

February 28, 2012

The regular meeting of the Council of the City of Martinsville, Virginia, was held on February 28, 2012, in Council Chambers, Municipal Building, at 7:30 PM, with Mayor Kim Adkins presiding. Council Members present included: Mayor Kim Adkins, Vice Mayor Kimble Reynolds, Gene Teague, Mark Stroud and Danny Turner. Staff present included: Leon Towarnicki, Interim City Manager, Brenda Prillaman, Eric Monday, Linda Conover, Wayne Knox, Donna Odell, Bobby Phillips and Marshall Thomas.

Following the invocation by Vice Mayor Kimble Reynolds and Pledge to the American Flag, the Mayor welcomed everyone to the meeting.

Minutes: On a motion by Gene Teague, seconded by Mark Stroud, with a 5-0 vote, Council approved the minutes of the January 24, 2012 meeting, February 13, 2012 tour, and February 13, 2012 meeting.

Recognitions: City Employee Service Awards: Mayor Adkins read the following list recognizing city employees eligible for Service Awards-January 1 through March 31, 2012:

Employee Name	Years of Service	Department
Leon Towarnicki	30	Interim City Mgr
Mike Scaffidi	20	Public Works
Donald Lucado	20	Fire
William Akers	15	Fire
Robert Jones	10	Police
Cynthia Carson	10	Utility Billing
William Wilson	10	Public Works
Kim Boyd	10	Comm of Revenue
Shannon Agee	10	Public Works
Daniel Brannock	5	Sheriff's Office

Mayor Adkins then presented a proclamation to Opal R. Hall, recognizing her 50 year career with the court system.

Staff report on Uptown CDBG projects: Wayne Knox presented the following update to Council:

We are in the midst of the CDBG effort and picking up some steam. Since July of 2011, we have been able to put together the plans for several facets of the revitalization effort:

- Façade renderings for fourteen (14) of the twenty – three (23) storefronts. A second façade round for the project area will be scheduled after construction begins on the first round.
- Estimates for the proposed upgrades completed
- Plans and specs for the restoration of the Historic Henry County have been completed and bid awarded. This is a project of the Virginia Garden Club. Actual construction should commence in the month of March.
- Concepts for two pocket parks in the CDBG project, which will transform blighted lots into public spaces. Staff is working with property owners for final concept plans, and potential users of the space to gauge needs.
- Harvest Grant:
- Planning for the upgrading of the Depot Street parking lot is complete; specs for the actual construction should be ready for bidding in late March. The upgrading will include landscaping, new lighting, and a pedestrian friendly staircase with an overlook where people can talk before a show at TheatreWorks or a class at New College Institute. You have already seen the relocation of Depot Street itself. Some additional curb and gutter work is underway along Ford Street.
- Another interesting undertaking is to upgrade the rear green area of the Historic Henry County Courthouse, better known as the North Lawn. Public input has been conducted and now it is time for a design of that area, in order to be as closely coordinated with the restoration work taking place on the other three sides of the Courthouse.
- The planning for a comfort station along Depot Street, near the spur trail, is complete and actual delivery of the structure is scheduled for late April. Some exterior enhancements to the pre – fabricated structure are being finalized. These enhancements are to give it a train depot look.
- Another facet of the Uptown project is wayfinding. This endeavor is being led by the Gateway - Wayfinding Sub -Committee of the Uptown management team. Wayfinding consists of signage that points to areas of interest strategically placed at intersections and gateways within and outside of the Uptown. This will involve the purchase of poles and fabrication of actual signage directing people to the “hot spots” of our community, such as the municipal building, Visitors Center, VMNH, Studio 107, Artisans Center, FAHI, PAA, and New College Institute, just to name a few.
- The upgrading of some of the gateways into our Uptown has been moving forward, also. Due to budgetary constraints, plans for these upgrades have to be made simple, pleasant, but also welcoming to motorists and pedestrians alike. We are also looking for some semblance of uniformity in the crosswalks and landscaping. One of the first gateways under construction is the intersection of Church Street and Church Street Extension led by Activate MHC in partnership with the YMCA, City, and other organizations. Utilities have been moved and further construction will commence as weather permits. Other intersections will be addressed, such as Market and Fayette Street, Market and Church Streets, as well as Market and Starling Avenue and Starling Avenue and Memorial Boulevard.

These many facets of the Uptown CDBG Project may seem like a great deal of activity to cover within the tight timelines that we have ... and you are correct. Staff and our partners, notably the Harvest Foundation, the Department of Housing and Community Development, Martinsville Uptown Revitalization Association, along with the stakeholders who make up our management team and committees, are up to the task.

February 28, 2012

DEQ Consent Order: Leon Towarnicki briefed Council on what occurred with the 2011 City Water Treatment Plant fluoride spill noting that the City moved quickly and professionally and the City Attorney has negotiated to get the fine amount lowered. Safety Officer Bobby Phillips spoke about specifics of the occurrence and future steps that will be taken. On a motion by Mark Stroud, seconded by Gene Teague, with a 5-0 vote, Council authorized the City Manager to sign the Consent Order and make payment.

 <p>COMMONWEALTH OF VIRGINIA</p> <p>DEPARTMENT OF ENVIRONMENTAL QUALITY Blue Ridge Regional Office www.deq.virginia.gov</p> <p>STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO THE CITY OF MARTINSVILLE FOR THE MARTINSVILLE WATER TREATMENT PLANT Unpermitted Discharge</p> <p>SECTION A: Purpose</p> <p>This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the City of Martinsville, regarding the Martinsville Water Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.</p> <p>SECTION B: Definitions</p> <p>Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:</p> <ol style="list-style-type: none"> "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19-5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7. 	<p>Consent Order The City of Martinsville, Martinsville Water Treatment Plant, Unpermitted Discharge Page 2 of 8</p> <ol style="list-style-type: none"> "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10 "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means: <ol style="list-style-type: none"> Any addition of any pollutant or combination of pollutants to surface waters from any point source; or Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. "Facility" or "Plant" means the Martinsville Water Treatment Plant located at 302 Clevelev Drive, Martinsville, Virginia, which supplies drinking water for the residents and businesses of the City of Martinsville. "The City" means the City of Martinsville, a political subdivision of the Commonwealth of Virginia. The City is a "person" within the meaning of Va. Code § 62.1-44.3. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15. "O&M" means operations and maintenance. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 <i>et seq.</i>)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an 	<p>Consent Order The City of Martinsville, Martinsville Water Treatment Plant, Unpermitted Discharge Page 3 of 8</p> <p>alteration of the physical, chemical, or biological property of state waters or a ditch or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to pollute; (ii) the discharge of untreated sewage by any owner into state waters; and contributing to the contamination of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.</p> <ol style="list-style-type: none"> "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 <i>et seq.</i> "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 <i>et seq.</i>) of Title 62.1 of Va. Code. "State waters" means all water, on the surface and under the ground, wholly or partly within or bordering the Commonwealth or within its jurisdiction, including wetland; Va. Code § 62.1-44.3. "Va. Code" means the Code of Virginia (1950), as amended. "VAC" means the Virginia Administrative Code. "VPDES" means Virginia Pollutant Discharge Elimination System. <p>SECTION C: Findings of Fact and Conclusions of Law</p> <ol style="list-style-type: none"> The City owns and operates the Plant for the purpose of treating and providing drink water to the residents and businesses of the City. Jones Creek and its tributaries are located in the Roanoke and Yadkin River Basins. Jones Creek is listed in DEQ's 2010 305(b)/303(d) Water Quality Assessment Integ Report as impaired for E, Coli. On October 16, 2011, the Facility had a release of fluoroisilic acid. The release was reported to the Department on October 17, 2011. On October 18, 2011, Department staff responded to a reported fish kill on Jones Cr in Martinsville, Virginia. Department staff observed a fish kill, estimated using American Fisheries Society methods, of 4,445 fish. The fish kill was observed originating from the storm drain outfall at the Facility, and continuing downstream to confluence of Jones Creek and Beaver Creek covering approximately 3700 meters (3 miles). The observed fish kill coincides in time and location with the October 16, 2011 relea fluoroisilic acid, which entered Jones Creek from the storm drain at the Facility.
<p>Consent Order The City of Martinsville, Martinsville Water Treatment Plant, Unpermitted Discharge Page 4 of 8</p> <ol style="list-style-type: none"> On December 6, 2011, the City submitted a document that described the incident that resulted in the unpermitted discharge. Fluoroisilic acid ("the Acid") is stored in a 6,000 gallon above ground storage tank. The tank is situated inside a containment area, as required. A transfer pump, situated inside the containment area, is used to move the Acid from the storage tank to the water purification process. Due to the extremely corrosive nature of the Acid, the transfer pump failed resulting in a release of the Acid into the containment area. The containment area contains a 2 inch valve which allows for the draining of the containment area when rain water has accumulated. Prior to October 16, 2011, the valve had been opened and inadvertently left open. Consequently, the Acid spilled onto the ground and flowed off-site and into state waters. The submittal also described the spill response initiated by the City, the remediation actions implemented to clean-up the spill, and the review and modification of the City's operations and maintenance procedures at the Facility to ensure that an unpermitted discharge does not occur in the future. 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; or otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses." Va. Code § 62.1-44.15(e) states that a VPDES permit is a "certificate" under the statute. The Regulation, at 9 VAC 25-31-50, also states 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, or any noxious or deleterious substances; or otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses. Va. Code § 62.1-44.15(f) states that a VPDES permit is a "certificate" under the statute. The Department has issued no permits or certificates to the City of Martinsville for the Martinsville Water Treatment Plant. Jones Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law. Based on the City's report of October 17, 2011 detailing an October 16, 2011 release, the results of the October 18, 2011 fish kill investigation, and the documentation submitted on December 6, 2011, the Board concludes that the City has violated Va. Code § 62.1-44.3 and 9 VAC 25-31-50, by discharging fluoroisilic acid from the Facility into Jones Creek which resulted in a fish kill, as described in paragraph C(3) through C(6), above. The City has submitted documentation that verifies that the violation as described in paragraphs C(3) through C(6), above, has been corrected. 	<p>Consent Order The City of Martinsville, Martinsville Water Treatment Plant, Unpermitted Discharge Page 5 of 8</p> <p>SECTION D: Agreement and Order</p> <p>Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the City of Martinsville, and the City of Martinsville agrees to:</p> <ol style="list-style-type: none"> Pay a civil charge of \$13,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order; Reimburse DEQ \$2,001.21 for DEQ fish kill investigative costs within 30 days of the effective date of the Order; Reimburse DGIF \$948.50 for DGIF fish replacement costs within 30 days of the effective date of the Order. <p>Payment shall be made by separate checks, certified checks, money orders or cashier's checks payable to:</p> <ol style="list-style-type: none"> the "Treasurer of Virginia" for the civil charge and for the DEQ fish kill investigative costs (one check); the "Department of Game and Inland Fisheries" for the DGIF fish replacement costs (one check) <p>and delivered to:</p> <p>Receipts Control Department of Environmental Quality Post Office Box 1104 Richmond, Virginia 23218</p> <p>The City of Martinsville shall include its Federal Employer Identification Number (FEIN) 54-6001415 with the payments and shall indicate that the payment of the civil charge is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF); that payment of the DEQ fish kill investigative costs is for reimbursement of DEQ expenditures; and that the payment of the DGIF fish replacement costs is for the Department of Game and Inland Fisheries.</p> <p>SECTION E: Administrative Provisions</p> <ol style="list-style-type: none"> The Board may modify, rewrite, or amend this Order with the consent of the City for good cause shown by the City, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4009 <i>et seq.</i>, after notice and opportunity to be heard. 	<p>Consent Order The City of Martinsville, Martinsville Water Treatment Plant, Unpermitted Discharge Page 6 of 8</p> <ol style="list-style-type: none"> 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. For purposes of this Order and subsequent actions with respect to this Order only, the City admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein. The City consents to venue in the Circuit Court of the City of Martinsville for any civil action taken to enforce the terms of this Order. The City declares it has received fair and due process under the Administrative Process Act and the State 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 fact or 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. Failure by the City 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. 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. The City shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquakes, 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 City shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City 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: <ol style="list-style-type: none"> the reasons for the delay or noncompliance; the projected duration of any such delay or noncompliance; the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

<p>Consent Order The City of Martinsville, Martinsville Water Treatment Plant, Unpermitted Discharge Page 7 of 8</p> <p>d. the timetable by which such measures will be implemented and the date full compliance will be achieved.</p> <p>Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend 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.</p> <p>9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.</p> <p>10. This Order shall become effective upon execution by both the Director or his designee and the City. Nevertheless, the City agrees to be bound by any compliance date which precedes the effective date of this Order.</p> <p>11. This Order shall continue in effect until:</p> <p>a. The Director or his designee terminates the Order after the City has completed all of the requirements of the Order;</p> <p>b. The City 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</p> <p>c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the City.</p> <p>Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the City from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.</p> <p>12. Any plans, reports, schedules or specifications attached hereto or submitted by the City 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.</p> <p>13. The undersigned representative of the City 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 the City to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the City.</p> <p>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</p>	<p>Consent Order The City of Martinsville, Martinsville Water Treatment Plant, Unpermitted Discharge Page 8 of 8</p> <p>representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.</p> <p>15. By its signature below, the City voluntarily agrees to the issuance of this Order.</p> <p>And it is so ORDERED this _____ day of _____, 2012.</p> <p style="text-align: right;">_____ Robert J. Weld, Regional Director Department of Environmental Quality</p> <p>The City of Martinsville voluntarily agrees to the issuance of this Order.</p> <p>Date: <u>3/2/2012</u> By: <u>Gene Teague</u>, Interim City Manager Leon Towarnicki City of Martinsville</p> <p>Commonwealth of Virginia City/County of <u>Martinsville</u></p> <p>The foregoing document was signed and acknowledged before me this <u>2nd</u> day of <u>March</u>, 2012, by Leon Towarnicki who is the Interim City Manager of the City of Martinsville on behalf of the Council.</p> <p style="text-align: center;"><u>Karen G. Walker</u> Notary Public <u>158349</u> Registration No. My commission expires: <u>5-31-15</u></p> <p>Notary seal: </p>
---	--

Consent agenda: On a motion by Gene Teague, seconded by Kimble Reynolds, with a 5-0 vote, Council approved the following consent agenda:

ORG	OBJECT	DESCRIPTION	BUDGET ADDITIONS FOR 2/28/12	DEBIT	CREDIT
FY12					
GENERAL FUND					
01100908	480410	Miscellaneous - Donations/Fire Department			100
01321102	505500	Fire Dept - Travel & Training private donation		100	
01100909	490104	Advance/Recovered Costs			375
01216076	506001	Clerk of Circuit Court - Office supplies courtroom computer replacement per Judge Greer		375	
01100909	490104	Advance/Recovered Costs			12,813
01812242	506067	Misc. Expense - RADAR Transit Program reimbursement of fuel expenses		12,813	
Total General Fund:				13,288	13,288

Business from floor: none

Council comments: Teague-reminded citizens Fast Track trade show is next week.

Interim City Manager comments: noted that former Gov. Kaine will hold a roundtable discussion at NCI for those interested.

Closed session: In accordance with Section 2.1-344 (A) of the Code of Virginia (1950, and as amended) and upon a motion by Kimble Reynolds, seconded by Mark Stroud, with the following 5-0 recorded vote: Adkins, aye; Teague, aye; Reynolds, aye; Stroud, aye; and Turner, aye, Council convened in Closed Session, for the purpose of discussing the following matters: (A) Appointments to Boards and Commissions as authorized by Subsection 1. (B) A personnel matter as authorized by Subsection 1. At the conclusion of Closed Session, each returning member of Council certified that (1) only public business matters exempt from open meeting requirements were discussed in said Closed Session; and (2) only those business matters identified in the motion convening the Closed Session were heard, discussed, or considered during Session. On a motion by Danny Turner, seconded by Gene Teague,

February 28, 2012

with the following recorded 5-0 vote: Adkins, aye; Reynolds, aye; Teague, aye; Stroud, aye; and Turner, aye, Council returned to Open Session.

Action taken: Board appointments: (1) Tonya Jones, 752 Stultz Rd., appointed to a 3yr. term ending 8/31/14 on the Pittsylvania County Community Action Agency Board on a motion by Reynolds, seconded by Teague, with a 5-0 vote. (2) Donna Odell, 96 Diana Ct., re-appointed to a 3 yr. term ending 4/30/15 on a motion by Adkins, seconded by Teague, with a 5-0 vote.

There being no further business, the meeting adjourned at 8:50pm.

Brenda Prillaman
Clerk of Council

Kim Adkins
Mayor