



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Michael P. Murphy  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
SOUTHWOOD APARTMENTS, LLC  
FOR  
SOUTHWOOD APARTMENTS  
Unpermitted Discharge**

## **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 Southwood Apartments, LLC, regarding the Southwood Apartments, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

## **SECTION B: Definitions**

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

1. "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.
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, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. 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.
7. "Facility" or "Pump Station" means the sewage pump station located at the property owned by Southwood at 1600 Clarkson Road, Richmond, Virginia, which pumps untreated sewage and other municipal wastes to the City of Richmond, for the residents of Southwood Apartments.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "O&M" means operations and maintenance.
10. "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.
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. “Southwood” means Southwood Apartments, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Southwood is a “person” within the meaning of Va. Code § 62.1-44.3.
16. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. “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.
18. “Va. Code” means the Code of Virginia (1950), as amended.
19. “VAC” means the Virginia Administrative Code.
20. “VPDES” means Virginia Pollutant Discharge Elimination System.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Southwood owns and operates the Pump Station at 1600 Clarkson Road in Richmond, Virginia.
2. The unnamed tributary of Broad Rock Creek is located in the Lower James River Basin. During the 2012 305(b)/303(d) Integrated Water Quality Assessment, the unnamed tributary to Broad Rock Creek considered fully supporting with observed effects for the Fish Consumption Use due to a VDH advisory for kepone. The other Designated Uses were not assessed. The Facility is within the study area for the James River and Tributaries – City of Richmond Bacterial TMDL (EPA approval November 4, 2010, SWCB approval June 29, 2012) which allocates E. coli to point and non-point sources. The discharge was not addressed in the TMDL. The discharge was also not included in the Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010.

The TMDL addresses dissolved oxygen and SAV impairments in the Chesapeake Bay and its tidal tributaries by allocating total nitrogen, total phosphorus, and total suspended solids to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. The unnamed tributary should be considered a Tier 1 water due to its ephemeral nature.

3. On July 22, 2015, the Department received notification from the City of Richmond Department of Public Utilities (RDPU) of untreated sewage discharge from the Pump Station. Department staff responded that same day and observed untreated sewage flowing from the Pump Station on Southwood Apartment's property into Broad Rock Creek. Southwood Apartment staff did not report the discharge to the Department or the coordinator of emergency services for the City of Richmond.
4. On September 17, 2015, DEQ issued a Notice of Violation (NOV) to Southwood for the unauthorized discharge and the failure to report the discharge.
5. The Department met with Southwood on October 28, 2015 to discuss the NOV and the issuance of a Consent Order. Southwood hired a consultant to determine whether to upgrade the pump station or eliminate the pump station with a gravity sewer connection to the City of Richmond.
6. The Department and Southwood agree that, with respect to the "members, affiliates and subsidiaries" referenced in Section B.15 above, those terms apply only to such persons as are defined as "Owners" or "Operators" in 9 VAC 25-790-10.
7. On January 11, 2016 Southwood informed the Department that they plan to upgrade the pump station to meet current regulations, or alternatively to remove the pump station and reconstruct the sanitary sewer collection system to be strictly gravity fed to the City of Richmond's Sewer Collection System.
8. Va. Code § 62.1-44.5(A) states that: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: 1. discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
9. Va. Code § 62.1-44.5(B) states that: "Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act."

10. The Regulation, at 9 VAC 25-31-50, states, "Except in compliance with a VPDES permit, or another permit, issued by the board or other entity authorized by the board, it is unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
12. The Department has issued no permits or certificates to Southwood.
13. The unnamed tributary of Broad Rock Creek is a surface water located wholly within the Commonwealth and is a State water under State Water Control Law.
14. Based on the results of the July 22, 2015 inspection, the October 28, 2015, meeting, and the documentation submitted on December 14, 2015, the Board concludes that Southwood has violated Va. Code 62.1-44.5(A) and (B) and 9 VAC 25-31-50, by discharging sewage and municipal wastes from the Pump Station without a permit and failing to report the discharge to the proper authorities, as described above.
15. In order for Southwood to return to compliance, DEQ staff and representatives of Southwood have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

**SECTION D: Agreement and Order**

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

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$13,125 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

Southwood 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Southwood shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Southwood for good cause shown by Southwood, 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, Southwood admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Southwood 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. Southwood 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 Southwood 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. Southwood 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 unforeseeable circumstances beyond its

control and not due to a lack of good faith or diligence on its part. Southwood shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Southwood 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 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.

9. This Order is binding on the parties hereto, and any 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 Southwood. Nevertheless, Southwood 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 Director or his designee terminates the Order after Southwood has completed all of the requirements of the Order;
  - b. Southwood 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
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Southwood.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Southwood 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 Southwood 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 Southwood certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Southwood to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Southwood.
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, Southwood voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 31<sup>ST</sup> day of MAY, 2016.

  
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Michael P. Murphy, Regional Director  
Department of Environmental Quality

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Southwood Apartments, LLC voluntarily agrees to the issuance of this Order.

Date: 3/10/16 By: Richard B Hewitt  
Richard B. Hewitt                      Manager  
Southwood Apartments, LLC

Commonwealth of Virginia  
City/County of Albemarle

The foregoing document was signed and acknowledged before me this 10 day of  
March, 2016, by Richard B Hewitt who is  
Richard B. Hewitt

the Manager of Southwood Apartments, LLC, on behalf of the company.

[Signature]  
Notary Public  
7254243  
Registration No.

My commission expires: October 31 2017

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

1. On or before July 1, 2016, Southwood shall submit to the Department for review and approval *either* documentation from a certified professional engineer that the sewer pump station is in compliance with DEQ Sewage Pump Station regulations in 9 VAC 25-790-380, et seq., for Reliability Class I systems *or* plans for the installation of a gravity sewer connection to the City of Richmond's Sewer Collection System, and the elimination of the pump station.
2. In the event that Southwood elects to install a gravity sewer connection to Richmond City's sewer system, this installation shall be completed no later than August 31, 2016, and documentation confirming completion of the installation submitted to the DEQ no later than September 30, 2016. Decommissioning and removal of the pump station shall be accomplished by December 31, 2016.
3. DEQ Contact

Unless otherwise specified in this Order, Southwood shall submit all requirements of Appendix A of this Order to:

**Frank Lupini**  
**Enforcement Specialist**  
**VA DEQ –Piedmont Regional Office**  
**4949A Cox Road,**  
**Glen Allen, Virginia 23060**  
**Frank.Lupini@deq.virginia.gov**

