



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4020
1-800-592-5482

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - CONSENT SPECIAL ORDER ISSUED TO

THE CITY OF LYNCHBURG

FOR

**LYNCHBURG REGIONAL WASTEWATER TREATMENT PLANT
AND COMBINED SEWER COLLECTION SYSTEM**

VPDES PERMIT No. VA0024970

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a), between the State Water Control Board and the City of Lynchburg. This Order supersedes and terminates the Consent Special Order issued by the Board to the City on August 19, 1994, regarding implementation of a plan to control combined sewer overflow discharges to the James River and its tributaries.

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 U.S.C. § 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. "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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Lynchburg and Roanoke, Virginia.

4. "City" means the City of Lynchburg, Virginia a political subdivision of the Commonwealth of Virginia. The City is a "person" within the meaning of Va. Code § 62.1-44.3.
5. "CSO" means the discharge from a combined sewer system at a point prior to the wastewater treatment plant.
6. "CSS" means combined sewer system, a wastewater collection system owned by a State or municipality which conveys sanitary wastewaters (i.e., domestic, commercial and industrial wastewaters) and storm water through a single pipe system to a combined sewer overflow outfall or to the WWTP.
7. "CSO Policy" means EPA's April 19, 1994 CSO Control Policy, published at 59 Fed. Reg. 18688, and incorporated into the Clean Water Act pursuant to the Wet Weather Water Quality Act, Section 402(q) of the Clean Water Act, 33 U.S.C. § 1342(q).
8. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
9. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
10. "Discharge" means discharge of a pollutant, 9 VAC 25-31-10.
11. "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.
12. "Facility" means the Lynchburg Regional Wastewater Treatment Plant and the City's collection system, owned or operated by the City, which treats and discharges treated sewage and other municipal wastes, and all related appurtenances and equipment for providing these services.
13. "Functioning Element" means a component of a project that if constructed and placed in operation will provide some part of the overall beneficial function of the project.
14. "HCF" means hundred cubic feet.
15. "LTCP" means Long Term Control Plan, which is the plan for controlling CSOs from the City's CSS that has been prepared by the City pursuant to the CSO Policy and submitted to DEQ as amended in a final report on August 19, 2014, and approved by the Department on September 5, 2014, and all approved amendments thereto.

16. Median Household Income ("MHI") shall be determined based on published annual data from the U.S. Census Bureau adjusted for inflation from the effective date of the published data to July 1 of the most current year, and based on published consumer price index ("CPI") from the Bureau of Labor Statistics. The inflation adjustment will equal 75% of the change in CPI.
17. "Order" means this document, also known as a Consent Special Order or Order by Consent, a type of Special Order under the State Water Control Law.
18. "Permit" means VPDES Permit No. VA0024970, reissued to the City on April 5, 2011 and which will expire on April 4, 2016.
19. "Placed in Operation" means to achieve consistent operations following completion of a startup and test period in such a way as to accomplish the intended function, even though all construction activities (such as completion of a punch-list, resolution of contract disputes and other close-out items) may not be completed.
20. "Sewer Net Revenue" equals sewer operating and non-operating revenues less operating and non-operating expenses excluding depreciation and interest expenses as presented in the City's audited financial statements that are included in its Comprehensive Annual Financial Report ("CAFR").
21. "TMDL" means Total Maximum Daily Load.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "WWTP" means wastewater treatment plant.

SECTION C: Findings of Fact and Conclusions of Law

1. The City owns and operates the Facility and a CSS. The Permit allows the City to discharge treated sewage and other municipal wastes from the Facility, to the James River, in strict compliance with the terms and conditions of the Permit. The Permit does not authorize discharges from the CSS during dry weather. The CSS, during periods of rainfall and/or snowmelt, discharges combined sewer flow to the James River and its tributaries in the City, i.e., Blackwater Creek, and Fishing Creek, from CSO outfalls. Accordingly, the City's CSS is subject to the CSO Policy, which calls for localities with CSOs to prepare a LTCP.
2. The James River and its above mentioned tributaries are located in the James River Basin and the Middle James River sub-basin. Segments of the James River and the subject tributaries into which the CSS discharges have been listed as impaired in DEQ's 305(b) report for *Escherichia coli*. The CSOs, discharges from separate storm sewer systems, livestock operations, pet wastes, wildlife and unspecified domestic wastes are listed among the potential sources of the impairment.

3. The City began implementing CSO controls in the late-1970s. The Board issued an Order to the City on August 19, 1994 ("1994 Order"), to address multiple CSOs from the CSS.
4. The 1994 Order provided for the complete separation of the City's CSS, with the CSS in the downtown area of the City scheduled for separation after the CSS in the other areas of the City. Since the Order was issued, with the exception of the CSS in the downtown area, the City has separated a significant portion of its CSS, which has resulted in elimination of 112 CSO outfalls and significant reductions in the volume, frequency, and number of CSO events.
5. In 2013, the City completed a study of an update to its CSO control plan. The study and its report ("LTCP Study Report") found that by capturing, conveying and treating CSS flows, the City could achieve a high level of control in less time and at less cost than separating the remaining area of the CSS. The City's sewer separation program has been cost effective in eliminating CSOs in less densely developed areas. Many of the remaining combined sewers are in Lynchburg's central business district and other densely developed areas, where construction of separation projects would be particularly disruptive and expensive.
6. The City submitted the LTCP Study Report, containing proposed changes to the LTCP, to the Department for approval on May 16, 2013, and amended it on August 19, 2014. On September 5, 2014, the Department approved the 2013 LTCP Update, as amended on August 19, 2014.
7. The amended LTCP indicates that, rather than complete separation of the CSS, the City plans to utilize CSO Control Plan Option "D2" to comply with the CSO Control Policy. The City asserts that Option D2 meets the "Presumption Approach" of the CSO Policy through elimination or capture for treatment of no less than 85%, by volume, of the combined sewage collected in the CSS during precipitation events, on a system-wide annual average basis. In addition the City has indicated that the "Demonstration Approach" of the CSO Policy will be met through implementation of Option D2, i.e., CSO discharges that remain after implementation will not preclude attainment of water quality standards, that Option D2 provides the maximum pollution reduction benefits reasonably attainable and that it is designed to allow cost effective expansion or retrofitting if additional controls are subsequently determined to be necessary to meet water quality standards or designated uses.

SECTION D: Agreement and Order

Accordingly, the Department, by virtue of the authority granted it in Va. Code § 62.1- 44.15, orders the City, and the City agrees, that:

1. The City shall fully implement Option D2 of the LTCP in accordance with the requirements of Appendices A and B of this Order.
2. If at any time prior to the termination of this order, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, is modified, the State Water Control Board adopts new water quality standards, or EPA duly promulgates new regulations to establish requirements for the control of CSOs in conflict with one or more provisions of this Order, the City and the Department agree to modify or terminate this Order to comply with such federal or state requirements.
3. Improvements to technology, practicalities of construction, or improvements in the performance of the LTCP may arise during the implementation of the LTCP that necessitate a change to one or more projects listed in Appendix B. If at any time the City or DEQ becomes aware of such technology, practicalities of construction or possible improvement in the performance of the LTCP, the City may request DEQ to perform a joint evaluation of the changed circumstances to determine if, with DEQ approval, the LTCP project priorities should be modified.
4. The Department is currently revising the Bacteria TMDL for the James River and its tributaries. If the Bacteria TMDL requires additional CSO reductions, the parties agree that they will work together to address amendments to the LTCP. Any LTCP amendment and any additional CSO controls that are a part of any LTCP amendment shall become part of this Order and enforceable under its terms upon approval by the Department.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the City, for good cause shown by the City, 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 only addresses the matters specified 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 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, the City admits the jurisdictional allegations, and agrees not to contest, but does not admit, the Findings of Fact and Conclusions of Law in this Order.
4. The City consents to venue in the Circuit Court for the City of Lynchburg for any civil action taken to enforce the terms of this Order.

5. The City 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 the City 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. The City 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. The City shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City 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 the City. Nevertheless, the City 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 the City has completed all of the requirements of the Order;
 - b. the City 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 the City.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the City 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 the City 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 the City certifies that he or she is a responsible officer authorized to enter into the terms and conditions of this Order and to execute and legally bind the City to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible officer or official of the City.
14. By its signature below, the City voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 31st day of July, 2015.



Robert J. Weld, Regional Director
Department of Environmental Quality

The City voluntarily agrees to the issuance of this Order.

By: L. Kimball Payne
L. Kimball Payne, III, City Manager
City of Lynchburg, Virginia

Date: 6/5/2015

Commonwealth of Virginia
City of Lynchburg, VA

The foregoing document was signed and acknowledged before me this 5 day of
June, 2015, by L. Kimball Payne, III, City Manager, on behalf of the City of Lynchburg.

Katherine J. McCleese
Notary Public

My commission expires: May 31, 2018

Notary seal:



Approved as to form:

By: Walter C. Erwin
Walter C. Erwin, City Attorney
City of Lynchburg, Virginia

Date: 6/5/2015

APPENDIX A SCHEDULE OF COMPLIANCE

The City shall fully implement Option D2 of the LTCP according to a schedule that accurately represents the limits of its financial capabilities based on the project prioritization schedule contained in Appendix B of this Order and the following requirements:

- I. Beginning July 1, 2015, and each fiscal year (July 1 to June 30) thereafter, the City shall allocate and spend on Option D2 implementation such sums as are available each fiscal year generated from its annual Sewer Net Revenue. Sums available shall be those sums remaining after expenditures required to operate, maintain, and develop¹ the City's CSS and the Facility and those expenditures required to comply with any federal, state, or local water-quality requirements associated with those systems. Available funds for implementation shall also include any loan and grant funds obtained for the purpose of implementing Option D2.
- II. The City shall demonstrate implementation of the LTCP to the limits of its financial capabilities if it achieves the following four criteria:
 - a. Notwithstanding the provisions of Section II (b) in this Appendix, sewer volume rates for all City customers will be equivalent. At least every other year, the City shall adjust the annual sewer rates and fees so that the annual sewer billings for a residential customer with 7 HCF of the average monthly usage is equal to, or exceeds, 1.25% of median household income;
 - b. Rates of contract customers added after execution of this Order will be based on a cost of service study that demonstrates annual revenue from that customer equals or exceeds the cost of providing service based on a rolling five-year average. The City will base these contract rates on a cost of service analysis that is updated at least every five years. The City shall provide DEQ a copy of this analysis.
 - c. The City borrows funds for Option D2 projects, as well as other water-quality projects associated with the City's CSS, LTCP, and Facility, in order to maintain a sewer debt coverage ratio² within the range of 1.1 to 1.5 computed on a rolling three-year average.
 - d. The City annually adjusts sewer system reserve funds to equal no more than 40% of the subsequent fiscal years' budgeted operating expenses and debt service.

The City's failure to achieve one or more of these criteria shall constitute a violation of this Order. The Board and the City understand and agree that should new or additional information become available subsequent to the issuance of this Order that identifies criteria that more

¹ Any such expenditure on expansion of the City's sanitary conveyance system must be designed to increase the City's sewer utility rate base and sewer revenues.

² Sewer debt coverage ratio is calculated as billed and collected service charge fees and other revenue, less sewer operation and maintenance expenses, divided by sewer-related debt service.

equitably allocate the cost or reduce the financial impact of CSO control without reducing the total revenues available for CSO control, that the City may petition the Department to modify the criteria in subparagraphs a. through d. above, provided the City demonstrates that the revised criteria will not materially reduce the revenues for the LTCP that otherwise would have been generated by the existing criteria.

- III. Beginning December 10, 2015, and no later than December 10th of each subsequent year for the duration of this Order, the City shall submit an Annual CSO Progress Report to the Department for review and comment. The reporting period of said report shall cover the previous fiscal year, shall include a certification statement, and shall include, at a minimum:
1. An independent rate consultant's report containing schedules and such documentation as necessary to demonstrate compliance with the criteria contained in section II above. Said report shall contain, at a minimum:
 - a. schedule of sewer rates and charges in effect during the fiscal year and an explanation of any changes in the sewer rates and charges during the fiscal year;
 - b. schedule that calculates the current year annual sewer bill for a residential customer with 7 HCF of average monthly sewer usage and the percentage of such bill to the median household income in the City;
 - c. schedule detailing sewer-related revenues, operation and maintenance expenses, net revenues, debt service and the sewer debt coverage ratio for the previous fiscal year;
 - d. schedule displaying the beginning balance, additions, uses and ending balance of sewer reserve funds and a comparison (expressed as a percentage) of the year end reserve balance to the subsequent fiscal year's operating expenditure budget;
 - e. schedule detailing (i) amounts borrowed and other sources of capital funds and (ii) the amount of capital funds obligated for the LTCP and water-quality projects during the previous fiscal year.
 - f. schedule displaying the rates charged to each City customer including the rates of contract customers added after execution of this Order, and a copy of the cost of service study that demonstrates annual revenue from that customer equals or exceeds the cost of providing service based on a rolling five-year average.
 2. For review and approval by the Department, a schedule that presents funds previously expended and obligated for CSO control.
 3. For review and approval by the Department, a schedule showing the current status of the LTCP projects listed in Appendix B.

4. For review and approval by the Department, a schedule that presents funds projected to be expended and obligated towards LTCP projects, and a schedule of LTCP projects anticipated beginning the subsequent fiscal year.
- IV. The Department hereby reserves the right to request additional documentation or clarification regarding the contents of the Annual CSO Progress Report.
 - V. If requested, the City shall meet with Department enforcement staff on an annual basis to review the overall progress made towards achieving full implementation of the LTCP.
 - VI. Within five (5) years after the execution of this Order, the City shall develop, in coordination with and approval by Department permitting staff, and include post-construction monitoring program requirements into its VPDES permit. The post-construction monitoring program set forth in the City's VPDES permit shall commence not later than one hundred and twenty (120) days after every project element set forth in Appendix B, and any subsequent amendments to the LTCP as required to address the Bacteria TMDL, has been placed in operation.
 - VII. In the event that post-construction monitoring demonstrates the need for additional CSO controls, such controls shall become a part of, upon Department approval, and enforceable under, the terms of this Order.
 - VIII. The financial obligations of the Order shall cease when the projects set forth in Appendix B, and any projects required by subsequent amendments to the LTCP as required to address the Bacteria TMDL, have been funded. Nothing shall prevent the City from petitioning the Director or his designee to terminate the Order or any portion of the Order if circumstances have rendered such portion no longer necessary.

APPENDIX B

CSO LTCP PROJECT PRIORITIZATION^{3, 4, 5}

Priority Ranking	Project Element	Description
1	James River Interceptor (JRI) Replacement Project Division 3B	Replace existing 48" – 54" JRI w/ 72" pipe; improve CSO 56 regulator; eliminate CSO 59.
2	CSO 125 Separation	Separate CSO 125 drainage area; eliminate CSO 125.
3	CSO 61 Control	Install new conveyance pipe to connect CSO 61 combined sewer to JRI; eliminate CSO 61
4	Wet Weather Pumping Facility	Install wet weather pumping, screening, and grit removal; upgrade the existing headworks; modify the existing sewers as required.
5	Storage Facility	Install storage facility receiving flows from the Wet Weather Pumping Facility.
6	Wet Weather Disinfection at WWTP	Install a new disinfection facility receiving flows from the Wet Weather Pumping Facility or storage facility; modify CSO 109 overflow structure and plant effluent piping as required.
7	CSO 70 Control	Install a new solids and floatable control regulator to replace the existing overflow structure; replace/rehabilitate existing interceptor.
8	Controls for CSOs 14, 33, & 34	Install overflow structure, flow equalization facility, and interceptor improvements for CSOs 14, 33, and 34 to reduce overflow occurrences.
9	CSO 52 Control	Install a new solids and floatable control regulator to replace the existing overflow structure.
10	Controls for CSOs 11, 15, 17, 62, 66, & 116	Modify the overflow structures by installing a bar screen to control floatables.

³ Prioritizations are found on Table ES-3 of the LTCP. During the preliminary engineering and design phase of the LTCP projects, the City will evaluate additional implementation options. The selected final option, as mutually agreed upon by the City and the Department, may include facilities and operation plans that are different from those in the table, but must still meet the overall water quality performance criteria in the LTCP.

⁴ These priorities may be undertaken concurrently or out of priority order as opportunity for construction and funding are available. The City may advance part of a project that will provide a Functioning Element.

⁵ Improvements to technology, practicalities of construction, or improvements in the performance of the LTCP may arise during the implementation of the LTCP that necessitate a change to one or more projects listed. If at any time the City or DEQ becomes aware of such a technology, construction situation, or possible improvement in the performance of the LTCP, the City may request DEQ to perform a joint evaluation of the changed circumstances to determine if, with Department approval, the LTCP project priorities should be modified.