued NOV No. W2008-11-V-004 on November 7, 2008, to Front Royal for the unpermitted discharge of sewage on September 22, 2008, which had potential adverse impacts to State waters in violation of Virginia Code § 62.1-44.5. and 9 VAC25-31-50.A.

8. DEQ issued NOV No. W2008-12-V-0003 on December 8, 2008, to Front Royal for failure to submit an O&M Manual by in violation of and failure to obtain a CTO before beginning operations of the Rotary Fan Sludge Press as required by the CTC, in violation of the Commonwealth of Virginia Sewage Collection and Treatment [SCAT] Regulations 9 VAC 25-790-50.A).

9. On December 12, 2008, DEQ met with representatives of Front Royal to discuss the violations cited in the NOV and the circumstances that led up to the unpermitted discharge. During the December 12, 2008, meeting, DEQ discussed the status of I&I work in the Town's collection system and requested the Town submit a plan and schedule of corrective actions to address the I&I problems.

10. By submittal dated January 29, 2009, Front Royal provided a written plan and schedule of corrective actions to address the Town's I&I problems. Sections of this plan and schedule have been incorporated into Appendix A of this Order.

11. DEQ issued NOV No. W2009-02-V-0002 on February 17, 2009, to Front Royal for the unauthorized discharges of sewage on December 11 and December 12, 2008 to the South Fork of the Shenandoah River in violation of Virginia Code § 62.1-44.5. In

addition, the NOV cited the Town with the failure to submit or re-evaluate local pretreatment limits by December 2, 2008, in violation of the Permit Part I.D.1.i.

12. Virginia Code § 62.1-44.5 and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation at 9 VAC 25-31-50 A. stipulate that except in compliance with a VPDES permit issued by the Board, it shall be unlawful for any person to discharge sewage, industrial wastes, or other wastes into state waters or otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

13. Virginia Code § 62.1-44.3 includes governmental bodies within the definition of "person". Front Royal is a "person" under the statute. "Sewage" is defined by the Code as "the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm or other water as may be present.

    The STP receives and treats human wastes from residences, buildings, industrial establishments and other places as well as, on occasion industrial wastes and surface and groundwaters.

    "State waters" is defined by Virginia Code § 62.1-44.3 to include all water above and below the surface of the ground and within the Commonwealth. Happy Creek is a "state water".

    The Department has never issued a permit to Front Royal for the discharge of sewage at any locations other than its STP's permitted outfall. Front Royal violated the Code by discharging sewage without a permit issued by the Board. Front Royal violated the Permit by failing to:
    a. submit a timely DMR;
    b. submit a timely Pretreatment Industrial User Survey;
    c. submit timely Pretreatment local limits;
    d. submit a timely O&M Manual; and,
    e. obtain a CTO prior to beginning operations of a treatment unit

14. Front Royal has submitted all outstanding Permit required reports and submittals.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Front Royal and Front Royal voluntarily agrees, to pay a civil charge of **$12,250** 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 payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on the check, Front Royal shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Front Royal, for good cause shown by Front Royal, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein. 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 spill as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Front Royal admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Front Royal consents to venue in the Circuit Court of Richmond for any civil action taken to enforce the terms of this Order.

5. Front Royal declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 enforce this Order.

6. Failure by Front Royal 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. Front Royal 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. Front Royal shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Front Royal shall notify the DEQ Regional Director in writing 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 Director of the Valley Regional Office within 24 hours of learning of any condition above, which Front Royal 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 Front Royal. Notwithstanding the foregoing, Front Royal 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. Front Royal petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
   b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Front Royal.

   Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Front Royal from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, the Town of Front Royal voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____day of _____, 2009.

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

The Town of Front Royal voluntarily agrees to the issuance of this Order.

By: _____

Title: Town Manager

Date: 5/28/09

Commonwealth of Virginia
City/County of Warren

The foregoing document was signed and acknowledged before me this

28 day of May, 2009, by J Michael Graham,
(name)

who is Town Manager of the Town of Front Royal on behalf
(title)

of the Town.

Tina L Presley #173753
Notary Public

My commission expires: 7/31/10.

APPENDIX A
SCHEDULE OF COMPLIANCE
TOWN OF FRONT ROYAL

I & I Reduction Studies in the Collection System.

Front Royal agrees to conduct an assessment of the collection system to identify sources of I/I problems within the collection system and to institute an aggressive I&I rehabilitation plan. Front Royal shall repair/rehabilitate collection system deficiencies on the following schedule. DEQ recognizes that the prioritization of the I&I projects in this schedule may need to change during the evaluation and rehabilitation process based on new information. DEQ agrees that with prior approval from DEQ Front Royal may alter/substitute repairs projects into the schedule to reprioritize the I&I repairs/rehabilitation. Front Royal shall submit to DEQ for review and approval any proposed reprioritization(s) and provide a basis for the revision.

Front Royal shall begin an evaluation of the collection system, which shall include, at minimum, the following:

a. A public information program about proposed collection system tests;
b. Collection system line integrity testing utilizing TV monitoring and smoke testing;
c. Assessment of leakage for all pump stations, manholes and other access points;
d. Conducting flow metering during day and night and wet and dry weather conditions; and
e. Data analysis and a project report.

Manhole Investigation and Rehabilitation

1. **By June 10, 2009,** Front Royal shall complete development of a manhole inspection/assessment RFP for the Town's 2,000 manholes to include the x,y,z coordinates of the manholes and pipe inverts, pipe sizes, manhole conditions.

2. **By July 25, 2009**, Front Royal shall advertise the RFP and receive proposals for the manhole inspection/assessment projects to include the x,y,z coordinates of the manholes and pipe inverts, pipe sizes, manhole conditions..

3. **By August 24, 2009**, Front Royal shall award bids for the manhole inspections, assessment, and manhole conditions.

4. **By May 21, 2010**, Front Royal shall complete field inspections of the Town's 2,000 manholes and identify physical problems.

5. **By July 20, 2010**, Front Royal shall develop and submit to DEQ for review and approval a corrective action plan, including a schedule of implementation, to address the physical problems identified at the manholes in a prioritized manner. For all I&I rehabilitation plans submitted to DEQ for review, Front Royal shall estimate the amount of I&I flow reduction (gallons per day or percentage) it expects from the

repair work. Front Royal shall respond to any comments on the corrective action plan **within 30 days** of receipt of written comments. Upon approval of the corrective action plan, said plan and schedule shall be incorporated by reference into this Order and become enforceable as part of this Order.

Ongoing Field Investigation.

6. **By October 8, 2009**, Front Royal shall complete video inspections of all of the collection system's stream crossings and routings enumerated in its March 3, 2009 document.

7. **By August 9, 2009**, Front Royal shall develop and initiate a Grease Trap Investigation Education Program and Grease Trap Inspection Program. Front Royal shall submit to DEQ written documentation of these programs.

8. **By August 9, 2009**, Front Royal shall complete investigation of known problem areas in the collection system identified on the Town of Front Royal Sanitary Sewer Map using record reviews, smoke testing and video inspections.

9. **By February 5, 2010**, Front Royal shall complete the Grease Trap Inspection Program as described in the documents submitted under Item 7 above.

10. **By March 7, 2010**, Front Royal shall complete video inspection of pipelines and identify deficiencies in the Town's older sections of the collection system identified on the Town of Front Royal Sanitary Sewer Map, specifically:

    a. Royal Village;
    b. Cherrydale;
    c. South Town; and
    d. Warren Park.

11. By **April 21, 2010**, Front Royal shall Front Royal shall develop and submit to DEQ for review and approval a corrective action plan and schedule to:

    a. Prioritize areas **identified in Item 10 above** for repair; and,
    b. Repair deficiencies identified.

    Front Royal shall respond to any comments on the corrective action plan within 30 days of receipt of written comments. Upon approval of the corrective action plan, said plan and schedule shall be incorporated by reference into this Order and become enforceable as part of this Order. In addition, Front Royal shall develop and submit to DEQ a plan for an inspection program to ensure that all collection system repairs are performed in a satisfactory manner.

Sanitary System Hydraulic Model

12. **By July 20, 2010**, Front Royal shall review manhole inspection data collected as required under Item 4 above, which includes the x,y,x coordinates of the manhole and pipe inverts, pipe sizes, and manholes conditions.

13. **By November 17, 2010**, Front Royal shall complete development and calibration of a hydraulic model to estimate base flows and identify remaining **sewer system subbasin** areas in the collection system with excessive I&I flows (wet weather flows exceeding 275 gallons per capita per day (gpcd) are generally classified as excessive I&I flows). Front Royal shall submit to DEQ for review and approval the Town's determination of base flow and excessive I&I flows in the collection systems. **Identification of excessive I&I flows in the system is for use in prioritizing subbasins area for repairs.**

14. **By January 16, 2011**, Front Royal shall compare model data to field data.

15. **By March 2, 2011**, Front Royal shall develop and submit to DEQ for review and approval a corrective action plan and schedule to:

    a. Identify **subbasin** areas with excessive flows;
    b. Prioritize **sewer system subbasin** areas for video inspections to identify specific deficiencies;
    c. Prioritize **sewer system subbasin** areas for repair; and,
    d. Repair deficiencies identified.

    Front Royal shall respond to any comments on the corrective action plan within 30 days of receipt of written comments. Upon approval of the corrective action plan, said plan and schedule shall be incorporated by reference into this Order and become enforceable as part of this Order. In addition, Front Royal shall develop and submit to DEQ a plan for an inspection program to ensure that all collection system repairs are performed in a satisfactory manner.

16. **By March 2, 2011**, Front Royal shall submit to DEQ the list of prioritized I&I repairs to be completed in 2011.

17. **By December 31, 2011**, Front Royal shall complete the I&I repairs prioritized for completion in 2011.

18. **By February 15, 2012**, Front Royal shall submit to DEQ the list of prioritized I&I repairs to be completed in 2012.

19. **By December 31, 2012**, Front Royal shall complete the I&I repairs prioritized for completion in 2012.

20. **By March 1, 2013**, Front Royal shall submit to DEQ for review and approval an update of the success of the I&I corrective actions (including estimated percentage reduction in I&I flows) conducted to date and its plan for conducting future ongoing I&I work. Front Royal shall respond to any questions concerning the plan within 30 days of receipt of written comments. Should Front Royal demonstrate that it has met the requirements of the Order, it may request the termination of the Order.

21. **By January 10, 2010, and annually thereafter**, Front Royal shall submit to DEQ a report describing the success of the rehabilitation work completed to date in reducing excessive I&I flow based on ongoing sewer system flow monitoring. This report should describe the amount of flow reduction in terms of gallons per day or percentile of reduction.

22. Front Royal shall submit quarterly progress reports to DEQ, with the first report being due **April 10, 2009**. Subsequent Progress Reports will be due by **July 10, October 10, January 10, and April 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

23. No later than **14 days** following a date identified in the above schedule of compliance Front Royal 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.