COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
THE TOWN OF ALBERTA
FOR
ALBERTA WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0026816

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Town of Alberta, regarding the Alberta Wastewater Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

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

1. "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.

2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "DMR" means Discharge Monitoring Report.

5. "Facility" or "Plant" means the Alberta Wastewater Treatment Plant, located at 8794 Boydton Plank Road in Alberta, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Alberta.

6. "Town" means the Town of Alberta, a political subdivision of the Commonwealth of Virginia. The Town is a "person" within the meaning of Va. Code § 62.1-44.3.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

8. "O&M" means operations and maintenance.

9. "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.

10. "Permit" means VPDES Permit No. VA0026816, which was issued under the State Water Control Law and the Regulation to the Town of Alberta on January 20, 2004, expired on January 19, 2009, was reissued on March 5, 2009 and will expire on March 4, 2014.

11. "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 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

12. "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 or injurious 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 alteration of the physical, chemical, or biological property of state waters or a discharge 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 cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

14. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

17. "Va. Code" means the Code of Virginia (1950), as amended.

18. "VAC" means the Virginia Administrative Code.

19. "VPDES" means Virginia Pollutant Discharge Elimination System.

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. The Town owns and operates the Plant in Alberta, Virginia. The Permit allows the Town to discharge treated sewage and other municipal wastes from the Plant, to Roses Creek, in strict compliance with the terms and conditions of the Permit.

2. Roses Creek is located in the Chowan River Basin. Roses Creek is listed in DEQ's 305(b) report as impaired for Recreation Use during the 2008 305(b)/303(d) Water Quality Assessment. The wastewater discharge from the Plant is listed among the potential sources of the impairment.

3. In submitting its DMRs, as required by the Permit, the Town has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for Copper (Cu) for the months of July 2008 through December 2008. The Town indicated that it has looked at many options to determine the source of the copper exceedences, such as flow rate, hardness levels of the water supply, and evaluating businesses and their potential discharges to the system.

4. The Town was issued two Warning Letters and a Notice of Violation for the copper exceedances as follows: WL No.W2008-10-P-1001, issued October 1, 2008; WL No. W2008-11-P-1101, issued November 4, 2008; and NOV No. W2009-01-P-0001, issued February 6, 2009. In addition, the Town was issued NOV No. W2009-08-P-0002 on August 10, 2009 for Cu exceedences and failure to submit the O&M Manual; issued NOV No. W2009-11-P-0003 on November 13, 2009 for Cu, Total Kjeldahl Nitrogen (TKN), Ammonia as Nitrogen exceedences, late submittal of the O&M Manual and late submittal of the Industrial Pretreatment Program/Significant Discharger Survey; issued NOV No. W2010-02-P-0007 on February 19, 2010 for Cu exceedences; and issued NOV No. W2010-05-P-0003 on May 14, 2010 for Cu, TKN and Carbonaceous Biological Oxygen Demand (CBOD) exceedences.

5. The Town responded to the Warning Letters and Notices of Violation by submitting a plan and schedule of corrective action to address the copper exceedances. The plan and schedule are incorporated in Appendix A of the Order. The Town explained that failure to submit the O&M Manual by the due date was an oversight; and the Town thought that the information included in a previous letter addressed the requirements of the Significant Discharger Survey. DEQ received both the O&M Manual and Significant Discharger Survey information approximately 2 months after the due dates. The TKN, Ammonia as Nitrogen, and CBOD exceedences were due to a plant upset and operational issues at the Plant.

6. Va. Code § 62.1-44.5 states that: "Except 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."

7. 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.

8. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

9. The Department has issued no permits or certificates to the Town other than VPDES Permit No. VA0026816.

10. Roses Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

11. Based on the results of the DMRs submitted for the months of July 2008 through January 2010 and March 2010, the Board concludes that the Town has violated the Permit and/or Va. Code §62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(5), above.

12. In order for the Town to return to compliance, DEQ staff and representatives of the Town have agreed to the Schedule of Compliance and Interim Efflfuent Limits, which are incorporated in Appendices A and B of this Order respectively.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Town, and the Town agrees to:

1. Perform the actions described in Appendices A and B of this Order; and

2. Pay a civil charge of **$3,780** within 30 days of the effective date of the Order in settlement of the violations cited in 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, Virginia 23218

The Town shall include its Federal Employer Identification Number (FEIN) 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 this Order with the consent of the Town for good cause shown by the Town, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, 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, the Town admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. The Town 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. The Town 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.

6. Failure by the Town 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. 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 occurrence. The Town shall show 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 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 above, which the Town 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 the Town. Nevertheless, the Town 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. The Town 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 the Town.

    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, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or 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.

13. The undersigned representative of the Town 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 Town to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Town.

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

And it is so ORDERED this 27th day of September, 2010.

Michael P. Murphy, Regional Director
Department of Environmental Quality

The Town of Alberta voluntarily agrees to the issuance of this Order.

Date: June 17, 10 By: Melissa B. Parrish Mayor
(Person) (Title)

Commonwealth of Virginia
City/County of Brunswick

The foregoing document was signed and acknowledged before me this 17TH day of June, 2010, by Melissa Parrish who is Mayor of the Town of Alberta, on behalf of the Town.

Linda Helm
Notary Public

322886
Registration No.

My commission expires: 12/31/10

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

The Town of Alberta shall:

1. **By no later than July 10, 2010**, notify DEQ of the wastewater treatment alternative chosen from the Dewberry & Davis preliminary engineering report ("PER") that has evaluated the cost-effectiveness for the Town to: 1) upgrade the WWTP; 2) construct a force main to discharge the Town's wastewater to the Lawrenceville WWTP; or 3) construct a force main to connect to the Regional Jail wastewater collection system, that will be discharging to the Town of Lawrenceville's WWTP.

2. **By July 15, 2010**, notify DEQ of the status of the installation of the aeration/corrosion inhibiting system in the Town's potable water supply tank as described in the Compliance Schedule dated May 8, 2009 from B&B Consultants, Inc. If the installation of the system has not been completed, submit a proposed date of installation completion, comply with the proposed date and begin operation for the system.

3. **As soon as possible, but by no later than October 29, 2010**, apply for funding to construct the selected sewage treatment system to bring the Town's WWTP into compliance with the final effluent limits in the Permit.

4. **Upon receipt of notification of funding approval, but by no later than June 30, 2011**, submit to DEQ for review and approval final plans and a schedule to construct the selected alternative to bring the Town's WWTP into compliance with the final effluent limits in the Permit.

5. Unless otherwise specified in this Order, The Town of Alberta shall submit all requirements of Appendix A of this Order to:

Cynthia Akers
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949-A Cox Road
Glen Allen, VA 23060
Phone: (804) 527-5079
Fax: (804) 527-5106
e.cynthia.akers@deq.virginia.gov

APPENDIX B

A. INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the effective date of this Order, and lasting until completion of the approved corrective action plan, as envisioned by paragraph 4 of Appendix A, the Town is authorized to discharge from outfall serial number 001 in accordance with the Permit, except that with respect to Copper, the limit described below shall apply.

   Such discharges shall be limited and monitored by the permittee as specified below:

   These requirements shall be construed in light of the Board's Permit Regulation 9 VAC 25-31-10 et seq.

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
	MONTHLY AVERAGE	WEEKLY AVG.	MINIMUM	MAXIMUM	FREQUENCY	SAMPLE TYPE
Total Recoverable Copper	NL	NL	NA	NA	1/Month	Grab

"NA" means not applicable.