



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

TOWN OF MONTEREY

VPDES Permit VA0023281

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and the Town of Monterey, for the purpose of resolving certain violations of environmental laws and 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 §§ 10.1-1184 and 62.1-44.7.
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. "2003 Order" means the Consent Special Order between the Town and the Board that became effective January 7, 2003.
6. "Order" means this document, also known as a Consent Special Order.
7. "STP" means sewage treatment plant.
8. "Monterey" or "Town" means the Town of Monterey which owns and operates the Town of Monterey STP.
9. "Facility" means the Town of Monterey STP located in Highland County, Virginia.
10. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
11. "Permit" means Virginia Pollutant Discharge Elimination System Permit No. VA0023281, which became effective September 27, 2002 and expires September 26, 2007.
12. "NOV" means Notice of Violation.
13. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.
14. "PER" means preliminary engineering report.
15. "DMR" means discharge monitoring report.
16. "O&M" means operations and maintenance.
17. "CTO" means certificate to operate.
18. "I&I" mean inflow and infiltration.
19. "TMDL" mean total maximum daily load.

SECTION C: Findings of Fact and Conclusions of Law

1. Monterey owns and operates a sewage treatment plant serving the Town, which has approximately 158 residents and is located in Highland County, Virginia. The Facility is subject to VPDES Permit VA0023281 which allows the Facility to discharge treated wastewater to West Strait Creek in the Potomac River basin.

2. The 2003 Order provided a schedule of compliance to return the Facility to compliance with the final Permit limits through conducting I&I rehabilitation work on the sewage collection system and/or upgrade of the Facility.
3. The Town completed the final phase of I&I repairs in the spring of 2006, however, the Facility has not been able to consistently meet Permit effluent limitations. The Town has been in the process of developing a plan for the Facility's replacement.
4. The Town continues to experience difficulty meeting the Permit's pH, dissolved oxygen and chlorine effluent limitations. These problems are related to the chlorination/dechlorination treatment processes utilized by the Town in its attempts to deal with the unpredictable nature of the high chlorine demand characteristics of the wetland effluent. The Town has been unsuccessful in its attempts at dealing with this issue.
5. On June 21, 2006, DEQ staff conducted technical and laboratory inspections of the Facility which noted a number of operational and reporting problems at the Facility including improper reporting of sampling data on the Facility's DMRs. The improper reporting included the use of an outdated DMR, incorrectly calculating and reporting various parameters during the period from December 2005 through May 2006.
6. DEQ staff conducted TMDL diurnal dissolved oxygen measurements downstream of the Facility's outfall in West Strait Creek from August 14 through August 16, 2006. DEQ staff noted dissolved oxygen levels remained below the stream standard of 4.0 mg/l during the entire period which is attributed directly to the Facility's discharge.
7. On September 21, 2006, DEQ received Monterey's initial proposed plan and schedule of compliance for the upgrade of the Facility to meet final effluent limitations.
8. DEQ issued NOV No. W2006-09-V-0002 on September 27, 2006, to Monterey for Consent Order CBOD interim effluent violations and permit effluent limitation violations of pH, D.O. and Cl₂, in conjunction with D.O. and fecal coliform stream standards exceedances during the period from February through August 2006. The NOV also cites the discharge of persistent floatable solids resulting in turbid waters downstream of the outfall, sampling inspection results that documented that the Facility was not adequately treating wastewater and cites that the Town did not address inspection deficiencies in a timely manner.
9. On October 2, 2006, Monterey submitted corrected DMRs to address the outstanding deficiencies from the June 21, 2006 inspection. These corrected DMRs revised some of the reported values cited as violations on the September 27, 2006 NOV.
10. On October 5, 2006, DEQ provided Monterey with a revised NOV to replace the September 27, 2006 NOV No. W2006-09-V-0002. The October 5, 2006, NOV corrected the citations based on a review of the corrected DMRs and included additional chlorine citations that were not included on the original NOV.

11. On October 10, 2006, DEQ received Monterey's plan and schedule of compliance for the upgrade of the Facility to meet final effluent limitations. Sections of this plan and schedule have been incorporated into Appendix A of this Order.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Monterey and Monterey agrees, to perform the actions described in Appendix A and Appendix B of this Order.
2. During the estimated one year's interim period during which Facility improvements will be completed, Monterey will operate the STP in a workmanlike fashion so as to produce the best quality effluent that the Facility is capable of producing.
3. Monterey shall comply with the interim effluent limits and monitoring requirements contained in Appendix A for CBOD and TSS. For the Permit's effluent limits for pH, DO and Cl₂, the Parties acknowledge that pending upgrade of the Facility, Monterey may experience additional violations of Permit conditions for these parameters. Accordingly, pending completion of upgrade of the Facility, Monterey shall operate the Facility in such a manner that it produces the best quality effluent of which it is capable in order to minimize such additional violations and minimize potential impacts to water quality, including eliminating exceedances of water quality criteria, it being understood between Monterey and the Board that proper operation of the Facility will allow water quality criteria for DO to be met.
4. This Order cancels and supersedes the Consent Special Order issued to the Town of Monterey on January 7, 2003.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Monterey, for good cause shown by Monterey, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein in Section C. 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 as may be authorized by law; or (3) taking subsequent action to enforce the 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, Monterey admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Monterey 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. Monterey declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 enforce this Order.
6. Failure by Monterey 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. Monterey 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. Monterey shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Monterey shall notify the DEQ 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 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 Director of the Valley Regional Office within 24 hours of learning of any condition above, which Monterey 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 Monterey. Notwithstanding the foregoing, Monterey 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. Monterey petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
 - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Monterey

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Monterey from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of Monterey 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 Monterey to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Monterey
13. By its signature below, Monterey voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 20 June, 2007.



Amy T. Owens, Regional Director
Department of Environmental Quality

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

By: Janice S. Warner

Title: Mayor of Monterey

Date: 3/21/07

Commonwealth of Virginia

City/County of Highland

The foregoing document was signed and acknowledged before me this 21st day of March, 2007, by Janice S. Warner,
(name)

who is Mayor of the Town of Monterey, on behalf of said Town.

(title)

Heidi Simmons
Notary Public

My commission expires: 1-31-2011

**APPENDIX A
TOWN OF MONTEREY
SCHEDULE OF COMPLIANCE**

1. **On December 4, 2006**, Monterey submitted to DEQ for review and approval a PER for the proposed Facility upgrade to meet Permit effluent limitations and requirements. Monterey shall respond to any comments regarding the PER **within 30 days** of receipt of written comments.
2. **Within 105 days** of approval of the PER, Monterey shall submit to DEQ for review and approval the plans and specifications for the approved Facility upgrade and the closure plan for the present Facility. Monterey shall respond to any comments regarding the plans and specifications and the closure plan **within 30 days** of receipt of written comments.
3. **Within 20 days** of approval of the plans and specifications for the approved Facility upgrade, Monterey shall advertise for bids for construction of the approved upgrade.
4. **Within 30 days** of advertising for bids for construction of the Facility upgrade, Monterey shall receive bids for the construction of the Facility upgrade.
5. **Within 30 days** of receipt of bids, Monterey shall award the contract for construction of the Facility upgrade.
6. **Within 30 days** of awarding the contract for the Facility upgrade, Monterey shall begin construction of the approved Facility upgrade
7. **Within 240 days** of beginning construction of the approved Facility upgrade, Monterey shall complete construction of the upgrade. At the same time, Monterey shall also submit to DEQ for review and approval the O&M Manual and Sludge Management Plan for the approved Facility upgrade. Monterey shall respond to any comments regarding the O&M Manual and Sludge Management Plan **within 30 days** of receipt of written comments.
8. **Within 30 days** of completing construction of the upgraded Facility, Monterey shall request a CTO for the Facility. Monterey shall respond to comments regarding construction deficiencies **within 30 days** of receipt of written comments.
9. **Within 60 days** of obtaining a CTO for the Facility upgrade, but **in no event later than April 1, 2009**, Monterey shall comply with the Permit's final effluent limitations.
10. **Within 180 days** of completion of construction of the Facility upgrade, Monterey shall complete the closure of the unneeded units of the Facility.

11. Monterey shall submit quarterly progress reports to DEQ, with the first report being due **July 10, 2007**. Subsequent Progress Reports will be due by **October 10, January 10, April 10, and July 10**, along with the Facility's Discharge Monitoring Report until the cancellation of this Order. The quarterly progress reports shall contain:
 - a. a summary of all work completed since the previous progress report in accordance with this Order;
 - b. a projection of the work to be completed during the upcoming semi-annual period in accordance with this Order; and
 - c. a statement regarding any anticipated problems in complying with this Order.

12. No later than **14 days** following a date identified in the above schedule of compliance Monterey shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

APPENDIX B: INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning with the effective date of this Consent Special Order and lasting until the completion of the Plant upgrade as required in Appendix A, Monterey shall limit and monitor the discharge from outfall 001 in accordance with the Permit except as specified below.

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>		
	<u>Monthly Average</u> mg/l	<u>Weekly Average</u> mg/l	<u>kg/d</u>	<u>Min.</u>	<u>Max.</u>	<u>Frequency</u>	<u>Sample Type</u>
CBOD ₅	32	51	11.4	18.2	NA	1 Day/Week	8 HC
TSS	30	45	13.6	20.4	NA	1 Day/Week	8 HC
Ammonia-N (January-May)	NL	NL	NA	NA	NA	1/Month	8 HC
Ammonia-N (June-December)	NL	NL	NA	NA	NA	1/Month	8 HC

NA = Not Applicable
 NL = No Limit