COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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www.deq.virginia.gov

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STATE WATER CONTROL BOARD

ENFORCEMENT ACTION

ORDER BY CONSENT

ISSUED TO THE

HALIFAX COUNTY SERVICE AUTHORITY
FOR
MAPLE AVENUE WWTP

VPDES PERMIT No. VA0020362

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 Halifax County Service Authority, 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 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "DDE" means dichlorodiphenyldichloroethylene.
7. "DDT" means dichlorodiphenyltrichloroethane.
8. "DMR" means Discharge Monitoring Report.
9. "Facility" or "WWTP" means the Maple Avenue Wastewater Treatment Plant, located at 500 Maple Avenue, South Boston, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of South Boston.
10. "Halifax County Service Authority", "Authority" or "HCSA" means an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* The Halifax County Service Authority is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "MGD" means million gallons per day.
12. "Notice of Violation" or "NOV" means a type of Notice of Violation under Va. Code § 62.1-44.15.
13. "O & M" means Operation and Maintenance.
14. "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.
15. "PER" means Preliminary Engineering Report.
16. "Permit" means VPDES Permit number VA0020362; which was issued under the State Water Control Law to the HCSA on June 6, 2009, and which expires on June 5, 2014.
17. "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.

18. "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.
19. "Regulation" means the VPDES Permit Regulation at 9 VAC 25-31-10 *et seq.*
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
21. "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.
22. "TMDL" means Total Maximum Daily Load.
23. "TSS" means Total Suspended Solids.
24. "Va. Code" means the Code of Virginia (1950), as amended.

25. "VAC" means the Virginia Administrative Code.
26. "VPDES" means the Virginia Pollutant Discharge Elimination System.
27. "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 Halifax County Service Authority owns and operates the Facility in the Town of South Boston, Virginia. The Permit allows the HCSA to discharge treated sewage and other municipal wastes from outfall 001 of the Facility to the Dan River, in strict compliance with the terms and conditions of the Permit.
2. The Dan River is located in the Roanoke River Basin. The Dan River was designated as impaired for recreation by E. coli bacteria, and for fish consumption by DDE and DDT in the 2008 Integrated Report (IR), and listed as a Category 5A water (waters which are impaired or threatened for one or more designated uses by a pollutant(s) and require the development of a TMDL). The Dan River was first listed on the 1998 IR for recreation, with the TMDL scheduled for development in 2010, and was listed for fish consumption in 2004, with the TMDL scheduled for 2016.
3. In submitting its DMRs, as required by the Permit, the HCSA has indicated that it exceeded discharge limitations contained in Part I.A.1. of the Permit as follows: TSS Permit effluent limit violations in November, 2009, and January, 2010; and a BOD_5 Permit effluent limit violation in January, 2010.
4. The Authority reported an unpermitted discharge event from the Facility at outfall 002 (holding pond) from November 13-15, 2009, which was attributed to a 4.85" rainfall event. The Authority reported additional unpermitted discharge events on March 30-31, 2010, from outfall 002, which was attributed to a 2.88" rainfall event, and April 2, 2010, which was caused by damage sustained to a sewer line at a creek crossing.

5. BRRO issued the following Warning Letters and Notices of Violation for the violations referenced above: WL W2009-12-L-1006, WL W2010-02-L-1008, NOV W2010-03-L-0001, NOV W2010-05-L-0004, and NOV W2010-06-L-0007.

6. The HCSA notified the Department on February 8, 2010, that the average influent flow to the Facility exceeded 95% of the design capacity for the months of November and December, 2009, as well as January 2010. The Authority attributed the exceedances to unusually heavy precipitation in the service area, as well as localized flooding of the Dan River due to heavy precipitation in the Dan River basin.

7. HCSA officials met with the Department on March 23, 2010, to discuss NOV W2010-03-L-0001, issued on March 3, 2010, for BOD_5 and TSS Permit effluent limitation violations. The Authority attributed the violations to greater than normal precipitation events in January, 2010, with total measured rainfall for the month exceeding four inches. The Authority informed the Department that it has secured 15 million dollars in funding from the Rural Utilities Service of the United States Department of Agriculture to upgrade the capacity of the Facility. The Authority anticipates that the project design and bidding process will be completed by July 1, 2011. The construction phase of the project will take approximately 2.5 years to complete.

8. The Authority's operating logs for the Facility indicate that it discharged treated wastewater every day from November 1, 2009 through April 30, 2010.

9. Va. Code § 62.1-44.5 states that: "Except 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. Part II F. of the subject Permit states that except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to:

    1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

    2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

12. Va. Code § 62.1-44.15(5a) states that a VPDES Permit is a "certificate" under the statue.

13. The Department has issued no permits or certificates to the HCSA other than VPDES Permit No. VA0020362.

14. The Dan River is a surface water located partially within the Commonwealth and within its jurisdiction and is considered "state waters" under State Water Control Law.

15. Based on the results of the DMRs submitted by the Town, and upon reports of unpermitted discharges, the Board concludes that the Halifax County Service Authority has violated VPDES Permit No. VA0020362, Va. Code § 62.1-44.5, and 9 VAC 25-31-50 by discharging partially treated sewage and other municipal wastes from the Facility and untreated sewage and other municipal wastes from the Facility's collection system while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C.3. and C.4., above.

16. In order for the HCSA to return to compliance, Department staff and representatives of the HCSA 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 Halifax County Service Authority, and the Authority agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the HCSA for good cause shown by the HCSA, 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 HCSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The HCSA 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 HCSA 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 HCSA 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 HCSA 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 HCSA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The HCSA 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 HCSA 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 Halifax County Service Authority. Nevertheless, the HCSA 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 HCSA 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 HCSA.

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

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 Halifax County Service Authority voluntarily agrees to the issuance of this Order.

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

_____

Robert J. Weld, Regional Director
Blue Ridge Regional Office
Department of Environmental Quality

(Remainder of this page intentionally blank)

Halifax County Service Authority voluntarily agrees to the issuance of this Order.

Date: July 27, 2010 By: William E. Jones, Executive Director
William E. Jones Executive Director
Halifax County Service Authority

Commonwealth of Virginia
City/County of Halifax

The foregoing document was signed and acknowledged before me this 27th day

of July, 2010, by William E. Jones, who is Executive Director of the Halifax

County Service Authority on behalf of the Authority.

Kara B. Garrett
Notary Public

07261607
Registration No.

My commission expires: June 30, 2013.

Notary seal:

APPENDIX A

SCHEDULE OF COMPLIANCE

1. The Halifax County Service Authority shall retain the services of Dewberry and Davis, Inc., of Danville, Virginia, to prepare the design and specifications for the proposed upgrade for the Maple Avenue WWTP, as outlined in the Preliminary Engineering Report dated August 28, 2009. The Authority shall enter into a contract for these services no later than **July 31, 2010.**

2. The Halifax County Service Authority shall forward final plans, specifications, and a project schedule to the Department for review and approval on or before **March 31, 2011.**

3. The Halifax County Service Authority shall complete the bid process and issue a Notice to Proceed with construction no later than **June 30, 2011.**

4. The Halifax County Service Authority shall complete construction in accordance with the approved plans and project schedule as expeditiously as possible, but in no case later than **December 31, 2013.**

5. During the construction phase of the upgrade and modification projects, the Halifax County Service Authority shall operate the Facility in a workmanlike manner in order to produce the highest quality effluent discharged to waters of the State.

6. The Halifax County Service Authority shall submit to the Department semi-annual Progress Reports on or before **January 10** and **July 10** of each year until such time of the issuance of a Certificate to Operate for the upgraded Facility by the Department.

7. 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