COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD

ENFORCEMENT ACTION

ORDER BY CONSENT

ISSUED TO

Mr. Charles B. Anderson,
Mr. Henry Martin, and
Lakewood Partners, LLC

For
Lakewood Mobile Home Court
Sewage Treatment Plant
VPDES Permit No. VA0063282

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d), between the State Water Control Board and Mr. Charles Anderson, Mr. Henry Martin, and Lakewood Partners, LLC for the purpose of resolving certain violations of the State Water Control Law and the applicable Permit and regulation.

SECTION B: Definitions

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

1. "Ammonia" means Ammonia as N (nitrogen).

2. "Board" means the State Water Control Board, a permanent citizen board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "BOD_5" means Biochemical Oxygen Demand.
4. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Lynchburg, Virginia.
5. "DMR" means Discharge Monitoring Report.
6. "DO" means Dissolved Oxygen.
7. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
8. "Director" means the Director of the Department of Environmental Quality.
9. "E. coli" means Escherichia coli.
10. "Lakewood Partners, LLC" or "Lakewood" means Lakewood Partners, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Lakewood Partners, LLC is a "person" within the meaning of Va. Code §62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "Plant" or "Facility" means the Lakewood Mobile Home Court Sewage Treatment Plant located at State Route 729 and U.S. Route 360, Halifax County, Virginia, which treats domestic sewage for the residents of Lakewood Mobile Home Court.
13. "Order" means this document, also known as a Order By Consent.
14. "Permit" means VPDES Permit number VA0063282; which was issued by authority of the Board to Sean Stanley on September 20, 2004, and which expires on September 30, 2009.
15. "Regulation" means the VPDES Permit Regulation at 9 VAC 25-31-10 *et seq.*

16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. "VAC" means the Virginia Administrative Code.
18. "VPDES" means the Virginia Pollutant Discharge Elimination System.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Lakewood Partners, LLC, owns and operates the Facility located in Halifax County, Virginia. Messrs. Anderson and Martin are the sole members of Lakewood Partners, LLC. The Permit allows Lakewood Partners, LLC, to discharge treated sewage from the Facility, to an unnamed tributary of the Lower Banister River, in strict compliance with the terms and conditions of the Permit.
2. The Lower Banister River is located in the Roanoke/Yadkin River Basin. No assessment information is currently available for the unnamed tributary. The Banister River is not a candidate for designation as exceptional waters.
3. In submitting its DMRs, as required by the Permit, Lakewood Partners, LLC, has indicated that it exceeded discharge limitations contained in Part I.A.1. of the Permit, for the following parameters and reporting periods: Ammonia, May 2006; Ammonia, June 2006; DO and E. coli, December 2006; TSS, January 2007; Ammonia, March 2007; Ammonia, June 2007; BOD_5, July 2007; and DO, August 2007. In addition, DEQ staff noted the following failures to comply with the reporting requirements of Part.II.C. of the subject Permit: late DMR, July 2006; improper reporting on DMR, January 2007; improper reporting on DMR, August 2007; failure to report an unauthorized discharge within 24 hours and follow-up with a five-day letter as required by Part II.G. of the subject Permit, December 2007;

incomplete DMR January, February, April and October 2008; failure to submit the April 2009 DMR; and late submittal of the April 2009 DMR.

4. The Department received a complaint on December 4, 2007, from one of the tenants of Lakewood, reporting a sewage overflow and a sewage backup into her residence. Department staff confirmed the sewage overflow during a site reconnaissance made on December 5, 2007, and also observed evidence that the sewage overflow reached a farm pond beside the Facility's treatment lagoon. The Department notified Lakewood of the overflow and requested that it be addressed immediately. A follow-up site reconnaissance performed on December 11, 2007, revealed that the overflow site had not been properly cleaned up or limed. During an enforcement meeting held at BRRO on January 10, 2008, Lakewood was informed of the need to properly clean up the site, and the needs for diligence in maintaining the Facility and the collection system.

5. The 2nd Annual Financial Assurance Review/Adjustment, which was due on or before July 17, 2006, and required by Part I.C.2. of the Permit, was received on July 31, 2006. The 3rd Annual Financial Assurance Review/Adjustment, which was due on or before July 17, 2007, was not received until October 11, 2007. The 4th Annual Financial Assurance Review/Adjustment, which was due on or before July 17, 2008, was not received and deemed complete until October 11, 2008. In addition, DEQ staff have noted that the 5th Annual Groundwater Monitoring Report, required by Part I.A.3. of the Permit to be submitted by Lakewood Partners, LLC on or before January 10, 2009, was received by the Department on May 8, 2009.

6. During reconnaissance inspections conducted on April 1, 2, and 10, 2008, Department staff observed that Lakewood had failed to maintain the minimum lagoon freeboard requirement of one (1) foot as required by Part I.C.13. of the subject Permit. Lakewood was notified of the deficiency during a meeting on April 2, 2008, and requested that the lagoon be pumped down immediately to avoid a possible overflow condition.

7. BRRO issued the following Warning Letters and Notices of Violation for Permit violations as follows: W2006-07-L-0002, issued July 19, 2006; W2006-08-L-0001, issued August 3, 2006; W2006-09-L-0003, issued September 8, 2006; W2007-02-L-0002, issued February 13, 2007; W2007-03-L-0004, issued March 19, 2007; W2007-05-L-1002, issued May 8, 2007; W2007-06-L-0006, issued June 13, 2007; W2007-07-L-0003, issued July 10, 2007; W2007-08-L-0005, issued September 12, 2007; W2007-10-L-0004, issued October 3, 2007; W2007-10-L-0009, issued November 2, 2007; W2007-12-L-0007, issued December 19, 2007; W2008-04-L-0008, issued May 1, 2008; W2008-06-L-0002, issued June 5, 2008; W2008-08-L-0008, issued September 8, 2008; W2008-10-L-0001, issued October 7, 2008; W2008-11-L-0010, issued November 6, 2008; W2008-12-L-0006, issued December 5, 2008; W2009-01-L-0007, issued January 9, 2009; W2009-03-L-0008, issued March 11, 2009; W2009-03-L-0017, issued April 2, 2009; W2009-05-L-0002, issued May 6, 2009; W2009-06-L-0003, issued June 19, 2009; and W2009-07-L-0009, issued July 9, 2009.

8. Lakewood Partners, LLC, responded to the Warning Letters and Notices of Violation by entering into a Letter of Agreement (LOA) with the Department on October 17, 2006, which required the removal and proper disposal of at least 12,500 gallons of waste solids from the Facility's treatment lagoon per month, beginning in November, 2006, an evaluation of the Facility's treatment effectiveness, and submission of quarterly progress reports to the Department for review. Rather than comply with the terms of the LOA, Lakewood determined that the mobile home park and the Facility should be closed and began the process of pumping out wastewater and solids from the lagoon in February, 2008. DEQ staff performed a reconnaissance inspection on March 30, 2009, which revealed that Messrs. Anderson and Martin, Lakewood Partners, LLC, had not

completed pumping down the lagoon. At the time of the inspection, the lagoon had one foot of freeboard available.

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

10. The Regulation, at 9 VAC 25-31-50, also state that except in compliance with a VPDES Permit, or another Permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.

11. Va. Code § 62.1-44.15(5a) states that a VPDES Permit is a "certificate" under the statue.

12. The Department has issued no Permits or certificates to Lakewood Partners, LLC other than VPDES Permit No. VA0063282.

13. Va. Code § 62.1-44.3 defines "state waters" to include all waters "on the surface and under the ground, wholly or partially within or bordering the Commonwealth". The unnamed tributary of the Lower Banister River is a surface water located wholly within the Commonwealth and therefore is a "state water" under the statue.

14. Va. Code § 62.1-44.3 defines "sewage" to include "the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present."

15. Va. Code § 62.1-44.14 states that the Board may delegate its authority to issue certificates to the Director. The Board delegated this authority to the Director in 1976.

16. Based on DMR data submitted to the Department and records reviews described in Section C, Paragraph 2. above, and the results of the reconnaissance inspection conducted on December 5 and 11, 2007, and on April 1 & 2, 2008, the Board concludes that Lakewood Partners, LLC has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50 by discharging treated

sewage from the Plant while concurrently failing to comply with the conditions of the Permit.

17. In addition, the Board has determined that Lakewood has violated Parts I.C.2., 10., and 13., as well as Parts II.C., D., and Q. of the Permit by failing to meet its conditions regarding the financial assurance requirements, performing groundwater monitoring, maintaining a minimum freeboard on the Facility's treatment lagoon, reporting monitoring results, fulfilling its duty to provide information to the Department, and operating and maintaining the Facility and collection system in a workmanlike manner.

18. In order for Lakewood Partners, LLC to return to compliance, DEQ staff and representatives of Lakewood Partners, LLC have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), the Board orders Lakewood Partners, LLC and Lakewood Partners, LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **$18,292.50** in settlement of the violations cited in this Order, as outlined in the payment schedule contained in Appendix A of this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, VA 23218

Lakewood Partners, LLC shall include its Federal Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the

requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Lakewood Partners, LLC for good cause shown by Lakewood Partners, LLC, or on its own motion pursuant to the Administrative Process Act after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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, Lakewood Partners, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Lakewood Partners, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Lakewood Partners, LLC declares it has received fair and due process under the Administrative Process Act and the Virginia 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 factor 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 Lakewood Partners, LLC 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. Lakewood Partners, LLC 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 other such occurrence. Lakewood Partners, LLC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Lakewood Partners, LLC 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 listed above, which Lakewood Partners, LLC intends 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, their 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 Lakewood Partners, LLC. Nevertheless, Lakewood Partners, LLC 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. Lakewood Partners, LLC 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

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Lakewood Partners, LLC.

    Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Lakewood Partners, LLC 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 Lakewood Partners, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any noncompliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Lakewood Partners, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Lakewood Partners, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Lakewood Partners, LLC.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms,

or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Lakewood Partners, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2009.

_____

Steven A. Dietrich, P.E., Director
Blue Ridge Regional Office
Department of Environmental Quality

Charles B. Anderson, Henry Martin, and Lakewood Partners, LLC voluntarily agree to the issuance of this Order.

_____ 9/18/09
Charles B. Anderson Date

_____ 9/18/09
Henry Martin Date

Lakewood Partners, LLC

By: _____ _____
Date

Commonwealth of Virginia
City/County of Halifax

The foregoing document was signed and acknowledged before me this 18th day of September, 2009, by Charles B. Anderson.

Kimberly S. Infillis
Notary Public

297136
Registration No.

My commission expires: July 31, 2012.

Notary seal:

Commonwealth of Virginia

City/County of _____,

The foregoing document was signed and acknowledged before me this _____ day

of _____, 2009, by Henry Martin.

_____
Notary Public

_____
Registration No.

My commission expires: _____.

Notary seal:

Commonwealth of Virginia

City/County of _____,

The foregoing document was signed and acknowledged before me this _____ day

of _____, 2009, by _____ of Lakewood

Partners, LLC, on behalf of said company.

_____
Notary Public

_____
Registration No.

My commission expires: _____.

Notary seal:

APPENDIX A

SCHEDULE OF COMPLIANCE

LAKEWOOD PARTNERS, LLC

VPDES PERMIT No. VA0063282

Lakewood Partners, LLC shall:

1. **No later than 30 days** from the effective date of this Order, Lakewood Partners, LLC shall submit to the Treasurer of Virginia the first payment towards the civil charge outlined in Section D.2. of the Order, in the amount of **$2,032.50.**
2. The remaining payments shall be due and payable according to the following schedule:
   a. The second installment payment of **$2,032.50** shall be due within sixty (60) days of the effective date of the Order.
   b. The third installment payment of **$2,032.50** shall be due within ninety (90) days of the effective date of the Order.
   c. The fourth installment payment of **$2,032.50** shall be due within one-hundred twenty (120) days of the effective date of the Order.
   d. The fifth installment payment of **$2,032.50** shall be due within one-hundred fifty (150) days of the effective date of the Order.
   e. The sixth installment payment of **$2,032.50** shall be due within one-hundred eighty (180) days of the effective date of the Order.
   f. The seventh installment payment of **$2,032.50** shall be due within two-hundred ten (210) days of the effective date of the Order.

g. The eighth installment payment of **$2,032.50** shall be due within two-hundred forty (240) days of the effective date of the Order.

h. The ninth and final installment payment of **$2,032.50** shall be due within two-hundred seventy (270) days from the effective date of the Order.

3. **No later than June 30, 2009**, select and retain the services of a licensed Professional Engineer (P.E.) for assistance in the update of plans and documents related to closing the treatment lagoon. The Department shall be notified in writing of the selection by means of a letter from the engineer or consulting firm on company letterhead for verification purposes.

4. **No later than September 15, 2009**, submit to the Department an update to the 2006 Closure Plan which shall contain a revised closing cost estimate and addresses residuals stabilization.

5. **No later than September 29, 2009**, implement closure of the lagoon in accordance with the updated Closure Plan.

6. **No later than December 31, 2009**, complete closure of the Facility in accordance with the Closure Plan. Lakewood Partners, LLC shall notify the Department in writing to request a closure inspection.

7. **Not later than the tenth of the month** following the effective date of this Order, and on the tenth of each successive month, submit monthly Progress Reports to the Department. The Progress Reports shall contain:

   i. A summary of all work completed since the previous Progress Report in accordance with the requirements of this Order.

   ii. A projection of the work to be completed during the upcoming period in accordance with the requirements of this Order; and

iii. A statement regarding any anticipated problems in complying with the requirements of this Order.

8. Monthly Progress Reports are to be submitted independent of the Facility's DMR submissions. Monthly Progress Reports will be required until such time as the Facility is closed and inspected by DEQ staff, and all compliance issues have been resolved and this Order terminated.

9. VPDES Discharge Permit No. VA0063282, which expires on September 29, 2009, shall be administratively continued during the active period of this Order, and shall remain in full force and effect.

10. Submit all reports and correspondence required by this Order to:

G. Marvin Booth, III
Regional Enforcement Representative
Department of Environmental Quality
Blue Ridge Regional Office
7705 Timberlake Rd.
Lynchburg, VA 24502

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