COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

CITY OF HARRISONBURG

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a),(8d) and (11), between the State Water Control Board and the City of Harrisonburg ("Harrisonburg") 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. "Harrisonburg" or the "City" means the City of Harrisonburg.

7. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

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. "STP" means sewage treatment plant.

12. "VDOT" means Virginia Department of Transportation.

SECTION C: Findings of Fact and Conclusions of Law

1. Harrisonburg owns and operates the sewage collection system serving the City which conveys sewage to the Harrisonburg-Rockingham Regional Service Authority – North River STP for treatment.

2. On November 18, 2008, Harrisonburg reported to DEQ a sewage overflow that occurred on November 17, 2008, in the City's Purcell Park. Harrisonburg reported that the overflow occurred at a manhole next to Interstate I81 and entered a dry ditch tributary to Blacks Run (dry ditch before entering Seiberts Run and finally Blacks Run). Although, Harrisonburg reported the overflow, it did not note that a significant amount of sewage had entered Seiberts Run. The overflow occurred as a result of a sewer backup in the collection system. The sewer backup apparently occurred due to a manhole cover being knocked off during mowing on VDOT's I81 right-of-way.

3. On November 19, 2008, DEQ investigated the sewage spill to Seiberts Run during which staff observed significant sewage solids deposits in a stream reach of approximately 720 feet. The sewage overflow initially entered a dry ditch and flowed about 180 meters through the ditch before entering Seiberts Run. Seiberts Run was blanketed with sewage solids from the entry point of the dry ditch downstream to a low water bridge. During the investigation, staff observed a kill of 5 dead fish in Seiberts Run in the area immediately above the confluence with Blacks Run.

4. DEQ conducted E. coli sampling in Seiberts Run above and below the spill location.

   The November 19, 2008, E. coli sampling results were as follows:

Station	Location	E. coli (col/100 ml)
Site A	Control site in Seiberts Run above confluence with the dry ditch	180
Site B	Downstream of dry ditch in Seiberts Run	650
Site C	Seiberts Run - Above confluence with Blacks Run	1000

5. 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.

6. Virginia Code § 62.1-44.3 includes governmental bodies within the definition of "person". Harrisonburg is a "person" under the statute. The Code also defines "other wastes" to include any substance that may cause pollution of state waters. "Pollution" is defined by Virginia Code § 62.1-44.3 to include the alteration of state waters in a manner which makes them detrimental to aquatic life. Sewage is therefore both a pollutant and a specifically prohibited discharge under the statute.

   "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. Seiberts Run and the unnamed tributary to the Seiberts Run are "state waters".

   The Department has never issued a permit to Harrisonburg for the discharge of sewage. Harrisonburg violated the Code by discharging sewage without a permit issued by the Board.

7. DEQ issued NOV No. W2008-11-V-003 on December 8, 2008, to Harrisonburg for the unpermitted discharge of sewage on November 17, 2008, which resulted in adverse impacts to State waters in violation of Virginia Code § 62.1-44.5. and 9 VAC25-31-50.A.

8. On December 18, 2008, DEQ met with representatives of Harrisonburg to discuss the violations cited in the NOV and the circumstances that led up to the unpermitted discharge.

9. Although not cited in an enforcement document, Harrisonburg experienced an unpermitted discharge from its collection system on August 25, 2008. This discharge occurred due to a line blockage which was immediately and completely addressed.

10. There are no further corrective actions necessary to resolve the violations cited in this Order.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a), (8d) and (11), orders Harrisonburg and Harrisonburg voluntarily agrees, perform the actions described in Appendix A and Appendix B of this Order. In addition, the Board orders Harrisonburg, and Harrisonburg voluntarily agrees, to pay a civil charge of **$14,300** in settlement of the violations cited in this Order.

1. Harrisonburg shall pay **$1,430.00** of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's 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, Harrisonburg shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

2. Submit to the Department, at the address shown above, a **separate check** payable to the "Treasurer of Virginia", a check in the amount of **$894.77 to** cover DEQ's costs in the pollution incident investigation. Harrisonburg shall submit the check **within 30 days** of the effective date of the Order.

3. Harrisonburg shall satisfy **$12,870** of the civil charge upon completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.

4. The net cost of the SEP to Harrisonburg shall not be less than the amount set forth in Paragraph D.3. If it is, Harrisonburg shall pay the remaining amount in accordance with Paragraph D. 1 of this Order, unless otherwise agreed to by the Department. "Net costs" means the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.

5. By signing this Order Harrisonburg certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.

6. Harrisonburg acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Harrisonburg to a third party, shall not relieve Harrisonburg of its responsibility to complete the SEP as contained in this Order. In the event it publicizes the SEP or the SEP results, Harrisonburg shall state in a prominent manner that the project is part of a settlement for an enforcement action.

7. The Department has the sole discretion to:

   a. Authorize any alternate SEP proposed by Harrisonburg; and

   b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

8. Should the Department determine that Harrisonburg has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Harrisonburg in writing. Within 30 days of being notified, Harrisonburg shall pay the amount specified in Paragraph 3 above to DEQ as provided in Paragraph 1 above.

SECTION E: Administrative Provisions

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

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

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

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Harrisonburg 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, City of Harrisonburg 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 City of Harrisonburg voluntarily agrees to the issuance of this Order.

By: A Michael Collins

Title: Director Public Utilities

Date: April 21, 2009

Commonwealth of Virginia

~~City~~/County of Rockingham

The foregoing document was signed and acknowledged before me this

21st day of April, 2009, by A. Michael Collins,

(name)

who is Director of Public Utilities of the City of Harrisonburg on behalf

(title)

of the City.

Bettie S Altizer 329863

Notary Public

My commission expires: October 31, 2011.

APPENDIX A
SCHEDULE OF COMPLIANCE
CITY OF HARRISONBURG

1. **By June 15, 2009,** Harrisonburg shall submit to DEQ for review and approval a Standard Operating Procedure ("SOP") for ensuring consistent and proper reporting of all overflows from the City's collection system. The City shall respond to any comments on the SOP **within 30 days** of receipt of written comments. Upon approval, the SOP shall be instituted by the City.

APPENDIX B
SUPPLEMENTAL ENVIRONMENTAL PROJECT
CITY OF HARRISONBURG

1. The SEP to be performed by Harrisonburg will be the identification and elimination of privately owned septic systems adjacent to Blacks Run and within the City. The project would first include identification of any privately owned septic systems in the area of Blacks Run. The City would then encourage the owners of these systems to abandon their systems and connect to the public sewer system by allowing the connection without payment of the usual connection fee of $4500. Should there be insufficient interest in this offer expressed by system owners in the Blacks Run area the City will expand the offer to all septic system owners within the City.

   Additionally, as part of the project, the City will offer to replace, at its sole cost, any compromised private sewer lateral within 100 feet of Blacks Run.

2. **Within 30 days** of the effective date of this Order, Harrisonburg shall begin the SEP project.

3. **Not later than August 1, 2010**, Harrisonburg shall complete the SEP project

4. **Within 30 days** of completion of the SEP projects, Harrisonburg shall submit to the Department written verification of the final overall and net cost of the SEP in the form of a certified statement itemizing costs and proof of payment and shall submit invoices, itemized lists and written and photographic verification of the work specified in Paragraphs 1 and 2 above.

5. Harrisonburg shall submit quarterly progress reports to DEQ, with the first report being due **October 10, 2009**. Subsequent Progress Reports will be due by **January 10, April 10, July 10** and **October 10**, until the cancellation of this Order. The quarterly progress reports shall contain:

   a. a summary of all SEP project 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