



COMMONWEALTH of VIRGINIA

Karen Shelton, MD
State Health Commissioner

Department of Health
P O BOX 2448
RICHMOND, VA 23218

TTY 7-1-1 OR
1-800-828-1120

STATE BOARD OF HEALTH ORDER BY CONSENT ISSUED TO THE Town of Phenix FOR THE Town of Phenix Waterworks PWSID No. VA5037550

This is a Consent Order issued under authority granted by Va. Code § 32.1-26 between the State Board of Health and the Town of Phenix for the Town of Phenix waterworks for the purpose of resolving certain violations of the Public Water Supplies Law and the applicable regulations. This Consent Order supersedes and terminates the Order by Consent between the State Board of Health and the Town of Phenix that became effective on May 5, 2020.

Section A. Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned below:

1. "2020 Order" means the Order by Consent entered into between the Town of Phenix and the Board concerning the Town of Phenix waterworks that became effective on May 5, 2020.
2. "Board" means the State Board of Health, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code § 32.1-15.
3. "CAP" means Corrective Action Plan.
4. "Commissioner" means the State Health Commissioner, who supervises and manages the Department, as described in Va. Code §§ 32.1-16 and 17.
5. "Department" or "VDH" means the Department of Health, an agency of the Commonwealth of Virginia, as described in Va. Code § 32.1-16.
6. "DFO" means the ODW Danville Field Office located in Danville, Virginia.

7. "Notice of Alleged Violation" or "NOAV" means a type of notice of alleged violation issued under 12VAC5-590-110 of the Regulations.
8. "ODW" means the VDH Office of Drinking Water.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," which the Board is authorized to issue to require any person to comply with the provisions of any law administered by it, the Commissioner or the Department or any regulations promulgated by the Board or to comply with any case decision, as defined in § 2.2-4001, of the Board or Commissioner.
10. "Permit" means Waterworks Operation Permit VA5037550, which VDH ODW issued to the Town of Phenix under the Public Water Supplies law and Regulations on June 14, 2013.
11. "PMCL" means primary maximum contaminant level.
12. "Public Water Supplies law" or "PWSL" means Article 2, Chapter 6 of Title 32.1 of the Va. Code.
13. "Pure water" means water fit for human consumption that is (i) sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts and (ii) adequate in quantity and quality for the minimum health requirements of the persons served.
14. "PWSID" means Public Water System Identification.
15. "Regulations" means the Waterworks Regulations, 12VAC5-590-10, *et seq.*
16. "Town" means the Town of Phenix, a governmental entity that supplies water to persons within this Commonwealth from or by means of any waterworks.
17. "Town of Phenix Waterworks" means the waterworks located at 6860 Main Street in Phenix, Virginia in Charlotte County.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "Waterworks" means a system that serves piped water for human consumption to at least 15 service connections or 25 or more individuals for at least 60 days out of the year. Waterworks include all structures, equipment, and appurtenances used in storage,

collection, purification, treatment, and distribution of pure water except the piping and fixtures inside the building where such water is delivered.

Section B. Findings of Fact and Conclusions of Law

1. The Town owns and operates the Town of Phenix Waterworks. The Town of Phenix Waterworks consists of four drilled wells, hypo-chlorination treatment at each source, one 114,000-gallon standpipe-type storage tank, and the distribution system and associated components.
2. On June 14, 2013, ODW updated the Permit to operate the Town of Phenix Waterworks in compliance with the Regulations.
3. During the 2018 and 2019 quarterly monitoring periods, the Town reported to ODW laboratory results indicating the following:

Issued Date	Violation Type	Analyte Group	Monitoring Period
2/21/2020	02 MCL, Average	Combined Radium (-226 & -228)	10/1/2019
2/21/2020	02 MCL, Average	Gross Alpha, Excluding Radon & Uranium	10/1/2019
5/7/2018	02 MCL, Average	Gross Alpha, Excluding Radon & Uranium	1/1/2018

4. The Regulations, at 12VAC5-590-388.B¹ (Radiological compliance.), state in part, "Compliance with PMCLs will be determined based on the analytical results obtained at each entry point. If the sample result at one entry point exceeds the PMCL, then the owner is in violation of the PMCL."
5. The Regulations, at 12VAC5-590-340² (Compliance standards.) in Table 340.4, establish that the PMCL for combined radium-226 and radium-228 is 5 pCi/L.
6. The Regulations, at 12VAC5-590-340³ (Compliance standards.) in Table 340.4, establish that the PMCL for gross alpha particle activity (excluding radon and uranium) is 15 pCi/L.
7. ODW issued Warning Letters to the Town for the above-mentioned violations on June 21, 2019, September 9, 2019, and March 20, 2020. The Town responded to the June 21,

¹ The 2020 Order cited 12VAC5-590-370.D.3.c of the Regulations, which was the operative regulation at the time the 2020 Order became effective. The Regulations were amended, effective June 23, 2021.

² The 2020 Order cited 12VAC5-590-400.B.2 of the Regulations, which was the operative regulation at the time the 2020 Order became effective. The Regulations were amended, effective June 23, 2021.

³ The 2020 Order cited 12VAC5-590-400.B.3 of the Regulations, which was the operative regulation at the time the 2020 Order became effective. The Regulations were amended, effective June 23, 2021.

2019, Warning Letter by letter dated July 23, 2019. In the Town's response, it listed various steps that it was taking to address the maximum contaminant levels for gross alpha.

8. Va. Code § 32.1-172 and 12VAC5-590-190 of the Regulations state that no owner shall establish, construct, or operate any waterworks or water supply in the Commonwealth of Virginia without a written permit from the Commissioner, that conditions may be imposed on the issuance of any permit, and no waterworks may be operated in violations of these conditions.
9. The Board and the Town entered into the 2020 Order to address the violations of the Regulations set forth in paragraphs B.3 through B.7 above.
10. On May 5, 2020, the 2020 Order became effective. The purpose of the 2020 Order was to address PMCL violations for the radiological exceedances (gross alpha particle activity and combined radium 226 & 228) reported for Well No. 2 for the Town of Phenix Waterworks. The 2020 Order required that the Town submit for ODW's approval a corrective action plan (CAP) and schedule describing the actions that the Town has taken or plans to take to comply consistently with the PMCLs for gross alpha. The Town submitted a CAP and schedule, which ODW approved.
11. Pursuant to the 2020 Order's approved CAP and schedule, the Town was required to disconnect Well No. 2 from the Town of Phenix Waterworks upon a new well – Well No. 4 – being completed and accepted. Rather than disconnecting Well No. 2 after Well No. 4 was put into service, however, the Town kept Well No. 2 in operation, blending the output of Well No. 2 with the output from Well No. 1. Representatives of the Town stated that they found the water yield from Well No. 4 to be inadequate if Well No. 2 was no longer in use. To ensure that water quality standards are maintained, the Town has blended the output from Well No. 1 and Well No. 2, has both wells operating on a single timer, Town staff and operators perform physical checks three times per week to ensure pumping rates are within acceptable standards, and the Town has posted Standard Operating Procedures and instructions that address potential maintenance situations. Combining the outputs from Well 1 and Well 2 have resulted in radiological results, for 2022 and 2023 monitoring periods, being below the regulatory limits.
12. By letter dated December 1, 2023, DFO informed the Town's mayor of the following possible options for the Town with respect to Well No. 2:
 - a. The Town complies with the 2020 Order by disconnecting and abandoning Well No. 2 as soon as possible;
 - b. The Town continues its current operation but enters into a new consent order with the Board, which would replace the 2020 Order. The new consent order would set forth operational requirements to ensure the public health is protected; or

- c. The Town enters into a new consent order with the Board, which would replace the 2020 Order, and pursuant to which the Town would route water from Well No. 1 and Well No. 2 to the storage tank for the Town of Phenix Waterworks, thereby creating a new entry point with additional blending.

The letter stated that entering into a new consent order with the Town would be at the discretion of the Commissioner.

13. By letter dated February 1, 2024, Town Manager Walter T. Bailey informed DFO that the Town Council unanimously voted in favor of entering into a new consent order that would allow the Town of Phenix Waterworks to continue its current operation of Well No. 2.
14. Pursuant to Va. Code § 32.1-26, the Board may issue orders requiring compliance with any law or regulation administered by the Board.
15. Based on ODW records, ODW acknowledges the Town wishes to enter into a new Consent Order to address keeping Well No. 2, and to not abandon the well, and the Town will blend Well No. 2 water with Well No. 1. The Town understands that Well No. 2 can under no circumstances ever be used in operation alone because of the threat it potentially causes to public health.

Section C. Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 32.1-26 and 32.1-27, the Board orders the Town, and the Town agrees, that this Order supersedes and terminates the Order by Consent entered into by the Board and the Town that became effective on May 5, 2020 – the 2020 Order – and that the Town shall perform the actions described in Appendix A of this Order.

This Order shall remain in effect indefinitely, and until terminated in accordance with Section D.12 of this Order, and shall be complied with by the Town in order to protect the public health of the customers served by the Town of Phenix Waterworks.

Section D. Administrative Provisions

1. This Order addresses and resolves only those violations specifically identified in Section B of this Order. This Order shall not preclude VDH from taking any action authorized by law, including but not limited to taking any action authorized by law regarding additional, subsequent, or subsequently discovered violations or taking subsequent action to enforce this Order.
2. This Order does not suspend, minimize, or otherwise alter the Town's obligation to comply with federal, state, and local laws and regulations. The Board waives no lawful means of enforcing the laws it administers, the regulations it has adopted, or this Order.

3. The Town agrees that it has received fair and due process under the Administrative Process Act (Va. Code § 2.2-4000, *et seq.*) and waives its right to further hearings or challenges, whether civil or administrative, regarding the terms, conditions, or issuance of this Order and specifically waives its rights to a hearing under Va. Code §§ 2.2-4019 or 2.2-4020 as a predicate for issuance of this Order. The Town consents to the issuance of this Order freely, voluntarily, and after an opportunity to consult counsel of its choice.
4. Any plans, reports, schedules, or specifications submitted by the Town and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
5. To the fullest extent allowed by law, this Order is binding on the Town and its agents and legal representatives, heirs, devisees, executors, administrators, and successors in interest, jointly and severally as applicable.
6. The Board may modify, rewrite, or amend this Order with the consent of the Town. Additionally, the Board may modify, rewrite, or amend this Order on the Board's own motion pursuant to the Administrative Process Act, Va. Code §§ 2.2-4000, *et seq.*, after the Town has received notice and an opportunity to be heard. Any request by the Town for modification of this Order shall be submitted to VDH in writing to be considered for approval by the Board or its designee.
7. This Order shall not preclude the Board, the Commissioner, or the Department 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 this Order.
8. Failure by the Town to comply with any 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 Department as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
9. 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.
10. The Town 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 such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Town shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town shall notify the Department 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 this 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 by the Town to prevent or minimize such delay or noncompliance; and
- d. The timetable by which the Town will implement such measures and the date full compliance will be achieved.

Failure by the Town to notify the Department verbally within 24 hours and in writing within three business days of learning of any condition above, which the Town intends to assert will result in the impossibility of compliance, shall constitute a waiver by the Town of any claim to inability to comply with a requirement of this Order.

11. This Order shall become effective on the 15th day after a copy of it is mailed to Town of Phenix by certified mail. Va. Code § 32.1-26.
12. This Order shall continue in effect until:
 - a. The Commissioner or his designee terminates the Order after the Town has completed all of the requirements of this Order;
 - b. The Commissioner or his designee terminates the Order after finding that the circumstances that led to the Order's issuance no longer exist, and that the Order is no longer needed to enforce the PWSL and Regulations to protect the public health;
 - c. The Town petitions the Commissioner or his designee to terminate the Order after the Town has completed all of the requirements of the Order and the Commissioner or his designee approves the termination of the Order; or
 - d. The Commissioner or Board, in their sole discretion, terminates the Order upon 30 days written notice to the Town. Termination of the Order pursuant to this authority without the Town having satisfied all terms of the Order may result in VDH pursuing further enforcement related to the violations identified in the Order.
13. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition, other order, certificate, standard, or requirement otherwise applicable.
14. The undersigned representative of the Town certifies that they are a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally

bind the Town to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Town.

15. By its signature below, the Town voluntarily agrees to the issuance of this Order.

It is SO ORDERED this day, May 6, 2024.

STATE BOARD OF HEALTH
Commonwealth of Virginia

Karen Shelton, M.D.
Karen Shelton, M.D.
State Health Commissioner

Town of Phenix voluntarily agrees to the issuance of this Order.

Walter T. Bailey

Name

4-11-24

Date

Town Manager

Title



Signature

Notary Public:

Commonwealth of Virginia

City/County of Charlotte

The foregoing document was signed and acknowledged before me this 11 day of

April, 2024, by Walter T. Bailey who is

Town Manager of the Town of Phenix, signing on behalf

of the entity.

Rhonda L. Williams

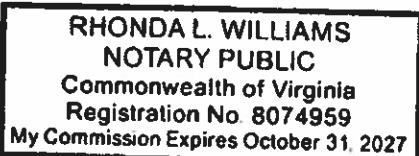
Notary Public

8074959

Registration No.

My commission expires: 10/31/2027

Notary seal:



Appendix A **Corrective Action Plan and Schedule for Compliance**

Town of Phenix shall:

1. Within 30 days of the effective date of this Order, submit to ODW for review and approval a corrective action plan (CAP) and schedule that describes the actions that the Town plans to take to comply with the Regulations for radiological activity which has been traced to Well No. 2. Items that must be addressed in the CAP include:

 - Annual radiological monitoring from the combined Well No. 1 and Well No. 2 entry point - EP003.
 - The Town is to maintain and utilize the Well 2 Operation Manual and Control Standard Operating Procedure (SOP). Within this SOP, Town personnel and contractors are instructed to physically check Well No. 1 and Well No. 2 operability at least three times per week, including starters, flow rates and timers. The Town must keep a copy of the SOP at each well building and at the Town Office.
 - If Well No. 1 is taken out of service, the Town must take Well No. 2 out of service.
 - The Town is required to submit to ODW a monthly operation report, detailing the total water usage for all sources. Within this report, the productivity of Well No. 1 and Well No. 2 must be clearly compared, illustrating their mixture ratios and contributions to the system. Should Well No. 1 fail to contribute a minimum of ten percent of their combined production, the Town must evaluate the wells and repair them if necessary. Should Well No. 1's yield diminish, then the Town must throttle the yield of Well No. 2 accordingly.
2. Upon ODW approval, implement the CAP in accordance with the schedule under the terms of this Order. The approved CAP and Schedule shall become a part of, and enforceable under, the terms of this Order. If the Town does not present a CAP and Schedule with terms that are acceptable to ODW such that ODW cannot approve it, and the Town and ODW are unable to reach agreement on the terms of a mutually agreeable CAP and Schedule, the Board or Commissioner may terminate this Order subject to Section D.12.d of this Order, which may result in further enforcement action against the Town as stated therein.
3. Review the SOP at least annually. If the Town would like to revise the SOP, it must submit the proposed revisions to ODW for review and approval prior to implementation.
4. Never operate Well No. 2: (1) without mixing its water supply in accordance with the SOP, (2) in violation of this Order, or (3) in violation of the PWSL or the Regulations.
5. In the event of the Town of Phenix Waterworks having a radiological PMCL exceedance (gross alpha particle activity and combined radium 226 & 228), have a reassessment of treatment management studied by a professional engineer(s) and present plans/designs to address the exceedance to ODW for review and approval within 30 days of the exceedance.

6. Mail all submittals and reports required by this Order to:

**Timothy "Chad" Merricks, Environmental Health Compliance Specialist
VDH-ODW Danville Field Office
211 Nor Dan Drive, Suite 1040
Danville, Virginia 24540**