COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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STATE WATER CONTROL BOARD ENFORCEMENT ACTION ENFORCEMENT ACTION - SPECIAL ORDER BY CONSENT ISSUED TO ISLE OF WIGHT COUNTY

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 Isle of Wight County, for the purpose of resolving certain violations of the State Water Control Law, and the applicable regulations.

SECTION B: Definitions:

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

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.

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 as described in Va. Code § 10.1-1185.

5. "HRSD" means the Hampton Roads Sanitation District.

6. "Hampton Roads Localities" means the cities of Chesapeake, Hampton, Newport News, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; the counties of Gloucester, Isle of Wight, and York; the James City Service Authority; and the town of Smithfield.

7. "Hampton Roads Locality" or "Locality" means one of the Hampton Roads Localities.

8. "Isle of Wight County" means Isle of Wight County in southeast Virginia. Isle of Wight County is an "owner" within the meaning of Va. Code § 62.1-44.3.

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

10. "Order" means this document, also known as a "Special Order by Consent" or a "Consent Special Order."

11. "2007 Order" means the Special Order by Consent effective September 26, 2007 between the State Water Control Board and the Hampton Roads Sanitation District, the cities of Chesapeake, Hampton, Newport News, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg; the counties of Gloucester, Isle of Wight, and York; the James City Service Authority; and the town of Smithfield.

12. "SSES" means Sewer System Evaluation Survey.

13. "SSES Basin" means a defined portion of the sanitary sewer system where historical data and/or flow monitoring data collected indicate high levels of rainfall derived inflow and infiltration, unresolved Sanitary Sewer Overflows, or other characteristics that warrant investigation.

14. "SSO" means Sanitary Sewer Overflow.

15. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

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

17. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Isle of Wight County is bordered by Suffolk City, Southampton County, Surry County, and the James River. The James River provides beneficial uses including recreation, fish consumption, and the support of aquatic life.

2. Isle of Wight County wastewater collection facilities were initially installed in the 1980's and to date there are approximately 2,000 wastewater customers. Isle of Wight County does not have wastewater treatment facilities, and all wastewater is transported to the HRSD wastewater collection system, except the wastewater in that portion of the Isle of Wight County wastewater system that is transported to the City of Franklin for treatment.

3. HRSD and the Hampton Roads Localities entered into a Special Order by Consent effective September 26, 2007. The 2007 Order outlines requirements and due dates for annual activity reporting and SSES basin identification, among other things.

4. The 2007 Order at Appendix K, Item 8, requires that Isle of Wight County submit an annual report on the status of required work to DEQ on or before November 1 following

the close of each fiscal year. The annual status report from Isle of Wight was received by DEQ on December 31, 2008, 60 days (2 months) late.

5. The 2007 Order at Section D. 4 states that Hampton Roads Localities shall comply with the Regional Technical Standards that are attached to and incorporated into the Order as Attachment 1. The 2007 Order at Section B.7 identified Isle of Wight County as one of the Hampton Roads Localities.

6. The Attachment 1 to the 2007 Order, Regional Technical Standards at Section 3.3.3., requires that flow monitoring for SSES basin identification shall be completed within 12 months of the effective date of the Order (i.e. effectively by September 26, 2008).

7. The December 2008 Isle of Wight annual report states that sanitary sewer flow monitoring which meets the requirements of the Regional Technical Standards for SSES basin identification was scheduled to commence in January 2009 (subject to completion of equipment installation), with flow monitoring to be completed by July 2009 (weather dependant).

8. Section 62.1-44.31 of the Code states that "[I]t shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter ..."

9. Section 62.1-44.3 of the Code states that "[O]wner means the Commonwealth or any of its political subdivisions, including but not limited to sanitation district commissions and authorities and any public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States ...".

10. Isle of Wight County violated the 2007 Order by failing to submit the annual status report on time.

11. Isle of Wight County violated the 2007 Order by failing to complete flow monitoring for SSES basin identification on time.

12. On March 9, 2009, DEQ issued NOV W2009-02-T-0101 to Isle of Wight County. The NOV advised Isle of Wight County of the violations of 2007 Order.

13. By letter dated February 9, 2009, Edwin P. Wrightson, Director of Isle of Wight General Services Department had provided that the annual report was late due to transition between himself and the previous Director of General Services who left in June 2008, and that delays in flow monitoring were due to contractor issues.

14. Isle of Wight County responded to the NOV by letter dated April 9, 2009, which reiterated why the annual report and flow monitoring were late and provided a proposed schedule for fulfilling flow monitoring responsibilities.

15. Isle of Wight has indicated it will complete the sanitary sewer flow monitoring and provide the SSES Plan and Flow Evaluation Reports pursuant to the technical specifications provided in the Regional Technical Standards. Isle of Wight has indicated it will submit the SSES Plan and Flow Evaluation Report to the Department soon after rain fall events specified in the Regional Technical Standards have occurred.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d), and upon consideration of Va. Code § 10.1-1186.2, the Board orders Isle of Wight County, and Isle of Wight County agrees to perform the actions described below and in Appendix A of this Order. In addition, the Board orders Isle of Wight County, and Isle of Wight County voluntarily agrees, to a civil charge of $3,900 in settlement of the violations cited in this Order, to be paid as follows:

1. Isle of Wight County shall pay $390 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

   Isle of Wight County shall include its Federal Employer Identification Number (FEIN) 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).

2. Isle of Wight County shall satisfy $3,510 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.

3. The net project cost of the SEP to Isle of Wight County shall not be less than the amount set forth in Paragraph D.2 of this Order. If it is, Isle of Wight County shall pay the remaining amount in accordance with Paragraph D.1 of this Order unless otherwise agreed to by the Department. "Net project costs" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

4. By signing this Order, Isle of Wight County certifies that it has not commenced performance of the SEP.

5. Isle of Wight County acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Isle of Wight County to a third party, shall not relieve Isle of Wight County of its responsibility to complete the SEP as described in this Order.

6. In the event it publicizes the SEP or the SEP results, Isle of Wight County shall state in a prominent manner that the project is part of a settlement of an enforcement action.

7. The Department has the sole discretion to:

a. Authorize any alternate, equivalent SEP proposed by Isle of Wight County; and
b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

8. Should the Department determine that Isle of Wight County has not completed the SEP, or alternate SEP in a satisfactory manner, the Department shall notify Isle of Wight County in writing. Within 30 days of being notified, Isle of Wight County shall pay the amount specified in Paragraph D.2. of this Order, as provided in Paragraph D.1 of this Order.

SECTION E: Administrative Provisions

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

2. This Order only addresses and resolves those violations specified 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 collection system 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, Isle of Wight County admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Isle of Wight County 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. Isle of Wight County 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 Isle of Wight County 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. Isle of Wight County 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 act of God, war, strike, or such other occurrence. Isle of Wight County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Isle of Wight County 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 Isle of Wight County 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 Isle of Wight County. Nevertheless, Isle of Wight County 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. Isle of Wight County petitions the Director or his designee to terminate the Order after it has completed all 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 Isle of Wight County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Isle of Wight County 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 Isle of Wight County 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 Isle of Wight County certifies he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Isle of Wight County to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Isle of Wight County.

14. By its signature below, Isle of Wight County voluntarily agrees to the issuance of this Order.

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

_____
Francis L. Daniel, Regional Director
Department of Environmental Quality

Isle of Wight County voluntarily agrees to the issuance of this Order.

Date: 8/20/09 By: _____
W. Douglas Caskey, County Administrator
Isle of Wight County

Commonwealth of Virginia
County of Isle of Wight

The foregoing document was signed and acknowledged before me this 20th day of August, 2009, by W. Douglas Caskey, who is County Administrator, Isle of Wight County. on behalf of the County.

Approved as to form:

_____
A. Paul Burton
Interim County Attorney

_____
Notary Public

334042
Registration No.

My commission expires: 07/31/2011.

Notary seal:

LUANN C. DELOSREYES
Notary Public
Commonwealth of Virginia
334042
My Commission Expires Jul 31, 2011

APPENDIX A

1. The SEP to be performed by Isle of Wight County is donating $3,510 to the Peanut Soil and Water Conservation District for use on an agricultural field in the Southern Rivers Watershed (Watershed Code CU60). The 40-acre agricultural field is at the corner of Jones Town Road and Mill Swamp Drive, Isle of Wight County.

2. The SEP shall be completed within 30 days of the effective date of this Order.

3. Isle of Wight County shall verify its completion of the SEP in writing, either in the form of a certification from a Certified Public Accountant or a certification from a responsible Isle of Wight County official that the SEP has been completed in accordance with the terms of this Order. Isle of Wight County shall submit the verification to DEQ within 60 days from the completion of the SEP.

4. If the SEP has not or cannot be completed as described in this Order, Isle of Wight County shall notify DEQ in writing no later than 30 days of discovery of the inability to complete the SEP. Such notification shall include:

    a. An alternate SEP proposal, or
    b. Payment of the amount specified in Paragraph D.2 of this Order as described in Paragraph D.1 of this Order.