

A G E N D A

JAMES CITY COUNTY BOARD OF DIRECTORS

READING FILE

June 26, 2007

FOR YOUR INFORMATION

1. State Water Control Board Enforcement Action Special Order By Consent Issued to the Hampton Roads Sanitation District
2. April 11, 2007, Draft - Committee Consensus: Memorandum of Agreement

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

the HAMPTON ROADS SANITATION DISTRICT, the cities of CHESAPEAKE, HAMPTON, NEWPORT NEWS, POQUOSON, PORTSMOUTH, SUFFOLK, VIRGINIA BEACH and WILLIAMSBURG; the counties of GLOUCESTER, ISLE OF WIGHT, and YORK; the JAMES CITY SERVICE AUTHORITY; and the town of SMITHFIELD

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 Hampton Roads Sanitation District, the cities of Chesapeake, Hampton, Newport News, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; the counties of Gloucester, Isle of Wight, and York; the James City Service Authority; and the town of Smithfield for the purpose of resolving certain alleged violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings 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 §§ 62.1-44.7 and 10.1-1184.
2. "Code" means the Code of Virginia (1950), as amended

3. "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. "Discharge" means the addition of any pollutant or combination of pollutants, including untreated sewage, to surface waters from any point source, as defined in 9 VAC 25-31-10, et seq.
6. "Fiscal Year" means the fiscal year used by HRSD, the Hampton Roads Localities and the Commonwealth of Virginia, which runs from July 1 of one calendar year through June 30 of the following calendar year.
7. "Hampton Roads Localities" means the cities of Chesapeake, Hampton, Newport News, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; the counties of Gloucester, Isle of Wight, and York; the James City Service Authority; and the town of Smithfield.
8. "Hampton Roads Locality" or "Locality" means one of the Hampton Roads Localities.
9. "HRPDC" means the Hampton Roads Planning District Commission, a political subdivision of the state. The purpose of planning district commissions, as set out in the Code of Virginia, Section 15.2-4297 is "...to encourage and facilitate local government cooperation and state-local cooperation in addressing on a regional basis problems of greater than local significance".
10. "HRSD" means the Hampton Roads Sanitation District, a political subdivision created by a 1940 Act of the General Assembly of Virginia and charged with the responsibility to provide sewage treatment services for the communities in the Hampton Roads metropolitan area.
11. "Order" means this document, also known as a Consent Special Order
12. "Regional Office" means the Tidewater Regional Office of the Department of Environmental Quality.
13. "Regulations" means 9 VAC 25-31-10, et seq. - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
14. "STP" means sewage treatment plant.

SECTION C: Findings of Fact and Conclusions of Law

1. HRSD owns and operates an interceptor sewer system, which includes both gravity and force mains, and nine (9) STPs, which serve the Hampton Roads area (HRSD System). Discharges of treated wastewater from the STPs into State waters are regulated by VPDES permits issued by the Board.
2. The Hampton Roads Localities individually own and operate sanitary sewer collection systems which collect sewage within their individual jurisdictional boundaries and deliver it to the HRSD System for treatment.
3. Although individually owned and operated, these sewage collection and treatment systems are physically interconnected at numerous locations to form a regional system with approximately 450,000 connections, 5,765 miles of gravity sewers, 1,496 pumping stations, and 692 miles of force mains. The regional system covers a 320 square mile service area, serves a population of over 1.6 million, and conveys and treats an average of over 165 million gallons of sewage each day.
4. Due to pipe breaks, electrical outages, infiltration and inflow, insufficient capacity in the collection, interceptor and treatment systems, and other factors, untreated sewage has been and is being discharged from various locations in the HRSD System and the individual sanitary sewer collection systems of the Hampton Roads Localities. The low-lying nature of the Hampton Roads region and corresponding high groundwater table, together with periodic widespread flooding in the region's urbanized areas are significant factors contributing to the discharge of untreated sewage.
5. Section 62.1-44.5.A of the Code and the Regulations at 9 VAC 25-31-50.A prohibit the discharge of sewage except as authorized by a permit issued by the Board. The Board has not issued HRSD or the Hampton Roads Localities permits authorizing said discharges of untreated sewage. Accordingly, the Board finds that HRSD and the Hampton Roads Localities have violated Va. Code § 62.1-44.5.A and 9 VAC 25-31-50.A.
6. For many years, HRSD and the Hampton Roads Localities have worked diligently and spent tens of millions of dollars testing and making repairs and improvements to their respective systems to minimize, and, where possible, prevent such unpermitted discharges of sewage. These efforts notwithstanding, however, unpermitted discharges of sewage continue to occur from the HRSD System and from the individual sanitary sewer collection systems of the Hampton Roads Localities. Accordingly, HRSD and the Hampton Roads Localities have agreed to expand their efforts to include measures that are designed to address both the regional and individual

sanitary sewer collection system capacity and performance conditions that continue to cause or contribute to unpermitted discharges of sewage.

7. HRSD, the Hampton Roads Localities, and the Board have agreed to a two-phased approach to this initiative.
8. The first phase is principally a data collection, evaluation and plan development program that consists of both regional and individual elements. The regional element will require the use of uniform standards to identify the infrastructure projects needed to provide the collection system, interceptor system and treatment capacity required to cost-effectively manage peak wet weather flows throughout the Hampton Roads sanitary sewer system. The individual element is designed to identify, characterize, and cost-effectively address conditions that contribute to unpermitted discharges. This element is also intended to provide for system repairs that require prompt attention.
9. The second phase will provide for the implementation of long-term capacity enhancement and sewer rehabilitation plans, including construction of the regional infrastructure projects and individual system improvements identified in this first phase.
10. To facilitate a coordinated regional approach and to establish a consistent and uniform framework for identifying and implementing regional and individual system improvements to be undertaken pursuant to this Order and during the second-phase of work, HRSD and the Hampton Roads Localities have developed Regional Technical Standards addressing the following: (1) data collection and flow monitoring, (2) Sewer System Evaluation Survey (SSES) planning, (3) sewer system condition assessment, (4) rehabilitation planning, (5) hydraulic modeling and performance assessment, (6) regional design guidelines, (7) regional operating guidelines, and (8) other technical requirements. HRSD and the Hampton Roads Localities have agreed to use the Regional Technical Standards as they proceed with the work and activities required by this Order. The Regional Technical Standards are attached and incorporated into this Order as Attachment 1.
11. HRSD and the Hampton Roads Localities also have concluded that the work and activities required by this Order can be efficiently implemented to achieve the most cost-effective solutions only through a coordinated effort involving the sharing of information and a cooperative approach to decision-making on matters that extend beyond their individual systems.
12. To facilitate the cooperative approach and coordinated effort so critical to the success of the regional initiative embodied in this Order and in future phases of sanitary sewer overflow ("SSO")-related work and activities, HRSD, the

Hampton Roads Localities and the HRPDC have entered into a Memorandum of Agreement ("MOA"). The MOA is an enforceable contract, which among other things, defines the roles, responsibilities, and obligations of the parties to the Agreement related to consultation between and among the parties, the sharing of data and information between and among the parties, and compliance with the Regional Technical Standards. The MOA also establishes a dispute resolution process designed to quickly resolve any conflicts which might arise between and among the parties. The MOA is attached, but is not incorporated into this Order, as Attachment 2. HRSD and the Hampton Roads Localities agree to promptly provide the DEQ with notice of and any amendments to the Memorandum of Agreement.

SECTION D: Agreement and Order

By virtue of its authority in Code § 62.1-44.15(8a), the Board orders HRSD and the Hampton Roads Localities, and they hereby agree, to undertake and complete the following actions:

1. HRSD shall perform the actions described in Appendix A to this Order.
2. The Hampton Roads Localities shall perform the actions described in Appendices B through N identified below to this Order.
3. Regional Wet Weather Management Plan.

In cooperation with the other parties to this Order, HRSD and the Hampton Roads Localities shall jointly develop, and within 74 months of the effective date of this Order, submit to the DEQ for approval, a final Regional Wet Weather Management Plan. The Plan shall be based on data collected from the flow and pressure meters and the system model and shall analyze a full range of capital and operating alternatives designed to improve system performance and thereby reduce the occurrence of un-permitted discharges both short term and long term. The Plan shall identify, quantify, prioritize, and propose a schedule for implementing regional system enhancements and address the funding of such enhancements between HRSD and the Hampton Roads Localities. The Plan shall include short and long term operating plans to maximize available capacity in the system through effective and proactive operations.

4. HRSD and the Hampton Roads Localities shall comply with the Regional Technical Standards that are attached to and incorporated into this Order as Attachment 1.

5. All submittals required by this Order shall be mailed to: Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462 Attn: Francis L. Daniel, Regional Director, or his successor.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite or amend any provision of this Order on its own motion after notice and opportunity to be heard. On motion of any party, with the consent of all the parties to this Order and for good cause shown, the Board may modify, rewrite or amend the provisions of Sections D.3 and D.4. above. The Board may modify, rewrite or amend other individual obligations of HRSD or a Locality imposed in the Appendices hereto on motion of that party for good cause shown.
2. This Order addresses and resolves all system overflows and releases within the HRSD sewer system serving the Hampton Roads Localities and those overflows and releases from the sewer systems owned by the Hampton Roads Localities and known or reported to the DEQ up to the date of execution of this Order by HRSD or the Hampton Roads Localities. In consideration of the commitments made herein to address and prevent future overflows and releases, no penalties are imposed at this time. This Order shall not preclude the Board or the Director from taking any further 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 sewer systems as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities or citizen's suits against the Hampton Roads Localities for matters not addressed herein. However, the Order shall preclude any actions against the Hampton Roads Localities which are barred by Clean Water Act § 309(g), as provided by Va. Code § 62.1-44.15 (8f), for all matters addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, HRSD and the Hampton Roads Localities admit the jurisdictional allegations, but do not admit or deny the factual findings and conclusions of law contained herein. This Order is made by agreement and with the consent of the parties and does not constitute an admission of violation of any federal, state or local law, rule, regulation, certificate, permit, or standard.
4. HRSD and the Hampton Roads Localities consent to venue in the Circuit Court of the City of Richmond for any civil action taken by DEQ to enforce this Order.

5. HRSD and the Hampton Roads Localities declare they have received fair and due process with respect to the entry of this Order under the Administrative Process Act, Code § 2.2-4000, et seq., and the State Water Control Law, and waive their right to any hearing or other administrative proceeding authorized or required by law or regulation, or to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of HRSD's or the Hampton Roads Localities' right to any administrative proceeding for, or to judicial review of, any action taken by the Board to terminate, change the terms of, or enforce this Order, or any other Board action that arises from the facts stated herein.
6. Failure by HRSD or any Hampton Roads Locality to comply with its respective individual obligations under the terms of this Order shall constitute a violation of an order of the Board by the party who fails to comply. 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 or citizen's suits for matters not addressed herein, but this order shall preclude those actions barred by Clean Water Act § 309(g), as provided by Va. Code § 62.1-44.15 (8f), for all matters addressed herein.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of this Order shall remain in full force and effect.
8. HRSD and the Hampton Roads Localities shall be responsible for failure to comply with their individual obligations under this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, the actions of another party to this Order or such other occurrence beyond their control. Any party in noncompliance 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. HRSD and the Hampton Roads Localities shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance with their individual obligations or cause noncompliance with their individual obligations under 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 so notify the Director of the Regional Office within ten (10) working days of learning of any condition listed above, which the party intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order. Notwithstanding, the notification deadline shall be within five (5) working days if, given the nature of the force majeure event, waiting ten (10) working days would prejudice the Director's ability to assess the claimed force majeure event.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns.
10. This Order shall become effective upon execution by the Director or his designee, HRSD and the Hampton Roads Localities. Notwithstanding the foregoing, HRSD and the Hampton Roads Localities agree to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect as to each party hereto until the Director or Board terminates the Order as to that party upon thirty (30) days written notice to the party or parties with respect to whom it is to be terminated. Provided such action meets the definition therein, a termination shall be a case decision within the meaning of Va. Code § 2.2-4019 and Rule 2A:2 of the Rules of the Supreme Court of Virginia. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve HRSD and the Hampton Roads Localities from their respective obligations to comply with any statute, regulation, permit condition, other Order, certificate, certification, standard, or requirement otherwise applicable.
12. The requirements in each appendix to this Order are the individual obligations of the party named in the appendix, and no party shall be liable for noncompliance with the requirements in the appendix of another party.
13. By entering into this Order, HRSD and the Hampton Roads Localities do not waive any defenses or immunities available to them at law, including, but not limited to, those set forth in Section 15.2-970 of the Code of Virginia.

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By their signatures below, HRSD and the Hampton Roads Localities voluntarily agree to the issuance of this Order and agree to be bound by the terms hereof.

Date: _____

By: _____
Francis L. Daniel

The terms and conditions of the Order are voluntarily accepted by HRSD.

Date: _____

By: _____
General Manager

Commonwealth of Virginia
City/County of _____

The foregoing instrument was acknowledged before me this ____ day of ____ by _____, General Manager of HRSD, on behalf of HRSD.

Notary Public

My commission expires:

APPENDIX M

JAMES CITY SERVICE AUTHORITY

The James City Service Authority shall perform the following:

1. SSES Plan. By the last day of the month that is 15 months after the effective date of this order, complete and submit to the DEQ for approval, a plan for conducting an SSES of the County's collection system. The plan shall conform to the Regional Technical Standards in Attachment 1. The approved plan shall become a requirement of this Order and the SSES shall be implemented in accordance with the approved schedule.
2. Interim Repairs to Existing Facilities. While the work required by paragraph 1 above is underway, identify and repair those sewer collection, force main and pumping station deficiencies that require prompt attention under the Regional Technical Standards in Attachment 1.
3. Interim System Improvements. Prior to implementation of the Regional Wet Weather Plan, any new or replacement collection system facilities will be designed and constructed in conformance with the Regional Technical Standards in Attachment 1.
4. Cooperation with HRSD to Develop Regional Hydraulic Model. Provide HRSD with sewer flow hydrographs for conditions of interest in accordance with the Regional Technical Standards in Attachment 1, pump curves and other information, and access to its facilities and property, as may be necessary for HRSD to install meters and gauges and perform its other obligations under Appendix A of this Order.
5. System Hydraulic Model. By the last day of the month that is 38 months after the effective date of this Order, develop a calibrated, dynamic model of the locality's sanitary sewer system necessary to be used in conjunction with HRSD's Integrated System Model. The model shall be developed in accordance with the guidelines in Attachment 1.
6. Management, Operations and Maintenance (MOM) Program. By the last day of the month that is 15 months after the effective date of this Order, submit to DEQ for approval a MOM program that documents the MOM program elements used to manage the James City Service Authority's sewer system and minimize SSOs. The MOM program shall include tangible parameters for assessing program implementation.

7. SSO Reports. Promptly report all sewage discharges in accordance with the Hampton Roads Sanitary Sewer Overflow Reporting System, as approved by the DEQ, Tidewater Regional Office.
8. Annual Report. Submit annual reports to the DEQ on the status of the work required by Appendix M, with copies to HRSD and the other Hampton Roads Localities. The reports shall reflect work and activities undertaken during the previous fiscal year and shall include a summary of the system benefits achieved during the year. The report shall be due on or before November 1 following the close of each fiscal year.

DRAFT

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Agreement”) is entered into and is effective on this ___ day of _____, 2007, by and among the Hampton Roads Sanitation District (“HRSD”); the cities of Chesapeake, Hampton, Newport News, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg; the Town of Smithfield; and the counties of Gloucester, Isle of Wight, and York; and the James City Service Authority (each a “Locality” and collectively, the “Localities”); and the Hampton Roads Planning District Commission (“HRPDC”).

WHEREAS, HRSD provides wastewater transmission and treatment services for the Localities.

WHEREAS, the Localities individually own and operate sanitary sewer collection systems, which collect sewage within their individual jurisdictional boundaries and deliver it to the HRSD sewer system for treatment.

WHEREAS, although individually owned and operated, these sewage collection and treatment systems are physically interconnected at numerous locations to form a regional system serving a population of over 1.6 million.

WHEREAS, the cities, counties and towns of the Hampton Roads region have established the HRPDC pursuant to Section 15.2-4200 of the Code of Virginia. Among its responsibilities, the HRPDC is charged with regional planning and coordination among the Localities. At the request of the Localities, the HRPDC is facilitating and coordinating discussions among HRSD and the Localities related to the collection and treatment of sewage.

WHEREAS, due to pipe breaks, electrical outages, wet weather events, insufficient capacity in the collection, interceptor and treatment systems, and other factors, untreated sewage is, on occasion, discharged from various locations in the HRSD sewer system and the individual sanitary sewer collection systems of the Localities.

WHEREAS, for many years, HRSD and the Localities have worked diligently and spent tens of millions of dollars testing and making repairs and improvements to their respective systems to minimize, and, where possible, prevent discharges of untreated sewage. These efforts notwithstanding, however, discharges of untreated sewage occasionally occur from the HRSD sewer system and from the individual sanitary sewer collection systems of the Localities. Accordingly, HRSD and the Localities have agreed to expand their efforts to include measures that are designed to address both the regional and individual sanitary sewer collection system capacity and performance conditions that continue to cause or contribute to discharges of untreated sewage.

WHEREAS, HRSD and the Localities have agreed to a two-phased initiative to address these matters. The first phase is principally a data collection, evaluation and plan

development program that consists of both regional and individual elements. The regional element will require the use of uniform standards to identify the infrastructure projects needed to provide the collection system, interceptor system and treatment capacity required to cost-effectively manage peak wet weather flows throughout the Regional Sanitary Sewer System. The individual element is designed to identify, characterize, and cost-effectively address conditions that cause or contribute to discharges of untreated sewage. This element is also intended to provide for system repairs that require prompt attention. This first phase will be reflected in a special order by consent to be issued by the State Water Control Board (“Board”) to HRSD and, with the exception of Norfolk, the Localities (“Regional Order”).

WHEREAS, the second phase of the initiative will provide for the implementation of long-term capacity enhancement and sewer rehabilitation plans, including construction of the regional infrastructure projects and individual system improvements identified in the first phase.

WHEREAS, the City of Norfolk (“Norfolk”) and HRSD have together already entered into two successive special orders by consent (“Norfolk/HRSD Orders”) with the Board. Pursuant to the Norfolk/HRSD Orders, Norfolk has already completed much of the work associated with the individual element of the first phase described above and is now implementing its individual capital improvements and operational measures that are contemplated as part of the second phase described above. Although Norfolk and HRSD anticipate completing their respective individual elements of the initiative pursuant to the Norfolk/HRSD Orders, they will be participating in the regional element of both the first and second phases of the initiative.

WHEREAS, the City of Hampton (“Hampton”) and HRSD have already entered into a special order by consent (“Hampton/HRSD Order”) with the Board pursuant to which Hampton and HRSD have already completed a portion of the work associated with the individual elements of the first phase described above. Hampton and HRSD anticipate that their respective uncompleted individual elements called for under the Hampton/HRSD Order will be merged into the Regional Order, that the Hampton/HRSD Order will be terminated at the time the Regional Order is issued, and that any such respective uncompleted individual elements merged into the Regional Order and also their respective regional elements of the first and second phases of the initiative will be completed pursuant to the Regional Order.

WHEREAS, to facilitate a coordinated regional approach to the operation and maintenance of their individual systems and to establish a consistent and uniform framework for identifying and implementing regional and individual system improvements, HRSD and the Localities have developed Regional Technical Standards, which are attached to this Agreement as Attachment A.

WHEREAS, HRSD and the Localities also understand and agree that the work and activities required to minimize the potential for discharges of untreated sewage can be efficiently implemented to achieve the most cost-effective solutions only through a

coordinated effort involving the sharing of information and a cooperative approach to decision making on matters that extend beyond their individual systems.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, HRSD and the Localities (each a “Utility” and collectively “the Utilities”) and the HRPDC do hereby agree to enter into this Agreement for the purpose of defining the roles, responsibilities, and obligations of the Utilities and HRPDC; establishing procedures for the sharing of data and information between and among the Utilities providing for compliance with the Regional Technical Standards; and establishing procedures to be followed by the Utilities to request modifications to the Regional Order and the Regional Technical Standards; and for resolving disputes between and among the Utilities related to the matters addressed herein.

A. DEFINITIONS

“Board” means the State Water Control Board, a permanent citizens body of the Commonwealth of Virginia as described in Virginia Code §§ 62.1-44.7 and 10.1-1184.

“Committee” means the HRPDC Directors of Utilities Committee, the membership of which consists of the utility department directors (or their designees) for all the Localities and the General Manager of HRSD (or his or her designee).

“Current Norfolk/HRSD Order” means the special order by consent dated March 17, 2005 by and among the Board, the City of Norfolk, and HRSD.

“DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Virginia Code §10.1-1183.

“EPA” means the United States Environmental Protection Agency

“Hampton/HRSD Order” means the special order by consent dated October 15, 2002 by and among the Board, the City of Hampton, and HRSD.

“Norfolk/HRSD Orders” means the special orders by consent dated December 17, 2001 and March 17, 2005 by and among the Board, the City of Norfolk, and HRSD.

“Party” or “Parties” means one or more signatories to this Agreement.

“Regional Order” means the special order by consent dated____, 2007 by and among the Board and the Utilities.

“Regional Sanitary Sewer System” means the collective sanitary sewer systems owned and operated by the Localities, as well as the HRSD sanitary sewer system including gravity sewer lines, manholes, pump stations, lift stations, pressure reducing stations, force mains, wastewater treatment plants, and all associated appurtenances.

“Regional Technical Standards” means the standards developed and agreed to by HRSD and the Localities to facilitate a coordinated regional approach to the operation and maintenance of their individual systems and to establish a consistent and uniform framework for identifying and implementing regional and individual system improvements. The Regional Technical Standards consist of the following: (1) regional design guidelines, (2) sewer system evaluation studies (SSES), (3) data collection and flow monitoring, (4) hydraulic modeling and performance assessment, (5) regional operating guidelines, (6) sewer system condition assessment, (7) rehabilitation planning, and (8) other technical requirements.

B. STATEMENT OF PRINCIPLES

This Agreement is based upon the following principles:

1. While the Utilities are individually responsible for operating, maintaining, and improving their respective systems, they have a shared responsibility and mutual interest in ensuring that their individual systems function effectively and efficiently as an integral part of a larger regional system.

2. A cooperative and coordinated effort among the Utilities involving, among other things, the sharing of data and information, development and implementation of regional technical standards and collective decision-making on matters that extend beyond respective individual systems, will help to ensure that the region’s sewage collection and treatment needs are served cost effectively and that water quality is protected.

3. Each of the Utilities should operate, maintain, expand, and improve their individual systems with the objective of providing efficient and cost-effective service to their respective residents and ratepayers while not adversely affecting the service provided by or to any other Utility.

4. The cost of identifying and implementing the regional system enhancements required to improve system performance and thereby reduce the occurrence of un-permitted discharges should be shared equitably among the Utilities and shall be minimized to the degree practicable for the overall lowest cost to the ratepayers of the region.

5. In the interest of regional cooperation, the Utilities should seek to resolve their differences through dispute resolution before resorting to administrative or judicial remedies.

C. ROLES AND RESPONSIBILITIES

In addition to such other obligations as may be established in this Agreement, the Parties shall have the following roles and responsibilities:

1. HRPDC. The HRPDC will (a) provide, as needed, staffing coordination support for the Committee related to Committee functions, including related subcommittees and workgroups, set forth herein, including but not limited to arranging and conducting periodic meetings of the Committee to review and discuss status of the work and activities required by the Regional Order and related issues, (b) serve to coordinate the making and delivery of notices among the Utilities as set forth herein, and (c) select any mediators needed to facilitate dispute resolution under this Agreement.

2. HRPDC Directors of Utilities Committee. The Committee will coordinate and facilitate the multi-jurisdictional related work and activities required by the Regional Order and organize subcommittees or work groups as may be needed to address and resolve issues. The Counties of Southampton and Surry and the Cities of Franklin and Norfolk are members of the Committee, but are not parties to the Regional Order or this Agreement. Therefore, they have no rights or responsibilities under this Agreement.

3. HRSD. HRSD will maintain active participation in the Committee's activities pursuant to this Agreement; maintain and make available to the Committee or the Localities and HRPDC such data, information, or notifications as they may need to fulfill their responsibilities and obligations under the Regional Order and this Agreement; consult with the Localities in the preparation of the plan and schedule for the installation of flow and pressure meters and rainfall gauges required by subparagraph 1(a) of Appendix A of the Regional Order; assist the Localities in the performance of their individual SSESs; and cooperate with the Localities in the development of the Regional Wet Weather Management Plan required by the Regional Order.

4. Localities. Each Locality will maintain active participation in the Committee's activities pursuant to this Agreement; maintain and make available to the Committee, HRSD, other Localities and HRPDC such data, information, or notifications as they may need to fulfill their responsibilities and obligations under the Regional Order and this Agreement; consult with HRSD and the other Localities in the preparation of the plan and schedule for the installation of flow and pressure meters and rainfall gauges required by subparagraph 1(a) of Appendix A of the Regional Order; and cooperate with HRSD and the other Localities in the development of the Regional Wet Weather Management Plan required by the Regional Order.

D. COMPLIANCE WITH REGIONAL TECHNICAL STANDARDS AND DEVELOPMENT AND IMPLEMENTATION OF REGIONAL WET WEATHER MANAGEMENT PLAN

Each Utility agrees to:

1. Comply with the Regional Technical Standards, which are attached as Attachment A (Attachment 1 to the Regional Order) and hereby incorporated into this Agreement.
2. In cooperation with the other Utilities, jointly develop, and on or before December 31, 2013 (or such other date as may be approved by the Board or the DEQ) submit to the DEQ for approval, a final Regional Wet Weather Management Plan as described in Section D.3 of the Regional Order. In conjunction therewith, HRSD will perform those tasks listed in Paragraphs 1 and 2 of Appendix A of the Regional Order, and each Locality will perform those tasks listed in paragraphs 4 and 5 of its respective Appendix of the Regional Order.
3. Upon approval of the Regional Wet Weather Management Plan by the DEQ and all of the Utilities, comply with the Regional Wet Weather Management Plan.

E. PROPOSED MODIFICATIONS TO THE REGIONAL ORDER AND THE REGIONAL TECHNICAL STANDARDS

1. Proposed Modifications to Section D.3 and D.4 of the Regional Order.

(a) Any Utility wishing to modify either Section D.3 or Section D.4 of the Regional Order will give at least 30 days prior written notice of the proposed modification to the other Utilities pursuant to the notice procedures of Section G.6 below before requesting the Board or DEQ to make such modification. Such notice shall describe the proposed modification and the basis and justification for such modification.

(b) Within 30 days of receiving notice of the proposed modification, every other Utility will file, pursuant to the notice procedures of Section G.6 below, its written response to the notice setting forth either (i) its consent to the proposed modification or (ii) its objection to the proposed modification and the basis for such objection. Any Utility may receive a 30-day extension to respond by so notifying the other Utilities in writing prior to the expiration of the response time period. Failure to respond by filing a written consent or objection within the prescribed time period as set forth herein shall be deemed to be consent to the proposed modification.

(c) The Utility proposing the modification may proceed to request the Board or DEQ to modify the Regional Order as proposed only if all the Utilities have consented (or be deemed to have consented pursuant to Section E.1. (b) above) to the proposed modification.

(d) Within 60 days after receiving from HRPDC one or more notices of objection to the proposed modification, the Utilities will meet as needed to resolve the objection through informal negotiations. At the request of a majority of the Utilities, the HRPDC shall employ a mediator to assist in resolving the dispute. The cost of any such mediator shall be shared equally by those engaged in the mediation process.

(e) If the dispute can not be resolved and the consent of all the Utilities can not be secured within 120 days of all other Utilities receiving notice of the objection, the Utility proposing the modification will withdraw the proposal and provide written notice of such withdrawal pursuant to Section G.6 below; provided, however, that the 120-day resolution period may be extended upon consent of all of the Utilities.

2. Proposed Modifications to Appendices to Regional Order. Any Utility that is a party to the Regional Order may request the Board or DEQ to modify its individual obligations in an Appendix to the Regional Order. The Utility making such a request shall provide every other Utility with a copy of its request at the time such request is filed with the Board or DEQ, as well as a copy of the Board's or DEQ's response to said request.

3. Modifications to Regional Technical Standards. The Regional Technical Standards may be modified only with the consent of all the Utilities.

F. REMEDIES AND RESERVATIONS OF RIGHTS

1. If any Utility shall fail to perform or observe any of the material terms, conditions or provisions of this Agreement applicable to it, and said failure is not rectified or cured within 30 days after receipt of written notice thereof from another Utility, then the defaulting Utility shall be deemed in breach of this Agreement; provided, however, that no Utility shall have a right to issue a notice of default pursuant to this Section F.1, until the dispute resolution procedures set forth in Section F.2 below have been exhausted. The Parties agree that, in the event of a material breach of this Agreement, a non-defaulting Utility which is or would be harmed by the breach may be permitted to seek injunctive relief or specific performance of the defaulting Utility's obligations without the requirement to post a bond. The Parties acknowledge that each Utility's performance of its material obligations is valuable and unique and that, for purposes of allowing the non-defaulting Utility to seek injunctive relief, the failure of a Utility to perform its material obligations hereunder may result in irreparable injury to the other Utilities. Nothing in this Agreement shall be deemed to modify, alter or otherwise affect such other rights and remedies as may be available to the Utilities under applicable law or equity. HRPDC shall have no rights to seek enforcement of this Agreement.

2. If any dispute arises with respect to the alleged failure of any Utility to perform or observe any of the material terms, conditions or provisions of this Agreement applicable to it, a Utility may initiate the dispute resolution procedures of this Section F.2 by providing to the other Utilities written notice of the existence and nature of the dispute. Within 30 days of such notice, the parties to the dispute shall meet and attempt in

good faith to resolve the dispute. Upon the request of any party to the dispute, the parties to the dispute shall participate in mediation. In the event of mediation, the mediator shall be selected by HRPDC and the cost of the mediator shall be shared equally by those parties engaged in the mediation. If the dispute can not be resolved within 60 days after receipt of written notice of the dispute, then any party to the dispute may elect to end dispute resolution by providing written notice of such election to the other parties to the dispute, in which case the dispute resolution procedures shall be deemed to have been exhausted. The dispute resolution procedures may also be deemed exhausted by written agreement of all the parties to the dispute.

3. Nothing herein shall be construed as or otherwise constitute a waiver or release by any Party of any right, power, immunity or standing of that Party that may exist pursuant to applicable law or regulation, including, without limitation, such right or standing to appeal or seek review of any case decision or other reviewable determination of the Board, DEQ, EPA, or any other agency or governmental body related to the matters addressed in this Agreement, the Regional Order, the Current Norfolk/HRSD Order, or the Hampton/HRSD Order.

G. MISCELLANEOUS

1. Amendments to Agreement. Amendments to this Agreement must be in writing and signed by all the Parties. No amendment may be inconsistent with the provisions of the Regional Order.

2. Entire Agreement. Subject to the requirements of the Regional Order, the Current Norfolk/HRSD Orders, and the Hampton/HRSD Order, this Agreement contains the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.

3. Severability. If any provision of this Agreement is found to be unenforceable, the remainder of this Agreement shall remain in full force and effect.

4. Authority. The Parties represent that they have the authority to enter into this Agreement and that the individuals signing this Agreement on their behalf have the requisite power and authority to bind the Parties to its terms and conditions. This Agreement shall apply to, and be binding upon the Parties, their elected officials, officers, agents, employees, successors and assigns.

5. Reservation. Except as expressly provided herein, nothing in this Agreement shall be construed to limit or otherwise affect the authority, rights, or responsibilities of the Parties.

6. Notices and Written Communications. All notices and written communication pursuant to this Agreement shall be submitted to the following HRPDC contact by electronic mail, recognized overnight courier or other hand delivery, or postage-prepaid U.S. Mail:

Deputy Executive Director, Physical Planning
Hampton Roads Planning District Commission
723 Woodlake Drive
Chesapeake, Virginia 23320
(757) 420-8300
jcarlock@hrpdc.org

HRPDC will promptly forward any such notice or written communication to all of the Committee members on behalf of the Utilities in the same manner as the notice or written communication was received by HRPDC. Notices shall be deemed received by the Utilities on the day of actual receipt from the HRPDC unless such day is not a Business Day, in which case such notice shall be deemed to have been received on the next Business Day. A Business Day for purposes of this Section G.6 shall mean any calendar day, ending at 4:30 P.M., that is not a Saturday, Sunday or official State or national holiday.

7. Term. This Agreement shall be effective on _____ and shall continue in effect until terminated by agreement of the Parties. In no event, however, shall this Agreement be terminated while the Regional Order remains in effect.

8. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia, without regard to the conflict of laws and rules thereof.

9. Force Majeure. No Party shall be responsible for its failure to fulfill an obligation pursuant to this Agreement to the extent that such failure is due to acts of God; strikes; war or terrorism; the actions of a third party; the actions of another Party; lockouts; or other events not reasonably within the control of the Party claiming *force majeure*. A Party experiencing a *force majeure* event, which prevents fulfillment of a material obligation hereunder, shall (i) give the other Parties prompt written notice describing the particulars of the event; (ii) suspend performance only to the extent and for the duration that is reasonably required by the *force majeure* event; (iii) use reasonable efforts to overcome or mitigate the effects of such occurrence; and (iv) promptly resume performance of the affected obligation if and when such Party is able to do so.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures given on behalf of all of the parties reflected hereon as the signatories.

11. Not for Benefit of Third Parties. This Agreement and each and every provision hereof is for the exclusive benefit of the Parties and not for the benefit of any third party.

12. Binding Effect. This Agreement shall inure to the benefit of the Parties and shall, to the extent permitted by law, be binding on the Parties and their successors and assigns.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officials as of the dates next to their respective signatures as shown below.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF CHESAPEAKE

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF HAMPTON

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

GLOUCESTER COUNTY

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

ISLE OF WIGHT COUNTY

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF NEWPORT NEWS

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF POQUOSON

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF PORTSMOUTH

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF SUFFOLK

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF VIRGINIA BEACH

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

CITY OF WILLIAMSBURG

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

YORK COUNTY

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

JAMES CITY SERVICE AUTHORITY

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

TOWN OF SMITHFIELD

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

HAMPTON ROADS SANITATION
DISTRICT

By: _____

Date: _____

Date: _____

Attest: _____

IN WITNESS THEREOF, the Chief Administrative Officer of the local government and the Executive Director of the Hampton Roads Planning District Commission hereby execute this Agreement.

HAMPTON ROADS PLANNING
DISTRICT COMMISSION

By: _____
Arthur L. Collins
Executive Director/Secretary

Date: _____

Date: _____

Attest: _____