



wastewater to the North Fork Shenandoah River under the authority of VPDES Permit No. VA0090263 (the "Permit") that was issued to SIL by the State Water Control Board (the "Board") effective October 15, 1999 and reissued effective October 16, 2004.

SIL has violated the discharge limitations in the Permit as to total phosphorus, total nitrogen, ammonia, fecal coliform, biochemical oxygen demand, total suspended solids, and whole effluent toxicity. The total phosphorus and total nitrogen violations have been particularly persistent and egregious.

These and other violations of the Permit were the subject of a suit in this Court, No. CL06-00876, brought by the Board and the Director of the Department of Environmental Quality (the "Department") against SIL. During the pendency of that suit, SIL filed a petition for bankruptcy.

The bankruptcy court has authorized the sale of SIL's assets, including the Facility, to Broadway and that sale will close today. Broadway proposes to rehabilitate and improve the Facility while continuing to treat the wastewater of the Customers. The Permit will transfer to Broadway at the time of the sale of the Facility.

The Facility in its current condition and configuration is incapable of meeting certain current requirements of the Permit for annual total nitrogen load and annual total phosphorus load; the Facility is marginal as to compliance with CBOD, Ammonia-N, and whole effluent toxicity; the Facility will be incapable of meeting certain new requirements that will take effect on or about January 1, 2011

to meet requirements of the General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Watershed in Virginia (the "Nutrient Regulation"). As a result, upon purchasing the Facility Broadway will be violating the Permit and those violations will continue until the Facility is upgraded and any necessary pretreatment requirements are implemented.

Under VA. CODE §§ 62.1-44.14, 62.1-44.23, 62.1-44.32, and 10.1-1185, the Board and the Director of the Department have the duty and authority to enforce the Permit. VA. CODE § 2.2-514 authorizes the Attorney General or his designee to compromise the claims in the Complaint, with the approval of the Director and the Board. Broadway has not been the subject of any earlier enforcement action by the Board or the Director.

By agreeing to this Consent Decree Broadway commits to taking interim steps to reduce pollution from the Facility in the short term while upgrading the facility to achieve compliance with the Permit in the long term. This Consent Decree has been noticed to the public for thirty days as required by 9 VAC 25-31-910.B.3. After considering the public comments, the Director, on his own behalf and on behalf of the Board, has approved the entry of this Decree.

The parties agree that this Consent Decree shall be construed to serve the purposes set forth in VA. CODE § 62.1-2 and particularly to reduce the level of nutrients and other pollutants in effluent from the Facility, to minimize adverse impacts to the environment, and to protect the public health. This Decree is

designed and intended to result in compliance with the State Water Control Law and the Board's implementing regulations, including without limitation the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (the "Permit Regulation"), 9 VAC 25-31-10 *et seq.*, the Sewage Collection and Treatment Regulations (the "SCAT Regulations"), 9 VAC 790-10 *et seq.*, and the Nutrient Regulation, 9 VAC 25-820-10 *et seq.* The parties further agree that, under Broadway's ownership, the Facility is a publicly owned treatment works or "POTW" within the meaning of the Permit Regulation, and that because of the nature of the industrial influent, treatment process upsets, and other circumstances a pretreatment program is warranted in order to prevent interference with the POTW or pass through.

Upon the consent of the parties, and conditioned upon the closing of the sale of the Facility today, the Court ORDERS:

1. From November 7, 2007 until January 1, 2011, Broadway shall comply with the effluent limits prescribed in Appendix A to this Consent Decree and with all other requirements of the Permit. With respect to Total Nitrogen and Total Phosphorus, Broadway shall conduct a study, not to exceed six months in duration, to determine appropriate annual interim effluent loading limitations. Upon conclusion of the study, Broadway may submit a recommendation whether the interim annual loading limitations shall be modified. The Director of VRO shall review the results of the study and Broadway's recommendation and, based

upon that and other relevant information, may modify the interim annual loading limitations in Appendix A.

2. Broadway shall submit to the Valley Regional Office of the Department ("VRO") completed Industrial Waste Surveys by January 15, 2008, and a draft POTW pretreatment program by June 15, 2008. Broadway shall submit to VRO as soon as possible but no later than September 15, 2008, the final POTW pretreatment program in accordance with the Permit Regulation for review and approval pursuant to 9 VAC 25-31-830. Broadway shall implement the approved program and have that program in full operation within six months of the date of approval.

3. Broadway shall submit to VRO by March 15, 2008, a Preliminary Engineering Report and a schedule for the upgrade of the Facility to meet all Permit limits and the limits to be imposed pursuant to the Nutrient Regulation. The schedule shall provide for full compliance with all applicable requirements of the Permit on and after January 1, 2011. The Preliminary Engineering Report shall be prepared in accordance with the SCAT Regulations. The Preliminary Engineering Report shall also include a plan and schedule for an infiltration/inflow (I/I) analysis; a Sewer System Evaluation Survey (SSES); a sewer survey report with cost/benefit analysis; a rehabilitation plan and schedule including a strategy and schedule for long-term and continued evaluation of the collection systems for both the Broadway and Timberville sewer systems. The Preliminary Engineering Report also shall include a toxicity reduction plan and schedule and a farmland

irrigation evaluation. Broadway shall submit to VRO by January 15, 2008, the I&I analysis, the toxicity reduction plan and schedule, and the farmland irrigation evaluation. Upon approval by the Department of the Preliminary Engineering Report and schedules, Broadway shall upgrade the Facility in accordance with the approved plans and schedules. The upgrade shall be complete no later than September 1, 2010, except that improvements to the sewer systems of Broadway and Timberville shall be complete by the dates in the schedules approved by the Department. No later than January 1, 2011, Broadway shall comply with all requirements of the Permit as then in effect and as it may thereafter be amended.

4. Broadway shall by December 3, 2007 submit the phosphorus sludge management plan required by the Department's approval letter to SIL dated December 5, 2006. Broadway shall implement the phosphorus sludge management plan within 30 days of the plan approval by DEQ.

5. Also by December 3, 2007 Broadway shall submit to VRO a plan for operation of the chemical feed equipment that was installed by SIL at the influent of the main storage lagoon to precipitate phosphorus in that lagoon. That plan shall propose operational measures and, if appropriate, equipment changes to reduce the concentration of phosphorus in the effluent from that lagoon. Upon approval by the Department, Broadway shall operate the chemical feed and manage the Facility in accordance with the approval.

6. Broadway shall by November 21, 2007 install or require its customers to install a permanent metering and monitoring facility at every point of

connection of its own and each Customer's sewers to the Facility. As to Cargill and Pilgrim's Pride, Broadway shall acquire and report monthly with its Discharge Monitoring Report for each customer the information specified in Appendix B of this Consent Decree. As to Timberville and Broadway, Broadway shall acquire and report monthly with its Discharge Monitoring Report for each Town flow, pH, and unusual or extraordinary effluents, as provided in Appendix B. All testing and reporting shall be in accordance with the standards and requirements prescribed in the Permit.

7. The Department shall promptly approve, disapprove, or seek further information regarding each plan, schedule, and recommendation submitted under this Decree. During the approval process the Department shall confer with Broadway as the Department deems appropriate or as Broadway may request. These opportunities to confer shall be deemed to meet the requirements for notice and informal conference provided by VA. CODE § 2.2-4019. The Department shall communicate its decision and a brief statement of the reasons for that decision to Broadway by electronic mail, confirmed by hard copy delivered by US Mail. In the event the Department seeks further information, Broadway shall provide that information within the time specified by the Department. In the event the Department disapproves any plan or schedule, Broadway shall submit a corrected plan or schedule that cures the defects identified by the Department within the time specified by the Department.

8. Broadway shall submit quarterly status reports of its progress toward meeting the requirements of this Consent Decree to the VRO by the tenth day of the month following the end of each calendar quarter, with the first such report being due January 10, 2008.

9. The Director of VRO may excuse any noncompliance with this Decree if:

- Broadway has reported the noncompliance to the Department in accordance with the reporting requirements of the Permit; and
- Broadway has within fourteen days of discovering the noncompliance demonstrated to the Department the cause of the noncompliance; and
- Broadway has demonstrated that, on the information then available to it, the noncompliance was neither an expected event nor a reasonably preventable event; and
- Broadway has taken prompt and effective action, satisfactory to the Director of VRO, to prevent or minimize recurrence of the noncompliance.

In any case where the Director of VRO proposes to excuse Broadway's failure to meet a schedule deadline by more than one month or Broadway's serious or moderate noncompliance (as those terms are defined in the Department's Enforcement Manual) with a requirement of this Decree, the Director of VRO

shall publish public notice of the proposed decision on the DEQ and Broadway Web sites and by email to EPA and to all persons who have submitted comments regarding this Decree during the public comment period and shall consider all EPA and public comment received within fourteen days after the date of publication.

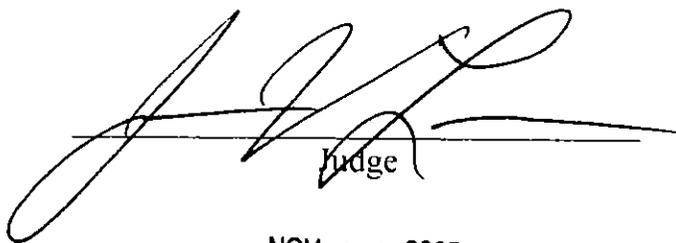
10. In the event that Broadway wishes to dispute any decision made by the Department pursuant to paragraph 7 or 9, Broadway shall within seven days of receiving the decision by electronic mail notify the Director of VRO of the nature and basis for the dispute. If the dispute has not been resolved by consent within seven days of delivery of that notice, Broadway may seek review of the disputed matter by this Court by motion filed within fourteen days after the date of delivery of notice of the dispute to the Director of VRO. The court will decide any such dispute according to the standards set forth in VA. CODE § 2.2-4027. Broadway shall be deemed to have waived its right to a formal hearing regarding the Department's decision in the disputed matter.

11. This case shall remain on the docket.

12. This case shall be dismissed and removed from the docket upon filing of a Notice by the Director of the Department that the upgraded facility has been issued a certificate to operate by the Department, and that the upgraded facility has, after a reasonable startup period, substantially complied with the applicable VPDES Permit for twelve consecutive months.

ENTER this <sup>21st</sup> ~~7th~~ day of November, 2007.

A handwritten signature in black ink, appearing to be 'JVK' or similar, written over the text of the entry date.



Judge

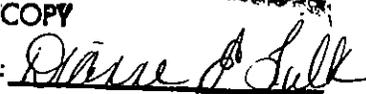
NOV 21 2007

**We ask for this:**



Robert F. McDonnell  
Attorney General

A TRUE COPY

ATTESTE:   
DEPUTY CLERK

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**Seen and agreed to:**



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INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. Outfall number 002 shall be limited and monitored as specified below:

EFFLUENT CHARACTERISTICS

	<u>DISCHARGE LIMITATIONS</u>			<u>MONITORING REQUIREMENTS</u>		
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
Flow (MGD) <sup>a</sup>	NL	NA	NA	NL	Continuous	T/I/R
pH (standard units)	NA	NA	6.5	9.5	1/Day	Grab
C <sub>BOD5</sub> (Jun-Dec) <sup>c</sup>	8 mg/L	12 mg/L	NA	NA	5 Days/Week	24 HC
C <sub>BOD5</sub> (Jan-May) <sup>c</sup>	29 mg/L	33 mg/L	NA	NA	5 Days/Week	24 HC
Suspended Solids <sup>c</sup>	30 mg/L	45 mg/L	NA	NA	1/Month	24 HC
Oil & Grease (kg/d) <sup>c</sup>	67	NA	NA	120	2/Month	Grab
Ammonia-N (Jun-Dec) (mg/L) <sup>c</sup>	3.1	3.1	NA	3.1	5 Days/Week	24 HC
Ammonia-N (Jan-May) (mg/L) <sup>c</sup>	10	15	NA	15	5 Days/Week	24 HC
E. coli (Geometric Mean (N/100 mL)) <sup>b</sup>	126	NA	NA	NA	2/Month between 10am and 4pm	Grab
Dissolved Oxygen (mg/L)	NA	NA	5.0	NA	1/Day	Grab
Total Residual Chlorine (TRC) (mg/L) <sup>b,c</sup>	0.012	0.015	NA	NA	1/Day	Grab
Tributyltin (ug/L)	0.14	0.14	NA	NA	1/Month	24 HC
Whole Effluent Toxicity (TEL) <sup>d</sup>	NA	NA	NA	NL	1/Quarter	24 HC
Total Phosphorus <sup>e</sup>	NL (mg/L)	NL (kg/d)	NA	NA	1/Week	24 HC
Total Phosphorus (kg/month) <sup>e</sup>	NA	NA	NA	NL	1/Month	Calculated
Total Phosphorus (kg/7 months) (11/07 – 5/08) <sup>e</sup>	NA	NA	NA	NL	1/Month	Calculated
Total Phosphorus (kg/7 months) (6/08 – 12/08) <sup>e</sup>	NA	NA	NA	9,333	1/Month	Calculated
Total Phosphorus (kg/calendar year) (1/09 – 1/11) <sup>e</sup>	NA	NA	NA	16,000	1/Month	Calculated
Orthophosphate <sup>e</sup>	NL (mg/L)	NL (kg/d)	NA	NA	1/Week	24 HC
Total Kjeldahl Nitrogen (as N) <sup>e</sup>	NL (mg/L)	NL (kg/d)	NA	NA	1/Week	24 HC
Nitrate plus Nitrite (as N) <sup>e</sup>	NL (mg/L)	NL (kg/d)	NA	NA	1/Week	24 HC
Total Nitrogen <sup>e</sup>	NL (mg/L)	NL (kg/d)	NA	NA	1/Week	24 HC
Total Nitrogen (kg/month) <sup>e</sup>	NA	NA	NA	NL	1/Month	Calculated
Total Nitrogen (kg/calendar year) (11/07 – 5/08) <sup>e</sup>	NA	NA	NA	NL	1/Month	Calculated
Total Nitrogen (kg) (6/08 – 12/08) <sup>e</sup>	NA	NA	NA	15,167	1/Month	Calculated
Total Nitrogen (kg/calendar year) (1/09 – 1/11) <sup>e</sup>	NA	NA	NA	26,000	1/Month	Calculated

NL = No Limitation, monitoring required

NA = Not Applicable

T/I/R = Totalizing, Indicating, and Recording

24 HC = 24 Hour Composite

- a. The design flow of this treatment facility is 1.923 MGD. See Part I.F.1. of the Permit for additional requirements related to facility flows.
- b. See Part I.B. of the Permit for disinfection requirements.
- c. See Part I.C. of the Permit for additional monitoring instructions and nutrient reporting requirements.
- d. See Part I.E. of the Permit for additional monitoring instructions.
- e. Total Nitrogen, which is the sum of Total Kjeldahl Nitrogen and Nitrates plus Nitrites, shall be derived from the results of those tests.
- f. There shall be no discharge of floating solids or visible foam in other than trace amounts.

INFLUENT MONITORING REQUIREMENTS

The influent from each customer shall be monitored as specified below:

EFFLUENT CHARACTERISTICS

	<u>DISCHARGE LIMITATIONS</u>			<u>MONITORING REQUIREMENTS</u>		
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
Flow (MGD)	NL	NA	NA	NL	Continuous	T/I/R
pH (standard units)	NA	NA	NL	NL	1/Day	Grab
CBOD <sub>5</sub> (mg/L) <sup>a</sup>	NL	NL	NA	NA	1/Month	24 HC
Suspended Solids (mg/L) <sup>a</sup>	NL	NL	NA	NA	1/Month	24 HC
Oil & Grease (mg/L) <sup>a</sup>	NL	NA	NA	NL	1/Month	24 HC
Ammonia-N (mg/L) <sup>a</sup>	NL	NL	NA	NA	1/Week	24 HC
Total Phosphorus (mg/L) <sup>a</sup>	NL	NA	NA	NA	1/Month	24 HC
Total Kjeldahl Nitrogen (as N) (mg/L) <sup>a</sup>	NL	NA	NA	NA	1/Month	24 HC
Nitrate plus Nitrite (as N) (mg/L) <sup>a</sup>	NL	NA	NA	NA	1/Month	24 HC
Total Nitrogen (mg/L) <sup>a,b</sup>	NL	NA	NA	NA	1/Month	24 HC

NL = No Limitation, monitoring required

NA = Not Applicable

T/I/R = Totalizing, Indicating, and Recording

24 HC = 24 Hour Composite

- a. See Part I.C. of the Permit for additional monitoring instructions and nutrient reporting requirements.
- b. Total Nitrogen, which is the sum of Total Kjeldahl Nitrogen and Nitrates plus Nitrites, shall be derived from the results of those tests.

Reports of Unusual or Extraordinary Influent

Unusual or extraordinary influent and/or overflows from customer sewerage systems shall be reported. This notification shall provide all available details of the incident, including any adverse effects on wastewater treatment or effluent quality. Unless otherwise required by the permit, the permittee shall reduce the report to writing and shall submit it to the Department with its monthly DMR. Unusual and extraordinary influent includes but is not limited to:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Improper dumping or disposal into the sewerage system; and
4. Flooding or other acts of nature.