COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
BLUE RIDGE REGIONAL OFFICE
3019 Peters Creek Road, Roanoke, Virginia 24019
(540) 562-6700 Fax (540) 562-6725
www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Steven A. Dietrich
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CITY OF BEDFORD
FOR
CITY OF BEDFORD WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0022390

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 City of Bedford, regarding the City of Bedford Wastewater Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

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

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. "DMR" means Discharge Monitoring Report.

6. "Facility" or "Plant" means the City of Bedford Wastewater Treatment Plant located at 852 Orange Avenue in Bedford, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the City.

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

8. "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.

9. "Permit" means VPDES Permit No. VA0022390, which was issued under the State Water Control Law and the Regulation to the City on June 23, 2008 and which expires on June 22, 2013.

10. "BRRO-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

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

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

13. "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.

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

15. "VAC" means the Virginia Administrative Code.

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

17. "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 City owns and operates the Plant in Bedford, Virginia. The Permit allows the City to discharge treated sewage and other municipal wastes from Outfall 001 of the Plant, to the Little Otter River, in strict compliance with the terms and conditions of the Permit.

2. The Little Otter River and Johns Creek are located in the Roanoke River Basin. Johns Creek is a tributary of the Little Otter River. The Little Otter River is listed in DEQ's 305(b) report as impaired for fecal coliform. The sources of the coliform contamination include wet weather discharges, municipal discharges and domestic waste discharges. Johns Creek is listed in DEQ's 305(b) report as having an impaired benthic community. The source of the impairment includes municipal discharges.

3. On December 6, 2004, the Department issued a Consent Order ("2004 Order") to the City to correct inflow and infiltration problems in the collection system for the Plant that were believed to be a cause of chronic overflows. The City successfully completed the requirements of the 2004 Order in accordance with the schedule specified in that Order. The frequency of overflows has been significantly lower since remedial action under the 2004 Order commenced. The 2004 Order was terminated on June 11, 2009.

4. In submitting its DMRs, as required by the Permit, the City has indicated that it had a total of nine unauthorized discharges from Pump Stations Nos. 1, 2 and 3 ("Pump Stations"), and from the Plant's equalization basin and grit chamber during the months of May and June 2009. The City described these discharges in letters to DEQ dated May 20, June 8 and June 11, 2009. The City indicated that it believed that the unauthorized discharges were related to inflow into the collection system during periods of heavy rainfall. With the exception of the discharges to the grit chamber and a discharge from a manhole, each of these unauthorized discharges was to the Little Otter River. The discharges from the grit chamber and the discharge from a manhole were to Johns Creek.

5. The City reported unauthorized discharges from Pump Stations Nos. 1 and 2 that occurred on January 7, 2009. The City described these discharges in a letter to DEQ dated January 12, 2009. The City indicated that it believed that the unauthorized discharges were related to inflow into the collection system during a period of heavy rainfall. Each of these unauthorized discharges was to the Little Otter River.

6. In submitting its DMR, as required by the Permit, the City has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for BOD5 average concentration, for the month of January 2009. The City indicated that it believed the exceedance was related to a temporary increase in soluble BOD received in wastewater from Brooks Food, Inc. This problem has not recurred.

7. The City reported an unauthorized discharge that occurred on February 18, 2009 from Manhole No. 135 to John's Creek. In a letter dated February 24, 2009, the City explained that this overflow was due to an accumulation of grease in the sewer line.

8. The City reported unauthorized discharges from Pump Stations 1, 2 and 3 and from the Plant's equalization basin that occurred on April 20, 2009. The City described these discharges in a letter to DEQ dated April 23, 2009. The City indicated that it believed that the unauthorized discharges were related to inflow into the collection system during a period of heavy rainfall. Each of these unauthorized discharges was to the Little Otter River.

9. BRRO-R issued Warning Letters and a Notice of Violation for the unauthorized discharges and the effluent limit exceedance as follows: WL No. W2009-03-W-1005, issued March 3, 2009; WL No. W2009-07-W-1001, issued July 9, 2009; and NOV No. W2009-08-W-0002, issued August 10, 2009.

10. The City responded to the Warning Letters and Notice of Violation by meeting with DEQ staff on August 20, 2009 and by submitting a plan and schedule of corrective action to address the inflow problems. The plan and schedule are incorporated in Appendix A of the Order.

11. The City's operating logs indicate that it discharged treated wastewater from the Plant every day from January 1, 2009 through June 30, 2009.

12. Va. Code § 62.1-44.5 states that: "[E]xcept 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."

13. 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.

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

15. The Department has issued no permits or certificates to the City other than VPDES Permit No. VA0022390.

16. The Little Otter River and John's Creek are surface waters located wholly within the Commonwealth and each is a "state water" under State Water Control Law.

17. Based on the City's DMRs for January through June 2009 and its letters to DEQ dated January 12, February 24, April 23, May 20, June 8 and June 11, 2009, the Board concludes that the City has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant and from the Pump Stations while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(4) through C(8), above.

18. In order for the City to complete its return to compliance, DEQ staff and representatives of the City 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 the City, and the City agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

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

4. The City 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 City 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 City 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 City 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 City shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City 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 City 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 City.

11. This Order shall continue in effect until:

a. The City 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 City.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the City 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 City 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 City 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 City to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the City.

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 City voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2009.

_____
Steven A. Dietrich, Regional Director
Department of Environmental Quality

The City of Bedford voluntarily agrees to the issuance of this Order.

Date: 10/14/09 By: [signature], City Manager
(Person) (Title)
The City of Bedford

Commonwealth of Virginia
City/County of Bedford

The foregoing document was signed and acknowledged before me this 14th day of October, 2009, by Charles P. Kolakowski who is City Manager of the City of Bedford, on behalf of the City.

Debra B. Anderson
Notary Public

226835
Registration No.

My commission expires: April 30, 2013

Notary seal:

DEBRA B. ANDERSON
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #226835
My Commission Expires Apr. 30, 2013

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Unpermitted Discharges**

   a. Not later than 30 days after the effective date of this Order, the City shall submit to DEQ, for review and approval, a plan and schedule of corrective action ("Plan") to prevent overflows from the Plant's equalization basin and grit chamber and from Pump Stations Nos. 1, 2 and 3. The Plan shall list specific projects which will be completed by 2014, together with the completion dates of individual projects, including, for the fiscal years ("FY") 2009/2010 and 2010/2011, additional details regarding the following planned projects: (1) for the Plunkett St. to Jackson St. Project, replace approximately 220 feet of 8-inch sewer line, replace approximately 380 feet of 18-inch sewer line, and renovate or replace four manholes; (2) for the Liberty St. to Federal St. Project, replace approximately 200 feet of 4-inch sewer line and install approximately three manholes; (3) ongoing investigation by City personnel of sewer lines leading to the No. 3 Pump Station, utilizing flow monitors, sewer camera, and smoke testing, in order to identify sources of inflow. For 2012-2014, the Plan shall include a schedule for I&I corrective action projects in specific portions of the collection system, and, to the extent possible, any specific projects that are planned for those areas. Upon its approval, said plan and schedule shall become a part of and enforceable under the terms of this Order.

   b. Not later than June 1, 2011, the City shall submit to DEQ, for review an revised plan and schedule of corrective action ("Revised Plan"), to include additional details and timelines for the projects previously specified in the Plan for completion in 2012-2014. As appropriate, the Revised Plan may also include additional projects for 2012-2014.

   c. For fiscal years ("FY") 2011/2012 through 2013/2014, the City shall appropriate at least $100,000 in each annual operating budget specifically dedicated to the reduction of I&I, it being the City's assertion that sufficient funds have already been appropriated for projects to completed in FY 2009/2010 and 2010/2011.

2. **DEQ Contact**

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

   Robert Steele
   Regional Enforcement Coordinator
   VA DEQ –BRRO-R
   3019 Peters Creek Road
   Roanoke, VA 24019
   (540) 562-6777 (phone)
   (540) 562-6725 (fax)
   Robert.Steele@deq.virginia.gov