COMMONWEALTH of VIRGINIA

RICHARD N. BURTON
DIRECTOR

DEPARTMENT OF ENVIRONMENTAL QUALITY

(804) 527-5000
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STATE WATER CONTROL BOARD ENFORCEMENT ACTION

A SPECIAL ORDER

ISSUED TO

THE CITY OF LYNCHBURG

This is a Special Order ("Order") issued by the State Water Control Board ("Board"), under the authority of Sections 62.1-44.15(8a) and 10.1-1185 of the Code of Virginia of 1950, as amended, ("Code"), to the City of Lynchburg ("City"), which has voluntarily consented to the issuance of this Order.

The City owns and operates a combined sanitary and stormwater sewer system which, during periods of rainfall, discharges pollutants from some or all of the one hundred and thirty two (132) combined sewer overflow ("CSO") outfalls to the James River and certain tributaries to the James River. The City's CSO discharges are authorized in VPDES permit No. VA0024970 ("Permit").

In December 1989, the City completed and submitted to the Board an update of the 1979 study on its CSO system. The purpose of the update was to review and re-evaluate the conclusions and recommendations in the 1979 study to determine if they were still valid, and to develop a CSO control plan, implementation priorities, and implementation plan taking into consideration the City's financial capability. With this Order, the Board approves the CSO control plan ("CSO Plan") submitted in December 1989 as part of the update.

The City has begun implementation of initial elements of the CSO Plan, and, as of the effective date of this Order, will have implemented portions of the CSO Plan at a cost of approximately $13.2 million. Further, current financial projections based on historical customer use patterns indicate that the criteria in Appendix A to this Order will result in City obligating expenditures of approximately $34 million on CSO Plan implementation between the effective date of this Order and 1998, assuming a bond rate of six percent.

In recognition of the unique financial burden associated with CSO's, the Board now orders and the City agrees to continue with implementation of the CSO Plan in accordance with the schedule and priorities contained in Appendices A and B, respectively, of this Order.

Additionally, as part of its overall CSO control program the City has agreed to conduct a CSO monitoring program. The Board orders and the City agrees to conduct the CSO monitoring program in Appendix C of this Order.

The requirements of this Order notwithstanding, the Board orders and the City agrees to actively pursue federal and state grants and low-interest loans to help underwrite the cost of CSO Plan implementation and to notify the Board immediately upon receipt of such funding. If the City receives federal or state funding for CSO control at any time during the life of this Order, the City shall submit a plan to the Board for its approval to use such funding to accelerate CSO Plan implementation. In no event, however, shall the City be obligated to submit a plan pursuant to this paragraph that requires the City to expend local funds for CSO Plan implementation at a rate in excess of the rate at which the City must expend local funds pursuant to the schedule in Appendix A.

The City and the Board agree to evaluate the criteria in Appendix A every 6 years during the City's update of its Capital Improvement Program. The Department of Environmental Quality ("Department") may, however, initiate an evaluation of the criteria at any time, and any such evaluation shall be in addition to the evaluations scheduled every six years. The purpose of the evaluation shall be to determine whether the criteria in Appendix A continue to reflect the limits of the City's financial capability to implement the CSO Plan based on events occurring or circumstances existing subsequent to the effective date of this Order and each evaluation thereafter. As part of each evaluation, the City agrees to provide the Board with such information on the City's financial condition relating to the sewer utility as may be requested by the Department. Any modification of this Order based upon such evaluation shall be in accordance with the modification procedures set forth in this Order.

The Board and the City agree that if at any time the City determines that it is unable to comply with any requirement of this Order, the City shall promptly provide written notification to the Board. This notification shall include a statement of the reasons for noncompliance, any actions to be taken to secure compliance and an estimate of the time necessary to regain compliance. The City may assert and it shall be a defense to any enforcement action for alleged violation of this Order that the

alleged violation was due to circumstances beyond the control of the City.

Nothing herein shall be construed as altering, modifying or amending any term or condition in VPDES Permit No. VA0024970. The City waives its rights to service of, a hearing on, written findings of fact and conclusions of law in support of, and judicial review of this Order.

The Board may cancel this Order or modify or terminate any provision only with the City's consent or for reasonable cause, after due notice and opportunity for hearing. The City may at any time petition the Board to cancel this Order or modify or terminate any provision for reasonable cause and the Board agrees to promptly grant or deny such petition. Reasonable cause for the Board to cancel this Order or to modify or terminate any provision shall include, but not be limited to, violation of this Order by the City, enactment or promulgation of new federal laws or regulations establishing requirements for the control of CSOs in conflict with one or more provisions of this Order, or the City's failure to substantially achieve by July 1, 1998 the projected $34 million in CSO Plan implementation expenditure obligations due to circumstances within its control. The City shall have the right to judicial review for the purpose of challenging the reasonableness of any decision by the Board to cancel this Order or to modify or terminate any provision or to deny a petition by the City to cancel this Order or modify or terminate any provision.

The City voluntarily agrees to the issuance of this Order. In agreeing to this Order, however, the City shall not be deemed to have admitted that it is violating any federal or state law, rule, regulation, standard or criterion.

This Order shall become effective upon the date of its execution by the Director of the Department or his designee. Notwithstanding the foregoing, the City agrees to be bound by any performance requirements which may occur prior to the effective date of the Order.

And it is SO ORDERED this 19 day of August, 1994.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Robert G. Burnley

for Peter W. Schmidt
Director

The terms and conditions of this Order are hereby voluntarily agreed to by the City of Lynchburg.

Charles F. Church
City Manager

Date: August 20, 1993

State of Virginia

City of Lynchburg

The foregoing Order was executed and acknowledged before me this 20 day of August, 1993, by Mr. Charles F. Church on behalf of the City of Lynchburg .

Notary Public

My Commission Expires: 7-31-97.

APPENDIX A

COMPLIANCE SCHEDULE

The City shall implement the CSO Plan on a schedule that reflects the limits of its financial capability based on the priorities established in Appendix B and the following requirements.

Beginning July 1, 1993, and each fiscal year (July 1 to June 30) thereafter, the City shall allocate and spend on CSO control plan implementation such sums as are available for CSO control from its annual sewer revenues. Sums available for CSO control each fiscal year shall be those sums remaining after expenditures required to operate, maintain, and develop[1] the City's sanitary and stormwater conveyance system and wastewater treatment facilities as well as those expenditures required to comply with any federal, state or local water quality-related requirement associated with the City's sanitary and stormwater conveyance and treatment systems.

The City shall be deemed to be implementing the CSO Plan to the limits of its financial capability if it achieves the following three criteria:

1. At least bi-annually adjusts its sewer rates and charges so that no later than five years after the effective date of this Order:

   (a) The annual sewer bill[2] for residential customers with 9 hcf of average monthly use will equal or exceed 1.25% of median household income;[3] and

   (b) The sewer volume rate for customers identified as industrial users in the City's utility billing

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1. Any such expenditures on expansion of the City's sanitary conveyance system must be designed to increase the City's sewer utility rate base and sewer revenues. In no event, however, shall annual fiscal year expenditures on expansion of the sanitary conveyance system exceed annual fiscal year expenditures on CSO control plan implementation in the same year.

2. All rates, fees and charges used to generate sewer revenues that are included on a customer's monthly utility bill.

3. As reflected in the 1990 and subsequent census. In the years between census, the median household income (MHI) shall be adjusted based on the percent increase in the adjusted gross income (AGI) since the date of the last census as reflected in data published by the Virginia Department of Taxation. In any year in which current AGI data is not available from the Virginia Department of Taxation, the MHI shall be adjusted based on 75% of the percent increase in the consumer price index (CPI) for that year.

records will equal the rate charged to the City's residential customers.[4]

2. Periodically borrow funds for water quality-related projects, including CSO control projects, in order to maintain a sewer operating debt service coverage ratio[5] within the range of 1.1 to 1.5.

3. Annually adjusts sewer system reserve funds to equal no more than 25% of the subsequent years' budgeted operating expenditures.

The City's failure to achieve one or more of these three criteria shall be a violation of this Order.

Beginning December 1, 1994, and no later than December 1 of each year thereafter during the life of this Order, the City shall submit a compliance and progress report to the Department. Said report shall cover the period of the previous fiscal year and shall include at least the following:

1. An independent rate consultant report that includes schedules and other material designed to demonstrate compliance with the above three criteria. At a minimum, the independent rate consultant's report will include:

   (a) A schedule of sewer rates and charges in effect during the year and an explanation of any changes in the sewer rates and charges during the year;

   (b) A schedule that calculates the current year annual sewer bill for a residential customer with 9 hcf of average monthly sewer use and the percentage of such bill to median household income in the City;

   (c) A schedule detailing sewer-related revenues, operation and maintenance expenses, net revenues, debt service and the sewer debt service coverage percentage for the previous year;

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4. The Board and the City understand and agree that the criteria in paragraph 1 are based on limited information, and are subject to modification should new or additional information available subsequent to the issuance of this Order identify criteria that more equitably allocate the cost or reduce the financial impact of CSO control without reducing the total revenues available for CSO control. Therefore, the City may at any time petition the Board to modify the criteria in paragraph 1 and the Board agrees to grant such petition provided the City demonstrates that the revised criteria will not materially reduce the revenues for CSO control that otherwise would have been generated by the existing criteria in paragraph 1.

5. Sewer Net Revenues (billed and collected service charge fees and other revenue less service operation and maintenance expenses) divided by sewer-related debt service.

(d) A 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 year's operating expenditure budget;

(e) A schedule detailing (i) amounts borrowed and other sources of capital funds and (ii) the amounts of capital funds obligated for water quality projects during the previous year.

(f) A schedule displaying the industrial rate structure and progress toward the 1998 goal of parity between industrial and residential rates.

2. For review and approval, sums obligated for CSO control plan implementation and a schedule showing the status of CSO control projects for which funds have been previously obligated;

3. For review and approval, sums projected to be obligated for CSO control plan implementation and a schedule of CSO projects to begin in the next year.

The Department reserves the right to request additional information and/or reformatting of the report.

APPENDIX B

CSO PROJECT IMPLEMENTATION PRIORITIES[6] [7] [8]

A. Rainleader Disconnect Program

B. Interceptor Replacement Program

Priority Ranking	Project
1	Blackwater 1&2 (completed)
2	Fishing Creek - Phase I - Div. 1 (completed)
3	Blackwater 3&4 (Blackwater 3 completed)
4	Blackwater 5
5	Fishing Creek - Phase I - Div. 2
6	Blackwater 8A
7	Fishing Creek - Phase I - Div. 3
8	Fishing Creek - Phase I - Div. 4
9	Fishing Creek - Phase I - Div. 5
10	Blackwater 8B
11	Blackwater 7
12	Blackwater 6
13	Ivy Creek 1, 2, & 3
14	James River
15	Fishing Creek - Phase II
16	Fishing Creek - Phase III

6. Program and project descriptions are taken from the Combined Sewer Overflow Study Update, dated October 1989.

7. Programs A, B, and C shall proceed concurrently.

8. In the event the City changes the priority ranking of any project it shall promptly provide written notification to the Board's staff with an explanation of the reason or reasons for the change. This Appendix B may be periodically modified, after the Department of Environmental Quality's review and approval, to reflect such changes in priority ranking.

APPENDIX B

(continued)

C. Separation/Rehabilitation Program

Priority Rank	Project Number	Priority Rank	Project Number
1	1-C(A)(completed)	30.	1-D-3.2
2	1-A-4(A)	31.	1-A-5.2
3	7.2	32	1A5.1
4	6.4	33	16.3
5	11.1	34	1-D.3
6	14.3	35	17.1
7	14.2	36	16.1
8	18.3	37	16.59
9	7.3	38	S-1-A-1
10	7.1	39	17.4
11	6.3	40	17.3
12	6.2	41	1-D-5.1
13	6.1	42	5.4
14	11.3	43	5.3
15	11.2	44	5.2
16	17.2	45	5.1
17	3.1	46	1-A-4(B)
18	1-D-3.3	47	1-C(B)
19	12.5	48	S-1-A-3
20	12.4	49	16.7
21	12.3	50	2.1
22	12.2	51	1-B-2.1
23	12.1	52	7.4-6.1
24	18.2	53	14.1
25	8.1	54	1-B-1.1
26	1-D-3.1	55	1-D-6.1
27	1-D.4	56	1-D-2
28	1-B-4.1	57	1-D-1
29	2.2	58	1-B-5.1
		59	S-1-A-2

APPENDIX C

CSO MONITORING PROGRAM

The City shall undertake the following monitoring program for the purpose of assessing the extent of ambient water quality improvements resulting from CSO Plan Implementation.

A. Biosurvey Monitoring

1. Within one year of the effective date of this Order and during each calendar year thereafter for the life of this Order, the City shall conduct a biosurvey of benthic macro invertebrates on Fishing and Blackwater Creeks at the following locations using Rapid Bioassessment Protocol II as described in EPA 444/4-89001 (and subsequent editions):

(a) Fishing Creek - at the first suitable location upstream of Liggates road and at the first suitable location downstream of Campbell Avenue. Suitable locations to be determined based on the status of the CSO control program.

(b) Blackwater Creek - at the first suitable location downstream of the confluence of Tomahawk Creek and Burton creek and at the first suitable location downstream of Langhorn Road. Suitable locations to be determined based on the status of the CSO control program.

2. Exact monitoring locations shall be approved by the Department prior to each biosurvey.

3. The City shall submit a technical report on each biosurvey to the Department within 60 days after completion.

B. Fecal Coliform Monitoring

1. Within one year of the effective date of this Order and during each calendar year thereafter for the life of this Order, the City shall sample and analyze for fecal coliform. Said sampling shall be conducted at the following locations within 24 hours following a significant rainfall event.

(a) James River near Reusens Dam (for Background)
(b) James River at John Lynch Bridge (Rt. 29 bus.)
(c) Blackwater creek under Williams viaduct

(d) Fishing Creek at Florida Ave. Bridge
(e) Blackwater Creek near Sandusky Park
(f) College Lake near Lakeside Dr.
(g) Blackwater Creek at Langhorne Road Bridge
(h) Ivy Creek at Langhorne Road Bridge
(i) Ivy Creek at Link Road Bridge

2. The results of each sampling shall be included with the next Discharge Monitoring Report submitted following the availability of results.