



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

West Central Regional Office

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**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
THE COUNTY OF ALLEGHANY
VPDES Permit No. VA0090671**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) by the State Water Control Board to the County of Alleghany for the purpose of resolving certain alleged violations of State Water Control Law and the Regulations.

SECTION B: Definitions

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

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
7. "Regulations" means the Virginia Pollution Discharge Elimination System Permit

7. “Regulations” means the Virginia Pollution Discharge Elimination System Permit Regulation, 9 VAC 25-31-10 *et seq.*
8. “County” means the County of Allegheny, Virginia, a political subdivision of the Commonwealth of Virginia.
9. “Infiltration” means the water entering a sewer system and service connections from the ground, through such means as, but not limited to, pipes, pipe joints, connections, or manhole walls.
10. “Inflow” means the water discharged into a sewer system, including service connections, from such sources as, but not limited to: roof leaders; cellars; yard and area drains; foundation drains; cooling water discharges; drains from springs and swampy areas; manhole covers; cross connections from storm sewers; surface run-off; street wash waters; or drainage.
11. “Inflow and Infiltration” or “I&I” means the total quantity of water from both infiltration and inflow without distinguishing the source.
12. “Bypass”, as defined at 9 VAC 25-31-10, means the intentional diversion of waste streams from any portion of a treatment facility.
13. “Sanitary Sewer Overflow”, “SSO”, and “Overflow” means any discharge to state waters from the County’s Sanitary Sewer System through point sources not specified in any VPDES permit, as well as any release of wastewater from the County’s Sanitary Sewer System to public or private property that does not reach state waters, such as a release to a land surface or structure that does not reach state waters; provided, however, that wastewater backups into buildings that are caused by blockages, flow conditions, or malfunctions in a building lateral, other piping or conveyance system that is not owned or operationally controlled by the County are not SSOs for purposes of this Consent Order. The burden of proving that the conditions of this exclusion are met for a particular overflow will be on the County.
14. “Sanitary Sewer System” means the wastewater collection and transmission system owned or operated by the County designed to collect and convey municipal sewage (domestic, commercial and industrial wastewater) to a wastewater treatment plant.

SECTION C: Findings of Fact and Conclusions of Law

1. The Town of Clifton Forge holds VPDES Permit No. 0022772 for operation of the Clifton Forge Sewage Treatment Plant (“Plant”). On March 11, 1999, the Board issued a Consent Special Order (“1999 Order”) to the County, the City of Clifton Forge, and the Town of Iron Gate (“Iron

Gate”) regarding wastewater collection, conveyance, and treatment in the area served by the Plant. The 1999 Order included separate appendices containing different Schedules of Compliance for each jurisdiction. Appendix B of the 1999 Order contained requirements for the County.

2. Between 1992 and 2003, the pump stations at Clifftondale Park and Selma in the County overflowed a total of 150 times, for an average of approximately one overflow per month. Between 2001 and 2003, these pump stations overflowed a total of 32 times (about 0.9 per month), with an estimated total overflow volume of 2.8 million gallons. During 2004, the County reported eight overflows (about 0.7 per month) at these pump stations. During 2005, the County reported thirteen overflows (about 1.1 per month) at these pump stations. The total number of overflows reported from 1999 through 2005 was 69.
3. The 1999 Order required the County to construct a new sewage treatment plant (“New STP”) by December 31, 2004. DEQ issued VPDES Permit No. VA0090671 to the County for the New STP in September 2001. Construction on the New STP has not been started for reasons including problems related to acquisition of the site of the proposed plant, financial and administrative problems with construction of a new bridge necessary for access to the proposed plant site, and plant design revisions necessary to meet new effluent nutrient standards.
4. The 1999 Order also required the County to: “Continue I&I reduction efforts to achieve a 25% reduction in total sewage flows from a 1.5 inch 24-hour storm by December 31, 2006, as compared to April-May 1998 data.”
5. The 1999 Order was amended on December 13, 2001 (“2001 Amendment”) to extend the deadline for submission of plans and specifications for the New STP. The amended deadline was June 24, 2002. As of January 26, 2006, such plans and specifications had not been submitted.
6. On July 20, 2004, the County Board of Supervisors approved negotiations for the purchase of land on which to locate the New STP.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Code §62.1-44.15(8a) and (8d), orders the County and the County agrees, to perform the actions described in Appendix A of this Order. The Board also orders, and the County agrees, that this Order supersedes those provisions of the 1999 Order and the 2001 Amendment that pertain to the County. In addition, the Board orders the County, and the County voluntarily agrees, to pay a civil charge of Fourteen Thousand Nine Hundred Dollars (\$14,900.00) within 30 days of the effective date of this 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”. Payment shall be sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, VA 23240

Payment shall include the County's federal identification number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the County, for good cause shown by the County or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the facility as may be authorized by law; or (c) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the County admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The County 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 County declares that it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.* and 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 judicial review of, any action taken by the Board or the Director to enforce this Order.
6. Failure by the County 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 County shall be responsible for failure to comply with its obligations under this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County shall notify the WCRO Regional Director in writing 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 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 WCRO Regional Director within forty-eight hours of learning of any condition above, which the County 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. Any plans, reports, schedules or specifications attached hereto or submitted by the County 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.
11. This Order shall become effective upon execution by both the Director or his designee and the County. Notwithstanding the foregoing, the County agrees to be bound by any compliance dates that precede the effective date of this Order.
12. This Order shall continue in effect until either: a) the County 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 this Order, or b) the Director or Board terminates the Order in his or its sole discretion upon 30 days notice to the County. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. By the signature of an authorized official below, the County voluntarily agrees to the issuance of this Order.
14. The undersigned representative of the County certifies that he or she is a responsible official

And it is so ORDERED this 12th day of SEPTEMBER 2006.

FOR Steven A. Dietrich
David K. Paylor, Director
Department of Environmental Quality

The County of Alleghany voluntarily agrees to the issuance of this Order.

By: George C. Sneed
Date: 4/19/06

Commonwealth of Virginia

City/County of Alleghany

The foregoing instrument was acknowledged before me this 19th day of February, 2006,
by George C. Sneed, who is Interim County Administrator of the
County of Alleghany, on behalf of said County.

Melissa A. Landis
Notary Public

My commission expires: May 31, 2008

APPENDIX A

1. **Property Acquisition.** Not later than June 1, 2006, the County shall submit to DEQ evidence of an irreversible commitment to obtain title to property on which the New STP will be constructed. Such evidence may consist of a deed to the property, an executed contract for purchase of the land, or another similar document.
2. **Pump Station Evaluation Report and Plan.** Not later than August 31, 2006, the County shall submit to DEQ a report describing the results of an evaluation of the probable effects of enlarging piping in the County's pump stations in order to increase pump station capacity. The report shall list the specific possible changes that were evaluated, the increase, if any, in capacity that those changes would yield, and the effects that any resulting increased pumping rates would have on downstream pump stations, including those in Clifton Forge. If the evaluation indicates that making such improvements would be expected to significantly reduce the overall number of overflows in the Sanitary Sewer Systems of the County and Clifton Forge, then not later than October 31, 2006, the County shall submit to DEQ for review and approval a plan and schedule for increasing pump station capacity accordingly.
3. **Maintenance Schedule.** Not later than August 31, 2006, the County shall submit to DEQ a regular schedule for removing roots from manholes and sewer lines, installing cleanouts as necessary at property lines, performing regular camera work and mapping the results of the camera work, and performing repairs as necessary to breaks and blockages in the collection system lines, manholes, and pump stations. The maintenance schedule shall also include a schedule with a specific quantifiable goal for reducing overflows due to line blockages and other maintenance-related issues.
4. **Construction Schedule.** Not later than August 31, 2006, the County shall submit to DEQ a plan and schedule for construction of the New STP.
5. **Collection System Evaluation.** Not later than August 31, 2006, the County shall submit to DEQ a schedule for evaluating those portions of the collection system which are experiencing or contributing to overflows. The evaluation must be completed by December 31, 2007, and must identify the locations of broken and/or blocked lines and manholes, provide estimates of peak flows (including flows that escape from the system) associated with conditions similar to those causing overflow events, provide estimates of the capacity of key system components, identify any sources of inflow originating from stormwater intake structures or collection systems, identify hydraulic deficiencies (including components of the system with limiting capacity) and identify the major sources that contribute to the peak flows associated with overflow events. Portions of the collection system which are scheduled to be abandoned or replaced need not be evaluated; however, omitted sections shall be listed in the CAP and shall be evaluated in

accordance with the provisions of this paragraph within a year if they are subsequently brought back into service or the decision is made to not abandon or not replace sections that had been previously scheduled for abandonment or replacement. The evaluation shall also include an analysis of: i) the effects of implementation of the requirements of Appendix A, Paragraph 2 herein; ii) the effects of I&I originating in the Westgate Subdivision on portions of the collection system downstream, including those located in Iron Gate.

6. **Corrective Action Plan.** Not later than December 31, 2007, the County shall submit to DEQ for review and approval a Sanitary Sewer System evaluation and Corrective Action Plan (“CAP”) for meeting the requirements of Paragraph 8 below, to include the following:
 - a. **Funding Plan.** A plan for funding the Sanitary Sewer System evaluation, repair, replacement, and rehabilitation required herein. The County shall provide in its public works budget sufficient funds to perform the activities specified in the CAP.
 - b. **Corrective Action Schedule.** A Corrective Action Schedule consisting of a prioritized plan and schedule for correction of deficiencies identified during the evaluation of the system.
 - c. **Compliance Verification Plan.** A plan for collecting and analyzing the data necessary to demonstrate compliance with the requirements of Paragraph 8 of this Appendix.
7. **Collection System Map.** Not later than August 31, 2007, the County shall submit a collection system map identifying the location and size of collection system pipes, interceptors and manholes and providing a general description of the condition of these system units.
8. **Deadline for Elimination of Overflows Caused by Excessive I&I.** Not later than December 31, 2010, the County shall eliminate overflows caused by excessive infiltration and inflow, as that term is defined by EPA’s Handbook entitled *Sewer System Infrastructure Analysis and Rehabilitation*, dated October 1991, and codified at 40 CFR § 35.2005(b)(16).
9. **Annual Report.** The County shall submit an Annual Report to DEQ by February 10 of each year summarizing major activities performed pursuant to this Order and pursuant to the plans and schedules submitted under this Order during the preceding calendar year. The Annual Report shall also include: Quantitative evaluation of I&I removed during the preceding calendar year; Evaluation of financial capability regarding adequacy of dedicated sewer revenues and other financial resources for completing scheduled activities required under this Order; Expenditures on activities required under this Order; Number of overflows by location, including

a frequency plot by years beginning in 1998.¹ The last Annual Report, due on February 10, 2011, shall present and analyze data collected pursuant to Paragraph 6.c of this Appendix in order to verify compliance with the requirements of Paragraph 8 of this Appendix.

10. Upon its approval by DEQ, the CAP and schedules of corrective actions in the CAP, and any revisions or updates of the CAP, shall become a part of and enforceable under the terms of this Order. The County shall comply with all plans and schedules submitted under this Order after they have been approved by DEQ. The County may submit proposed revisions to the CAP and/or Corrective Action Schedule as needed to DEQ for review and approval.
11. If upon completion of the evaluation specified in Paragraph 5 above, the County believes that additional time beyond December 31, 2010 is needed to complete the corrective action required to eliminate overflows caused by excessive I&I in accordance with Paragraph 8 of this Appendix, then the County may petition DEQ for an Amendment to this Order to extend the December 31, 2010 deadline. Such petition must contain sufficient information to fully explain and justify any extension of the deadline, as well as a detailed proposed revised corrective action schedule.

¹ This Order does not exempt the County from the ongoing reporting requirements at 9 VAC 25-31-50(B).