



COMMONWEALTH OF VIRGINIA
State Board of Health
Order Number 10-2004-(09)

CONSENT ORDER ISSUED TO THE TOWN OF SMITHFIELD, OWNER OF THE
TOWN OF SMITHFIELD WATERWORKS

This is an Order issued by the State Board of Health (referred to below as the "Board") of the Commonwealth of Virginia under authority granted by Title 32.1 of the *Code of Virginia*, 1950, as amended, (the "*Code*") to the Town of Smithfield, owner of the Town of Smithfield Waterworks.

A. AUTHORITY

1. Section 32.1-12 of the *Code* authorizes the Board to adopt and enforce regulations protecting public health and welfare. Section 32.1-169 of the *Code* authorizes the Board to exercise supervision and control over all water supplies and waterworks in the Commonwealth, Section 32.1-170 authorizes the Board to adopt regulations governing waterworks, and Section 32.1-174 requires a written permit for the construction and operation of a waterworks. Section 32.1-167 of the *Code* defines "waterworks" to mean a system that serves piped water for drinking or domestic use to the public, at least fifteen connections, or an average of 25 individuals for at least 60 days out of the year. Consistent with and in order to implement this authority, the Board lawfully adopted the *Virginia Waterworks Regulations (Regulations)*, §12 VAC 5-590 *et seq.*, in 1974 and lawfully amended them in 1977, 1979, 1982, 1991, 1993, and 1995.
2. Sections 32.1-12 and 32.1-27 authorize the Board to enforce regulations it adopts, and Section 32.1-26 authorizes the Board to issue orders requiring compliance with any law or regulation administered by the Board. The Board may issue an order to a waterworks owner following an informal hearing held in accordance with §12 VAC 5-590-160 1 of the *Regulations* and Section 2.2-4019 of the *Code*. Sections 32.1-27, 32.1-174 and 32.1-176 provide that a violation of a regulation adopted, or an order issued, by the Board may result in payment of civil charges as ordered by the Board with the Owner's consent, revocation by the Commissioner of any applicable waterworks operation permit, or imposition of injunctive relief, civil penalties or criminal punishment by an appropriate state court.
3. Section 12 VAC 5-590 *et seq.* of the *Regulations* govern the design, maintenance, and operation of waterworks in the Commonwealth, and serve to implement the federal Safe Drinking Water Act of 1974, as amended in 1986 and 1996, 42 U.S.C. Section 300f *et seq.*, and the National Primary Drinking Water Regulations, 40 C.F.R. Part 141. The *Regulations* are codified in Title 12 of the Virginia Administrative Code (VAC) and are available from the Virginia Department of Health (VDH) upon request.

B. BACKGROUND

1. The Town of Smithfield Waterworks is located in the Town of Smithfield, Virginia. The Town of Smithfield Waterworks is a “waterworks”, as defined by Section 32.1-167 of the *Code* and by §12 VAC 5-590-10, and is a “community system,” as defined by §12 VAC 5-590-10 of the *Regulations*. The Town of Smithfield water system consists of five drilled wells, three elevated tanks, and the distribution system. The waterworks serves piped water for drinking and domestic use to approximately 6600 residents, and has 2100 connections. Operation of the waterworks is the subject of Permit Number 3093640, issued to the Town of Smithfield, on January 16, 2003.

C. FINDINGS

1. The available factual data support the conclusion, and the Town of Smithfield agrees, that the Town of Smithfield has violated the *Regulations* for:
 - A. Exceeding the non-acute Primary Maximum Contaminant Level (PMCL) for fluoride during the compliance periods of April 1, 2003 to September 30, 2004, pursuant to § 12 VAC 5-590-410, § 12 VAC 5-590-370 B and Table 2.2 of the *Regulations*.

D. ORDER FOR COMPLIANCE

1. So that the Waterworks may return to, and be continually operated in, compliance with the *Regulations*, the Town of Smithfield agrees to:
 - A. To collect quarterly fluoride samples from the Town of Smithfield waterworks and have them analyzed as required by § 12 VAC 5-590-370 B 1 d (2)(h) of the *Regulations*.
 - B. To provide quarterly public notice to residents of the Town of Smithfield waterworks (as long as the violation exists) as required by § 12 VAC 5-590-540 of the *Regulations*.
 - C. Submit a quarterly public notification completion form to VDH as required by §12 VAC 590-540 of the *Regulations*.
 - D. To reduce the concentration of fluoride entering the Town of Smithfield waterworks distribution system below the Primary Maximum Contaminant Level of 4.0 mg/L by installing reverse osmosis treatment equipment on each entry point which exceeds the Fluoride PMCL. The Town of Smithfield shall comply with the following compliance schedule, which assures that the projects will be completed in a timely manner:
 - (1) Confirm the selection of an engineering firm within 30 calendar days from the effective date of this Order.

- (2) Participate in a Preliminary Engineering Conference with VDH regarding the installation of reverse osmosis treatment within 60 calendar days from the effective date of this Order.
 - (3) Submit a Preliminary Engineering Report (PER) to VDH, which shall include a complete pump testing of at least two supply wells to confirm that the wells can produce adequate water quality and quantity consistent for reverse osmosis treatment within 300 calendar days from the effective date of this Order.
 - (4) Submit initial plans and specifications to VDH, within 90 calendar days of VDH approval of the Preliminary Engineering Report.
 - (5) Submit final plans and specifications within 90 calendar days from the date that VDH issues a comment letter regarding the initial plans and specifications.
 - (6) Submit a letter of substantial completion from the selected engineer and schedule VDH construction inspection within 18 months of VDH approval of the final plans and specifications.
 - (7) Complete start up of treatment equipment within 3 months of VDH issuance of an operating permit.
 - (8) The Town of Smithfield must have on staff or a contract with a Class IV operator (minimum) before beginning treatment.
 - (9) Submit an Operation and Maintenance manual for the fluoride treatment to VDH (pursuant to 12 VAC 5-590-640 of the *Regulations*) for review and approval within 60 calendar days after submittal of the certificate of substantial completion by a professional engineer. The manual must include the detailed description of the treatment process, sampling requirements, safety issues, emergency contact person and his or her telephone number, the manufacturer's literature, and the attendance requirement of the unlicensed and licensed operators and the frequency of their visits.
2. The Town of Smithfield knowingly WAIVES its right to further hearings or challenges, whether civil or administrative, on this Order and specifically WAIVES its right to a hearing under sections 2.2-4019 or 2.2-4020 as a predicate for this Order. The Town of Smithfield also knowingly WAIVES its right to written findings of fact and conclusions of law to support this Order. The Town of Smithfield consents to the issuance of the Order freely, voluntarily, and after an opportunity to consult counsel of its choice.
 3. This Order does not suspend, minimize, or otherwise The Town of Smithfield's obligation to comply with federal, state, or local laws and regulations. The Board waives no lawful means of enforcing the laws it administers, the regulations it has adopted, or this Order.

4. This Order shall become effective upon execution by the Board or its designee. Any request for modification of this Order must be submitted to VDH in writing to be considered for approval by the Board or its designee. The Board may revoke this Order in its discretion upon thirty days written notice to the Town of Smithfield.

It is SO ORDERED at Richmond, this _____ day of _____, 2004.

STATE BOARD OF HEALTH

Robert B. Stroube, M.D., M.P.H.
State Health Commissioner

CONSENT TO THE ORDER

The Owner voluntarily consents to the issuance of this Order:

Town of Smithfield.

By: 

Title/Rank or Office: _____

By signing above, the person so signing represents that he or she has been fully and duly authorized by the legal Owner of the subject waterworks to represent and bind the Owner in this matter, and to show the Owner's consent to the issuance of this Order.

Approved as to form: _____
William H. Riddick, III, Town Attorney

CERTIFICATION

COMMONWEALTH OF VIRGINIA

County/City of _____

The foregoing instrument was signed and acknowledged before me this _____ day of

_____, 2004, by _____,
(Print Date) (Print Name)

_____, Town of Smithfield, Virginia.
(Title/Rank)

Notary Public

My Commission expires: _____