

**WATER CONTROL BOARD ENFORCEMENT ACTION  
SPECIAL ORDER BY CONSENT  
ISSUED TO  
TOWN OF BIG STONE GAP  
BIG SONE GAP WASTEWATER TREATMENT PLANT  
VA0020940**

**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 the Town of Big Stone Gap, for the purpose of resolving certain violations of environmental law and regulations.

**SECTION B: Definitions**

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

1. “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 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 Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “SWRO” means the Southwest Regional Office of the Department.
6. “Order” means this document, also known as a consent special order.
7. “Town” means the Town of Big Stone Gap.

8. "Facility" means the sewage treatment plant located on Second Avenue West in the Town of Big Stone Gap in Wise County.

### **SECTION C: Findings of Facts and Conclusions of Law**

1. The Town owns and operates the Facility and associated collection lines pursuant to VPDES permit VA0020940 which was issued on September 23, 1998 and which expires on September 23, 2003. The Facility discharges to the Powell River in the Tenn-Big Sandy River Basin.
2. The SWRO issued a Warning Letter to the Town on April 23, 2001 and a Notice of Violation on June 26, 2001 for excessive overflows (18) during the period from January 2000 through March 2001.
3. The Town sent a letter to DEQ on May 31, 2001 which stated that the Town had taken steps to address the overflow problem including repairs to the Artesian Well Hollow Lift Station and that additional funds were allocated by the Town Council to correct I/I problems in the collection system.
4. During the period from April 2001 through February 2003, the Town has reported an additional 21 overflows from their wastewater system. During this same twenty one (21) month period the Town has exceeded 95% of the design flow rate for eight (8) months. The Town was issued a Notice of Violation letter on March 27, 2003 noting the continuing overflow problem. The Town's VPDES permit does not authorize an overflow.
5. The Town received a Notice of Violation letter in November 2002 for apparent violations noted in an analytical laboratory inspection by DEQ staff. The Town purchased the required equipment to bring the laboratory into compliance.
6. The Town was issued a Warning Letter on March 31, 2003 for apparent violations of effluent limits for the parameters of TSS and BOD<sub>5</sub> in the month of February 2003. The Town has reported these violations to be the result of I/I problems from heavy rainfall. Subsequent DMR's have not shown effluent violations for these parameters.
7. The Town and DEQ met on April 24, 2003 to resolve the Facility's compliance issues.
8. Code § 62.1-44.5 and Board regulation 9 VAC 25-31-50A state that it is unlawful to discharge sewage into state waters unless in compliance with an approved VPDES permit.

**SECTION D: Agreement and Order**

Accordingly the Board, by virtue of the authority granted it pursuant to Va. Code § 62.4-44.15 (8a) and (8d), orders the Town, and the Town agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders the Town, and the Town voluntarily agrees to pay a civil charge of **\$2,700** 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 or money order payable to the “Treasurer of Virginia”, and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check or money order, the Town shall indicate that this payment is submitted pursuant to this Order and shall include the Town’s Federal Identification Number.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the Town, for good cause shown by the Town or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or 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 as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this 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, the Town admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Town declares it has received fair and due process under the Administrative Process Act, 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 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.

5. Failure by the Town 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.
6. 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.
7. The Town 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. The Town must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Town shall notify the Director and the Director of the SWRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of 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 notify by phone the Director and the Director of the SWRO within 24 hours of learning of any condition listed above, which the Town intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and the Town. Notwithstanding the foregoing, the Town agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its

sole discretion upon 30 days written notice to the Town. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. The Town consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
12. By its signature below, the Town voluntarily agrees to the issuance of this Order.

Date: \_\_\_\_\_

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

Town of Big Stone Gap

By: \_\_\_\_\_  
(Name)

Date: \_\_\_\_\_

State of Virginia  
City/County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ by  
( date )

\_\_\_\_\_, \_\_\_\_\_ of the Town of Big Stone Gap on behalf of  
(name) (title)

the Town.

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Date

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Notary Public

My commission expires:

APPENDIX A

In order to comply with the provisions of the State Water Control Law and Regulations, the Town agrees to implement the following actions:

1. Comply with the following schedule for I/I repair and replacement: (Areas 2 through 10 are described in a document prepared by Lane Engineering, Inc. for the Town. The document was submitted to DEQ by George Polly, Town Manager on April 11, 2003.)
  - a. Area 2.
    - Begin repairs. July 2003
    - Finish repair work. February 2004
  - a. Area 3.
    - Begin repairs. September 2003
    - Finish repair work. July 2004
  - b. Area 4 and 5.
    - Begin repairs. July 2004
    - Finish repair work. December 2004
  - c. Area 6 and 7.
    - Begin repairs. December 2004
    - Finish repair work. May 2005
  - d. Area 8, 9 and 10.
    - Begin repairs. July 2005
    - Finish repair work. November 2005
  - e. Complete monitoring tests and submit report July 2006
2. Eliminate overflows in the referenced areas in order to comply with its VPDES permit by July 15, 2006.
3. Conduct flow monitoring and smoke testing for each area prior to construction to determine the extent of I/I repairs needed. In the same manner, conduct flow monitoring after repairs are finish to determine the benefit in flow reduction for each area. The flow monitoring shall attempt to cover both wet and dry conditions.
4. Provide semiannual reports to DEQ on the current progress of I/I repair work. The reports should include specific information regarding the Town's compliance with the schedule for I/I repairs listed in item 1 above. Also the Town shall provide a summary of the flow monitoring data for both before and after repair work in each area. The first semiannual report is due on January 15, 2004 and the final report shall be submitted by July 15, 2006.
5. All reports to be submitted to the SWRO shall be mailed to the attention of Ruby Scott,

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Compliance Auditor, P.O. Box 1688, Abingdon, VA 24212.