Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
TOWN OF BIG STONE GAP
FOR
BIG STONE GAP REGIONAL WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0020940

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 the Town of Big Stone Gap, regarding the Big Stone Gap Regional Wastewater Treatment Plant, 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 meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

2. "Big Stone Gap" or "Town" means the Town of Big Stone Gap, a political subdivision of the Commonwealth of Virginia. Big Stone Gap is a "person" within the meaning of Va. Code § 62.1-44.3.

3. "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.

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. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10

7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:

   (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

   (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

8. "DMR" means Discharge Monitoring Report.

9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

10. "Facility", "Plant" or "WWTP" means the Big Stone Gap Regional Wastewater Treatment Plant located at 1572 Second Avenue W, Big Stone Gap, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Big Stone Gap.

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

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

13. "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.

14. "Permit" means VPDES Permit No. VA0020940, which was reissued under the State Water Control Law and the Regulation to the Town of Big Stone Gap on October 1, 2018 and which expires on September 30, 2023.

15. "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.

16. "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.

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

18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

19. "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.

20. "SWRO" means the Southwest of DEQ, located in Abingdon, Virginia.

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

22. "VAC" means the Virginia Administrative Code.

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

SECTION C: Findings of Fact and Conclusions of Law

1. Big Stone Gap owns and operates the Plant. The Permit allows the Town to discharge treated sewage and other municipal wastes from the Plant, to the Powell River, in strict compliance with the terms and conditions of the Permit.

2. The Powell River is located in the Tennessee and Big Sandy River Basin, Clinch-Powell River Subbasin, Section 4, Class IV. The segment of the Powell River that the WWTP

discharges to is not assessed; however, this segment is included in the *E. coli and Benthic Total Maximum Daily Load Development for Powell River and Tributaries (N.F. Powell River, S.F. Powell River, Butcher Fork, and Wallen Creek)*, which was approved by the EPA on March 10, 2011. Sources of bacteria listed in the TMDL report include humans, livestock, wildlife, pets, as well as permitted point sources. Sediment sources listed include farming and mining activities, as well as permitted point sources and streambank erosion.

3. In submitting its DMRs, as required by the Permit, Big Stone Gap has indicated that it exceeded discharge limitations contained in Part I.A of the Permit, as described in the table below:

Parameter	**Observations - DMR Monitoring Period and Relevant Reported Monitoring Results**		**Permit Limit**
	May 2021	June 2021	
313 Ammonia weekly average concentration (mg/L) Dec. - May	14.5		**12**
312 Ammonia weekly average concentration (mg/L) June – Nov.		9.7	**6.1**

The Permit, at Part I, Section A, sets forth the final effluent parameter permit limits.

Va. Code § 62.1-44.5 states, in part: "Except in compliance with a certificate or permit issued by the Board…, it shall be unlawful for any person to… [d]ischarge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances…"

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 shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.

4. On May 5, 2021, DEQ conducted a reconnaissance inspection of the Facility in response to an odor complaint (Incident Report No. 299403), received on May 4, 2021. During the inspection, DEQ staff observed an unusual and extraordinary discharge from the Facility, which was not reported to DEQ within 24 hours. Additional observations noted during the inspection included the following:

a) No odor was detected near the Facility entrance, flow equalization (FEQ) basin, or oxidation ditch, but a slight odor was detected in the vicinity of the UV system and cascade aeration unit.
b) One of the drum aerators was out of service due to a gearbox issue.
c) Two of the three influent pumps, located in the FEQ basin, were out of service. The FEQ basin had been taken out of service to allow contractor access for pump repairs. As a result of the FEQ basin being taken out of service, Facility operators were unable to regulate influent flows. On April 30, 2021, the aeration system was shut down to prevent loss of solids in Facility effluent due to unregulated influent flows and recent rain events. At the time of the DEQ inspection, the aeration system had not yet been turned back on. Also on May 5, 2021, DEQ received notification from the Town that the aeration system had been turned back on. On June 9, 2021, a Facility representative notified DEQ that the two influent pumps had been placed back into service. DEQ records do not include notification from the Town regarding shut down of the aeration system.
d) The contents of the oxidation ditches appeared grayish in color, with a cloudy appearance. Effluent from all four secondary clarification units appeared cloudy. The contents within, and discharging from, the UV system were gray in color with a cloudy appearance. Effluent discharge from Outfall 001 was obscured by elevated water levels within the Powell River and could not be observed at the time of the DEQ inspection. Via telephone on May 5, 2021, a Facility representative informed DEQ staff that the cloudy discharge from the plant may have begun to occur approximately 24 hours following shut down of the aeration system, which would have been on May 1, 2021. DEQ did not receive a report of the unusual and extraordinary discharge from the Facility.
e) A second odor complaint was received by DEQ on May 6, 2021 (Incident Report No. 299434). Also on May 6, 2021, DEQ staff visited the Facility and collected samples of the Facility discharge for analysis. The appearance of the discharge from the Facility was still gray and cloudy. The results of the sample analyses were as follow: E. coli - >2,420 MPN/100 mL; total suspended solids – 14 mg/L; and BOD5 – 15.9 mg/L.

The Permit, at Part II, Section H states: "If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the Department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the Department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from: 1. Unusual spillage of materials resulting directly or indirectly from processing operations; 2. Breakdown of processing or accessory equipment; 3. Failure or taking out of service some or all of the treatment works; and 4. Flooding or other acts of nature."

The Permit, at Part II, Section Q state, in part: "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit."

Va. Code § 62.1-44.5 states, in part: "Except in compliance with a certificate or permit issued by the Board..., it shall be unlawful for any person to... [d]ischarge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances..."

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 shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.

5. On June 22, 2021, SWRO issued NOV No. W2021-06-S-0002 to Big Stone Gap, citing the May 2021 violation of permitted effluent limits and failure to report the unusual and extraordinary discharge observed by DEQ staff on May 5 and 6, 2021. While not cited in the NOV, the June 2021 violation of permitted effluent limits, as described in paragraph C(3), is also covered by this Order.

6. On July 7, 2021, the Facility operator contacted SWRO enforcement staff via telephone in response to the June 22, 2021 NOV. During the call, the Facility operator requested a meeting or conference call with DEQ staff to discuss the NOV.

7. On July 15, 2021, a conference call was held between SWRO and Big Stone Gap to discuss the June 22, 2021 NOV. The Town detailed plans for WWTP repairs and upgrades and discussed progress made on Facility improvements since 2016.

8. On July 30, 2021, DEQ received a written response to the NOV from Big Stone Gap, dated July 23, 2021. The response outlined actions taken by the Town to address noncompliance and indicated that it had requested an updated repair quote for the inoperable aerator. The response also stated that the Town was in the process of reevaluating the scope of an anticipated project that is to utilize funding from the DEQ Clean Water Financing and Assistance Program (CWFAP). The Town indicated it would request a meeting with CWFAP staff once it had reevaluated the project scope.

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

10. The Department has issued no permits or certificates to Big Stone Gap other than VPDES Permit No. VA0020940.

11. The Powell River is a surface water located partially within the Commonwealth and is a "state water" under State Water Control Law.

12. Based on the monthly DMRs submitted to SWRO by Facility staff, the May 5, 2021 DEQ reconnaissance inspection, the May 6, 2021 DEQ site visit, the July 7, 2021 and July 15, 2021 telephone calls between DEQ and the Town, and the July 23, 2021 correspondence to DEQ from the Town, the Board concludes that Big Stone Gap has violated the Permit, Va. Code § 62.1-44.5 and the Regulation 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(8), above.

13. In order for Big Stone Gap to return to compliance, DEQ staff and representatives of the Town 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 Town of Big Stone Gap, and the Town of Big Stone Gap agrees to:

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

2. Pay a civil charge of $7,742.00 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

The Town of Big Stone Gap 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, the Town of Big Stone Gap shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Big Stone Gap for good cause shown by the Town, 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 and in NOV No. W2021-06-S-0002, dated June 22, 2021. 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, Big Stone Gap admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Big Stone Gap 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. Big Stone Gap 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 Big Stone Gap 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. Big Stone Gap 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Big Stone Gap shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Big Stone Gap 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 parties intend 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 and any 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 Big Stone Gap. Nevertheless, Big Stone Gap 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 Director or his designee terminates the Order after Big Stone Gap has completed all of the requirements of the Order;

    b. Big Stone Gap 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

    c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Big Stone Gap.

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

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, Big Stone Gap voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20___.

_____
Jeffrey L. Hurst, Regional Director
Department of Environmental Quality

The Town of Big Stone Gap voluntarily agrees to the issuance of this Order.

Date: 10-18-21 By: Stephen L. Lawson, Town Manager
(Person) (Title)
Town of Big Stone Gap

Commonwealth of Virginia

City/County of Wise

The foregoing document was signed and acknowledged before me this 18th day of October, 2021, by Stephen L. Lawson who is Town Manager of the Town of Big Stone Gap, on behalf of the Town.

Amanda Lynn Hawkins
Notary Public

7805051
Registration No.

My commission expires: 05/31/2022

Notary seal:

AMANDA LYNN HAWKINS
NOTARY PUBLIC
REG. #7805051
MY COMMISSION EXPIRES
05/31/2022
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law, the Regulation, and the Permit, the Town of Big Stone Gap agrees to implement the following actions by the dates noted below:

1. Revise the O&M manual for the Facility to incorporate relevant information regarding notification requirements and procedures set forth by the Permit, and submit verification of the revisions to DEQ.....within 60 days of the effective date of this Order.

2. Make necessary repairs to the inoperable drum aerator, place the unit back into service, and notify DEQ upon completion.....within 120 days of the effective date of this Order.

Unless otherwise specified in this Order, the Town of Big Stone Gap shall submit all requirements of Appendix A of this Order to:

Ruby Scott
Compliance Auditor
VA DEQ – Southwest Regional Office
355-A Deadmore Street
Abingdon, Virginia 24210
Phone: (276) 676-4882
ruby.scott@deq.virginia.gov