



# GEORGIA

DEPARTMENT OF NATURAL RESOURCES

## ENVIRONMENTAL PROTECTION DIVISION

**Richard E. Dunn, Director**

**EPD Director's Office**  
2 Martin Luther King, Jr. Drive  
Suite 1456, East Tower  
Atlanta, Georgia 30334  
404-656-4713

CERTIFIED MAIL  
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JUL 11 2017

Honorable Donna Whitener, Mayor  
City of Blue Ridge  
480 West First Street  
Blue Ridge, Georgia 30513

RE: Proposed Consent Order (Order)  
Blue Ridge Water Pollution Control Plant (WPCP)  
NPDES Permit No. GA0037583  
Blue Ridge, Fannin County

Dear Mayor Whitener:

Representatives of the Environmental Protection Division (EPD) have documented noncompliance with the Georgia Water Quality Control Act and the Department of Natural Resources Rules for Water Quality Control, Chapter 391-3-6. The enclosed proposed Order is to provide an amicable disposition of the alleged violations. Please return the signed Order within fifteen (15) days of receipt to:

Environmental Protection Division  
Mountain District Office  
Post Office Box 3250  
Cartersville, Georgia 30120

Upon execution of this Order, you will be expected to complete all provisions set forth in the Order to achieve compliance. Failure to meet the actions described, in compliance with the corresponding deadline, will subject you to further administrative actions. The City of Blue Ridge will also be responsible for returning the settlement amount to the Division in the form of a check made payable to the Georgia Department of Natural Resources within fifteen (15) days of the execution date of the Order.

If you have any questions concerning this Order, please contact Mick Smith at (770) 387-4900.

Sincerely,

Richard E. Dunn  
Director

Enclosure: Proposed Order

**ENVIRONMENTAL PROTECTION DIVISION  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF GEORGIA**

RE: Blue Ridge Water Pollution Control Plant (WPCP)                      EPD-WP-  
NPDES Permit No. GA0037583  
Blue Ridge, Fannin County

**CONSENT ORDER**

**WHEREAS**, the City of Blue Ridge (hereinafter "Respondent") owns and operates the Blue Ridge Water Pollution Control Plant (hereinafter "Facility") located at 242 Windy Ridge Road, Blue Ridge, Fannin County, Georgia; and

**AUTHORITY**

**WHEREAS**, under the "Georgia Water Quality Control Act of 1964" as amended O.C.G.A. § 12-5-20 et seq. (hereinafter the "Act"), the General Assembly of Georgia designated the Director of the Georgia Department of Natural Resources, Environmental Protection Division, (hereinafter the "Director" and the "Division") to administer the provisions of the Act; and

**WHEREAS**, the Rules for Water Quality Control, Chapter 391-3-6, as amended, (hereinafter the "Rules") authorized under O.C.G.A. § 12-5-23 of the Act, were established and became effective; and

**WHEREAS**, O.C.G.A. § 12-5-23 of the Act, assigns the Director the authority to issue permits stipulating in each permit the conditions or limitations under which such

permit was issued and the authority to issue orders as may be necessary to enforce compliance with the provisions of the Act and all rules and regulations promulgated thereunder; and

**WHEREAS**, Section 391-3-6-.03(5)(c) of the Rules requires that all waters be free from material related to municipal, industrial or other discharges which produce turbidity, color, odor or other objectionable conditions which interfere with legitimate water uses; and

**WHEREAS**, Section 391-3-6-.03(5)(e) of the Rules requires that all waters be free from toxic, corrosive, acidic and caustic substances discharged from municipalities, industries or other sources, such as non-point sources, in amounts, concentrations or combinations which are harmful to humans, animals or aquatic life; and

### **HISTORY**

**WHEREAS**, authorization to discharge under the National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit No. GA0037583 (hereinafter "Permit") was issued to the Respondent on September 11, 2015 and became effective on October 1, 2015; and

**WHEREAS**, the Facility discharges to Dry Creek, a tributary of the Toccoa River in the Tennessee River Basin, which is classified as a primary trout stream; and

**WHEREAS**, Section 391-3-6-.03(15) of the Rules state that there shall be no elevation of natural stream temperatures for Primary Trout Waters and two (2) degrees Fahrenheit or less for Secondary Trout Waters; and

**WHEREAS**, Part I.B.1 and Part I.B.2 of the Permit establishes Stream Temperature limitations for the Facility; and

**WHEREAS**, Part I.B.1 of the Permit states that beginning on the effective date of the Permit, the discharge from the Facility shall not change the temperature of the receiving stream more than 2 degrees Fahrenheit from the natural stream temperature; and

**WHEREAS**, Part I.B.2 of the Permit states that beginning 36 months from the effective date of the Permit and continuing until Permit expiration, the discharge from the Facility shall not elevate the temperature of the receiving stream more than zero degrees Fahrenheit from the natural stream temperature; and

**WHEREAS**, Part I.C.12 of the Permit establishes a compliance schedule of thirty-six (36) months from the effective date of the Permit, for the Facility to comply with the Stream Temperature limitation established by Part I.B.2 of the Permit; and

**WHEREAS**, the Permit requires monitors at three (3) stations for in-stream temperature (hereinafter “monitoring stations”): Station 1 (34° 52’ 53.44” N, 84° 18’ 40.53” W), Station 2 (34° 52’ 17.92” N, 84° 19’ 7.41” W), and Station 3 (34° 53’ 7.36” N, 84° 18’ 25.19” W); and

**WHEREAS**, the Respondent submitted a Preliminary Investigation Report (hereinafter “PIR”) for temperature on March 16, 2016, which reports an increase in temperature of the receiving stream during October 2015; and

**WHEREAS**, the Respondent submitted an amended PIR for temperature on October 7, 2016, which reports an increase in temperature of the receiving stream during the additional months of May, June, July, and August 2016; and

**WHEREAS**, the PIRs indicate that the natural stream temperature is cooling upstream of the discharge location; and

**WHEREAS**, the Respondent exceeded the Stream Temperature limitation established by Part I.B.1 of the Permit from May through October 2016; and

**WHEREAS**, on November 14, 2016 the Division was notified by the Respondent of a discharge of 100,000 gallons of untreated wastewater from the Facility's collection system into Dry Creek on November 11, 2016; and

**WHEREAS**, on February 21, 2017 the Respondent submitted a request for the Division to extend the 36 month compliance schedule established by Part I.C.12 of the Permit; and

**WHEREAS**, the Division requires additional temperature data from the Respondent in order to evaluate and make a determination about natural temperature elevations in the receiving stream; and

### **VIOLATIONS**

**WHEREAS**, the Respondent exceeded the Stream Temperature limitation established by Part I.B.1 of the Permit during October 2015; and

**WHEREAS**, the Respondent exceeded the Stream Temperature limitation established by Part I.B.1 of the Permit during May 2016; and

**WHEREAS**, the Respondent exceeded the Stream Temperature limitation established by Part I.B.1 of the Permit during June 2016; and

**WHEREAS**, the Respondent exceeded the Stream Temperature limitation established by Part I.B.1 of the Permit during July 2016; and

**WHEREAS**, the Respondent exceeded the Stream Temperature limitation established by Part I.B.1 of the Permit during August 2016; and

**WHEREAS**, the Respondent exceeded the Stream Temperature limitation established by Part I.B.1 of the Permit during September 2016; and

**WHEREAS**, the Respondent exceeded the Stream Temperature limitation established by Part I.B.1 of the Permit during October 2016; and

**WHEREAS**, On November 11, 2016, approximately 100,000 gallons of untreated wastewater was discharged to Dry Creek from the collection system of the Facility, in violation of Section 391-3-6-.03(5)(c) and Section 391-3-6-.03(5)(e) of the Rules; and

**WHEREAS**, the Respondent exceeded the Stream Temperature limitation established by Part I.B.1 of the Permit during May 2017; and

#### **CIVIL PENALTIES**

**WHEREAS**, O.C.G.A. § 12-5-52 provides that any person violating any provision of the Act or any permit condition or limitation established pursuant to the Act or, negligently or intentionally, failing or refusing to comply with any final order of the Director shall be liable for a civil penalty of not more than \$50,000.00 per day for each day during which such violation continues, provided, however, that a separate and later incident creating a violation within a 12 month period shall be liable for a civil penalty not to exceed \$100,000.00 per day for each day during which such violation continues; and

#### **CONDITIONS**

**WHEREAS**, the Director has determined that it is in the public interest to resolve all allegations raised above by entering into this Order without the necessity of litigation and adjudication of the issues.

**NOW THEREFORE**, by agreement of the parties, before the taking of any testimony and without adjudicating the merits of the parties' positions in this matter, in order to resolve the violations alleged herein, the Director hereby **ORDERS** and Respondent **CONSENTS** to the following:

1. The Respondent shall comply with all effluent limitations established by the Permit.
2. The Respondent shall compile an Excel spreadsheet containing all monitoring data taken from each monitoring station from May 2016 through August 2016, and submit the completed spreadsheet to the Division by no later than fifteen (15) days from the execution date of this Order.
3. The Respondent shall compile an Excel spreadsheet containing weekly monitoring data beginning fifteen (15) days from the execution date of this Order and continuing for eight (8) consecutive weeks: the monitoring stations should include the three (3) monitoring stations required by the Permit, as well as five additional monitoring stations as follows:

Station 4 – Upstream of Facility discharge at road crossing (34° 53' 2.39" N, 84° 18' 28.17" W);

Station 5 - Upstream of Facility discharge (34° 53' 4.60" N, 84° 18' 26.37" W);

Station 6 - Downstream of Facility discharge (34° 53' 19.12" N, 84° 18' 26.38" W);

Station 7 - Downstream of Facility discharge (34° 53' 23.24" N, 84° 18' 26.04" W);

Station 8 - Downstream of Facility discharge (34° 53' 28.21" N, 84° 18' 27.17" W).

The Excel spreadsheet containing the weekly monitoring data shall be submitted to the Division within fifteen (15) days from the completion of the required weekly monitoring required by this condition.

4. Within fifteen (15) days of the execution date of this Order, the Respondent shall pay to the State of Georgia a negotiated settlement in the sum of Four Thousand, One Hundred Twenty-Five Dollars (\$4,125).

#### **ADDRESSES**

Correspondence and other submissions to be made to the Division shall be addressed to: Mr. James Cooley, Environmental Protection Division Mountain District Office, P.O. Box 3250, Cartersville, Georgia 30120. Correspondence to Respondent shall be addressed to: City of Blue Ridge, Honorable Donna Whitener, Mayor, 480 West First Street, Blue Ridge, Georgia 30513.

#### **PERMIT COMPLIANCE**

This Order does not relieve Respondent of any obligations or requirements of the Permit except as specifically authorized herein; which authorization shall be strictly construed.

#### **PUBLIC NOTICE AND COMMENT**

This Order is subject to public notice and comment upon final approval by the Director.

#### **TIME OF ESSENCE**

Time is of the essence of this Order. Upon it becoming effective, Respondent shall promptly commence its undertakings required herein and shall diligently pursue the accomplishment thereof.



## REQUIRED SUBMISSIONS

Upon the submission of any plan, report, or schedule, or any modified plan, report or schedule, required by this Order, the Division shall review the submission to determine its sufficiency. The Division shall notify the Respondent in writing whether the submission is approved or disapproved.

If the Division determines that the submission is disapproved, it shall provide Respondent with a written notice of the deficiencies of the submission. The Respondent shall have fifteen (15) days from the issuance of the Division's notice of deficiency to modify the submission to correct the deficiencies and resubmit it to the Division. If Respondent does not agree with the Division's initial determination, Respondent shall submit in writing to the Division the grounds for its objection(s) within thirty (30) days from the issuance of the Division's notice of deficiency. The parties shall confer in an attempt to resolve any disagreement. If no such resolution is reached within thirty (30) days from the date of Respondent's written objection(s), Respondent shall be required to modify its submission in accordance with the Division's comments.

Notwithstanding the foregoing, the failure of Respondent to provide the Division with an ultimately approved submission on or before the specified due date, may, in the sole discretion of the Director, be deemed a violation of this Order. Upon approval by the Division, all submissions required by the terms of this Order are incorporated by reference into, and made a part of, this Order. Except as may be provided by this Order, noncompliance with the contents of such approved submissions shall be deemed noncompliance with this Order.

Division approval of any submission required by this Order is not intended as, nor shall such approval be construed as, certification by the Division that compliance with relevant state and federal laws, regulations, and permits will thereby be achieved, and such approval by the Division shall not provide Respondent with a defense to an enforcement action taken by the Director pursuant to violations of the same. Division approval of any submission is strictly limited to the technical aspects of the submission and is not intended as, nor shall it be construed as, approval or acceptance of any statements, assertions, or representations of fact, of opinion, or of a legal nature that are contained in the document.

#### **FORCE MAJEURE**

Failure to complete a condition mandated by this Consent Order within the time period specified may be excused and not subject Respondent to further enforcement action if the failure is the result of a force majeure event as identified below and Respondent complies the requirements set forth below. Respondent shall have the burden of proving to the Division that it was rendered unable, wholly or in part, by Force Majeure to carry out its obligations.

The term "Force Majeure" as used herein shall be limited to the following: Act of God; strike, lockout, or other labor or industrial disturbance not caused by an unfair labor practice by the Respondent; act of the public enemy; war; blockade; public riot; fire; storm; flood; explosion; failure to secure timely and necessary federal, state, or local approvals or permits, provided such approvals or permits have been timely and diligently sought; or other delay caused by unforeseeable circumstances beyond the reasonable control of Respondent, its employees, agents,

consultants, or contractors, as determined by the Division in its sole discretion. Force Majeure does not include financial inability to perform an obligation required by this Consent Order or a failure to achieve compliance applicable regulatory permits.

Respondent shall notify the Division verbally within 48 hours (or no later than the beginning of the next business day if the expiration of the 48 hours occurs on a weekend or holiday) from the time Respondent learns, or in the exercise of reasonable diligence should have learned, of any Force Majeure circumstances that may reasonably be expected to cause a schedule or performance delay. Within 10 days of such time, Respondent shall submit to the Division a written notice of as to the anticipated length (if known) and cause of any delay due to Force Majeure. Failure to so notify the Division shall constitute a waiver of any claim to Force Majeure.

The Respondent and the Division agree to negotiate informally and in good faith to identify delays resulting from Forces Majeure. Respondent shall comply with the Division's determination as to the appropriate time period to be excused by Force Majeure, which shall be communicated to Respondent in writing. In the event that any circumstance or series of circumstances cause the schedule to extend over thirty (30) calendar days, Respondent and the Division shall meet formally to assess the overall schedule impact and attempt to mitigate same. Any Force Majeure or Forces Majeure that cause the schedule to extend over sixty (60) consecutive days shall be noticed to the citizens of Fannin County in a form to be determined by the Division.

If the Division determines that Force Majeure has occurred, the affected time for performance specified in this Consent Order shall be extended for a period of time equal to the delay resulting from such Force Majeure. Respondent shall exercise due diligence and adopt all reasonable measures to avoid or minimize any delay.

This Order does not waive the Director's right to take further enforcement action against Respondent, or imply that the Director will not take such action, either for (1) the violations alleged herein if Respondent fails to fully comply with the conditions of this Order, or (2) violations not alleged herein based on any other relevant requirements of this Order, the law, rules, and permit(s). Issuance of this Order does not waive the Director's right to use the violations alleged herein, upon sufficient evidence, to show past violations in any subsequent enforcement proceeding.

This Order is executed and entered solely for the purpose of resolving and disposing of the alleged violations set forth herein and does not constitute a finding, adjudication, or evidence of a violation of any law, rule, or regulation by Respondent, and, by consenting to this Order, Respondent does not admit to any factual allegation contained herein or to any violations of State laws. In addition, this Order is not intended to create and it shall not be construed or otherwise deemed to recognize or create any claim, right, liability, estoppel, or waiver of rights in favor of any third-party or parties.

By agreement of the parties, this Order shall have the same force and binding effect as a Final Order of the Director, and shall become final and effective immediately upon its execution by the Director. The parties further agree that this

Order shall not be appealable by Respondent, and Respondent hereby waives its right to initiate any administrative or judicial hearing on the terms and conditions of this Order.

Unless modified or terminated by a subsequent order, or otherwise specified in writing by the Director, this Order shall be deemed satisfied and terminated upon full, complete, and timely performance of each and every condition set forth herein.

It is so ORDERED, CONSENTED, and AGREED to this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

FOR RESPONDENT:

BY: \_\_\_\_\_ (signature)

NAME: \_\_\_\_\_ (printed)

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

FOR THE DIVISION:

\_\_\_\_\_  
Richard E. Dunn,  
Director