COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CITY OF WAYNESBORO
FOR
WAYNESBORO STP
VPDES Permit No. VA0025151

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and City of Waynesboro, regarding the Waynesboro STP and sewage collection system, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and/or regulation.

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. "CTC" means Certificate to Construct.

3. "CTO" means Certificate to Operate.

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. "DMR" means Discharge Monitoring Report.

7. "Facility" or "Plant" means the Waynesboro Wastewater Treatment Plant located in Waynesboro, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the City of Waynesboro.

8. "I&I" means Inflow and Infiltration.

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

10. "O&M" means operations and maintenance.

11. "Permit" means VPDES Permit No. VA0025151, which was issued under the State Water Control Law and the Regulation to Waynesboro on February 1, 2010 and which expires on January 31, 2015.

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. "STP" means sewage treatment plant.

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

19. "VAC" means the Virginia Administrative Code.

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

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

22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

23. "Waynesboro" means the City of Waynesboro, a political subdivision of the Commonwealth of Virginia. Waynesboro is a "person" within the meaning of Va. Code § 62.1-44.3.

SECTION C: Findings of Fact and Conclusions of Law

1. Waynesboro owns and operates the Plant and the sewage collection system serving the City and a portion of Augusta County in Augusta County, Virginia. The Permit allows Waynesboro to discharge treated sewage and other municipal wastes from the Plant, to the South River, in strict compliance with the terms and conditions of the Permit.

2. South River is located in the Shenandoah River subbasin, Potomac River basin. South River is listed in DEQ's 303(d) report as impaired for mercury in fish tissue (fish consumption advisory), fecal coliform and for not meeting the General Standard (Benthics) for aquatic life.

3. Presently, Waynesboro is subject to a Consent Order that became effective October 19, 1999 and was amended September 1, 2004 ("2004 Amendment"), to continue to address I&I problems in its collection system.

4. The 2004 Amendment required Waynesboro to complete the removal of all private sump pumps and roof leader connections to the sewage collection system and to conduct rehabilitation work on a list of eight (8) prioritized areas needing rehabilitation and then to evaluate the success of those repairs and to provide a schedule for additional areas needing rehabilitation.

5. Waynesboro has completed the requirements contained in Appendix A of the 2004 Amendment. However, Waynesboro continues to experience I&I events, including

overflows, bypasses and most significantly, discharges of raw wastewater from the City's siphon discharge location.

6. The design capacity of the Plant has been rated and approved as 4.0 MGD.

7. Waynesboro is presently constructing an upgraded and expanded sewage treatment plant designed to meet nutrient limits with a design capacity of 6.0 MGD that is scheduled to be brought online by December 31, 2010. This Plant will have the capability to treat wet weather flows up to 18 MGD.

8. Waynesboro expects that until the completion of the upgraded and expanded sewage treatment plant, it will not be able to prevent further unpermitted discharges from the siphon discharge location. The City utilizes the Plant's headworks gate to regulate influent flows to prevent Plant flooding and damage during certain high flows rainfall events. When this gate is shut, the influent flows are shunted to the siphon discharge point, thus bypassing all treatment. The City anticipates being able to discontinue the use of the gate control and the siphon discharge with the completion of the Plant upgrade/expansion.

9. On October 6, 2008, VRO issued Warning Letter number W2008-10-V-1011 to Waynesboro for chlorine concentration minimum and CBOD concentration average effluent limitation violations in August 2008.

10. On November 3, 2008, VRO issued Warning Letter number W2008-11-V-1009 to Waynesboro for unauthorized discharges occurring on September 6 and September 27, 2008. The 5-day letter for the September 27 event was received late on October 3, 2008

11. On December 3, 2008, VRO issued Warning Letter number W2008-12-V-1014 to Waynesboro for a chlorine concentration minimum effluent limitation violation in October 2008.

12. On January 12, 2009, VRO issued Warning Letter number W2009-01-V-1011 to Waynesboro for a chlorine concentration minimum effluent limitation violation in November 2008.

13. On February 9, 2009, VRO issued Notice of Violation number W2009-02-V-0001 to Waynesboro for a chlorine concentration minimum effluent limitation violation in December 2008.

14. On February 20, 2009, Department staff met with representatives of Waynesboro to discuss the NOV's violations, the problems that led to the violations and corrective actions needed to address the problems DEQ requested the City submit a plan and schedule of corrective actions to address the problems.

15. On August 13, 2009, VRO issued Notice of Violation number W2009-08-V-0004 to Waynesboro for failure to survey all of its industrial users as required by the pretreatment provisions of the Permit as noted in DEQ's June 3, 2009 inspection.

16. On September 11, 2009, VRO issued Notice of Violation number W2009-09-V-0002 to Waynesboro for an ammonia-N concentration average effluent limitation violation in July 2009.

17. On October 5, 2009, VRO issued Notice of Violation number W2009-10-V-0005 to Waynesboro for a pH concentration minimum effluent limitation violation in August 2009.

18. In addition, there were unauthorized discharges in January 2009, April and December 2009, the late submittal of a Semi-annual Progress Report due April 10, 2009 which was received June 5, 2009 and the late submittal of a TMP report due September 10, 2009, which was received October 29, 2009. These violations were not included in any enforcement documents.

19. By letters dated November 10, 2009 and January 25, 2010, Waynesboro submitted to DEQ a plan and schedule of corrective actions to further address the City's collection system I&I problems for incorporation into this Order.

20. 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."

21. 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.

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

23. The Department has issued no permits or certificates to Waynesboro other than VPDES Permit No. VA0025151.

24. The South River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

25. Based on the results of the February 20, 2009, meeting, and a file review, the Board concludes that Waynesboro has violated the Permit and Va. Code § 62.1-44.5 and 9 VAC 9 VAC 25-31-50, by discharging untreated sewage and municipal wastes from the collection system and treated sewage and municipal wastes while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(9) through C(18), above.

26. Waynesboro is to conduct certain I&I corrective actions to address collection system deficiencies as incorporated into Appendix A of this Order. Waynesboro took actions to address the reporting and effluent limitation violations. Many effluent violations were related to high flows due to wet weather which are to be addressed through the completion of the Facility's upgrade and expansion.

27. In order for Waynesboro to return to compliance, DEQ staff and representatives of Waynesboro 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 Waynesboro, and Waynesboro agrees to:

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

2. Pay a civil charge of $7,700 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, 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

3. This Order cancels and supersedes the October 19, 1999 Consent Order and the September 1, 2004 Amendment.

Waynesboro shall include its Federal Employer Identification Number (FEIN) (54-6001673) 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 Waynesboro for good cause shown by Waynesboro, 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, Waynesboro admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

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

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, Waynesboro voluntarily agrees to the issuance of this Order.

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

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

City of Waynesboro voluntarily agrees to the issuance of this Order.

Date: 3-18-10 By: Michael G. Hamp II, CITY MANAGER
(Person) (Title)
City of Waynesboro

Commonwealth of Virginia

City/County of Waynesboro

The foregoing document was signed and acknowledged before me this 18th day of March, 2010, by Michael G Hamp II who is

City Manager of City of Waynesboro on behalf of the City of Waynesboro.

Julia Bostic
Notary Public

234704
Registration No.

My commission expires: May 31, 2010

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

Plant upgrade

1. **By January 1, 2011**, Waynesboro shall complete construction of the Facility upgrade and expansion for the approved design capacity of 6.0 MGD and submit a Certificate to Operate ("CTO") application to DEQ for review and approval. Waynesboro shall respond to comments on the CTO application **within 30 days** of receiving written comments.

2. **By January 15, 2011**, Waynesboro shall permanently plug/seal the siphon discharge, also known as Outfall 005, to eliminate further unauthorized discharges from that location.

I&I Corrective Actions

Waynesboro shall conduct collection system rehabilitation work on the following schedule. DEQ recognizes that the prioritization of the individual project items to be accomplished each year in this schedule as contained in Waynesboro's January 25, 2010 I&I Program Implementation Plan and schedule may need to change during the rehabilitation process based on new information. DEQ agrees that Waynesboro may alter/substitute individual project items into the schedule below. Waynesboro shall notify and submit to DEQ for review and approval any proposed reprioritization(s) and provide a basis for the revision. Waynesboro shall conduct the collection system rehabilitation work utilizing the following construction schedule:

Waynesboro proposes to initiate I&I projects such that one and a half projects are completed each year for five years. These projects have been prioritized based on the assessment from the City's flow studies.

Project #S-18

3. **By September 1, 2010**, Waynesboro shall submit to DEQ for review and approval the proper CTC forms and any required documents for the Project # S-18 from the Implementation Plan. Waynesboro shall respond to comments on the PER **within 30 days** of receipt of written comments.

4. **By January 1, 2011**, Waynesboro shall advertise for bids for construction of Project # S-18 from the Implementation Plan.

5. **By November 1, 2011**, Waynesboro shall complete construction of Project # S-18 from the Implementation Plan.

Project #S-1

6. **By September 1, 2010**, Waynesboro shall submit to DEQ for review and approval the proper CTC forms and any required documents for the Project # S-1 from the Implementation Plan. Waynesboro shall respond to comments on the PER **within 30 days** of receipt of written comments.

7. **By April 1, 2011**, Waynesboro shall advertise for bids for construction of Project # S-1 from the Implementation Plan.

8. **By February 1, 2012**, Waynesboro shall complete construction of Project # S-1 from the Implementation Plan.

Project #S-2

9. **By September 1, 2011**, Waynesboro shall submit to DEQ for review and approval the proper CTC forms and any required documents for the Project # S-2 from the Implementation Plan. Waynesboro shall respond to comments on the PER within 30 days of receipt of written comments.

10. **By January 1, 2012**, Waynesboro shall advertise for bids for construction of Project # S-2 from the Implementation Plan.

11. **By November 1, 2012**, Waynesboro shall complete construction of Project # S-2 from the Implementation Plan.

Project #S-3

12. **By September 1, 2011**, Waynesboro shall submit to DEQ for review and approval the PER for the Project # S-3 from the Implementation Plan. Waynesboro shall respond to comments on the PER within 30 days of receipt of written comments.

13. **By April 1, 2012**, Waynesboro shall advertise for bids for construction of Project # S-3 from the Implementation Plan.

14. **By February 1, 2013**, Waynesboro shall complete construction of Project # S-3 from the Implementation Plan.

Project #S-4

15. **By September 1, 2012**, Waynesboro shall submit to DEQ for review and approval the proper CTC forms and any required documents for the Project # S-4 from the Implementation Plan. Waynesboro shall respond to comments on the PER within 30 days of receipt of written comments.

16. **By January 1, 2013**, Waynesboro shall advertise for bids for construction of Project # S-4 from the Implementation Plan.

17. **By November 1, 2013**, Waynesboro shall complete construction of Project # S-4 from the Implementation Plan.

Project #S-5

18. **By September 1, 2012**, Waynesboro shall submit to DEQ for review and approval the proper CTC forms and any required documents for the Project # S-5 from the Implementation Plan. Waynesboro shall respond to comments on the PER within 30 days of receipt of written comments.

19. **By April 1, 2013**, Waynesboro shall advertise for bids for construction of Project # S-5 from the Implementation Plan.

20. **By February 1, 2014**, Waynesboro shall complete construction of Project # S-5 from the Implementation Plan.

Project #S-6

21. **By September 1, 2013**, Waynesboro shall submit to DEQ for review and approval the proper CTC forms and any required documents for the Project # S-6 from the Implementation Plan. Waynesboro shall respond to comments on the PER within 30 days of receipt of written comments.

22. **By January 1, 2014**, Waynesboro shall advertise for bids for construction of Project # S-6 from the Implementation Plan.

23. **By November 1, 2014**, Waynesboro shall complete construction of Project # S-6 from the Implementation Plan.

Project #S-7

24. **By September 1, 2013**, Waynesboro shall submit to DEQ for review and approval the proper CTC forms and any required documents for the Project # S-7 from the Implementation Plan. Waynesboro shall respond to comments on the PER within 30 days of receipt of written comments.

25. **By April 1, 2014**, Waynesboro shall advertise for bids for construction of Project # S-7 from the Implementation Plan.

26. **By February 1, 2015,** Waynesboro shall complete construction of Project # S-7 from the Implementation Plan.

Project #S-8

27. **By September 1, 2014**, Waynesboro shall submit to DEQ for review and approval the proper CTC forms and any required documents for the Project # S-8 from the Implementation Plan. Waynesboro shall respond to comments on the PER within 30 days of receipt of written comments.

28. **By January 1, 2015**, Waynesboro shall advertise for bids for construction of Project # S-8 from the Implementation Plan.

29. **By November 1, 2015**, Waynesboro shall complete construction of Project # S-8 from the Implementation Plan.

Project #S-9

30. **By September 1, 2014**, Waynesboro shall submit to DEQ for review and approval the proper CTC forms and any required documents for the Project # S-9 from the Implementation Plan. Waynesboro shall respond to comments on the PER within 30 days of receipt of written comments.

31. **By April 1, 2015**, Waynesboro shall advertise for bids for construction of Project # S-9 from the Implementation Plan.

32. **By February 1, 2016**, Waynesboro shall complete construction of Project # S-9 from the Implementation Plan.

33. Waynesboro shall submit quarterly progress reports to DEQ, with the first report being due **October 10, 2010**. Subsequent Progress Reports will be due by **January 10, April 10, July 10, and October 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.

34. No later than **14 days** following a date identified in the above schedule of compliance Waynesboro 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.

<u>DEQ Contact</u>

Unless otherwise specified in this Order, **Waynesboro** shall submit all requirements of Appendix A of this Order to:

Steve Hetrick
Enforcement Specialist Sr.
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7833 Phone
(540) 574-7878 Fax
steven.hetrick@deq.virginia.gov