COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

Doug W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
TOWN OF SURRY
FOR
TOWN OF SURRY WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0061646

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 Town of Surry, regarding the Town of Surry Wastewater Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law, the Virginia Pollutant Discharge Elimination System Permit Regulation and the above-referenced Permit

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. "CBOD" means carbonaceous biochemical oxygen demand.

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 Town of Surry Wastewater Treatment Plant, located at 11463 Rolfe Highway in Surry, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Surry.

7. "Surry" or "Town" means the Town of Surry, a political subdivision of the Commonwealth of Virginia. Surry is a "person" within the meaning of Va. Code § 62.1-44.3.

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. "Permit" means VPDES Permit No. VA0061646, which was issued under the State Water Control Law and the Regulation to Surry on January 17, 2006 and which expires on January 16, 2011.

12. "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.

13. "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.

14. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

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

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. "TKN" means Total Kjeldahl Nitrogen.

19. "TSS" means total suspended solids.

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

21. "VAC" means the Virginia Administrative Code.

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

23. "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 Town of Surry owns and operates a wastewater treatment Plant in Surry, Virginia. The Permit allows Surry to discharge treated sewage and other municipal wastes from the Plant to an unnamed tributary of Dark Swamp, in strict compliance with the terms and conditions of the Permit.

2. Dark Swamp is located in the James River (Lower) Basin. Dark Swamp is not listed in DEQ's 305(b) report as impaired.

3. The Department and the Town of Surry entered into a Consent Order on June 29, 2007 which required the Town to connect to the regional sewer collection system owned by the County of Surry. After analysis of the project the County determined that it was not economically feasible for the County to accept the wastewater flow from the Town.

4. Based on a Department review of DMRs submitted by Surry for the April 2008 through March 2009 monitoring periods as required by the Permit, Surry exceeded discharge limitations contained in Part I.A.1 of the Permit for TKN for the months of April through November 2008; CBOD in April and May of 2008 and March 2009; total copper in June through November 2008 and January and February 2009; and chlorine in January 2009.

5. DMRs indicated that the monthly average influent flow from May through October of 2008, December 2008, and from January through March of 2009 exceeded the design flow of the Facility. DEQ did not receive written notice of this exceedance. Part I,

Section D.1 of VPDES Permit VA0061646 requires that a written notice must be submitted when the monthly average flow influent to the sewage treatment works reaches 95 percent of the design capacity authorized in this permit for each month of any three consecutive month period. The written notice must be submitted within 30 days from the third consecutive month for which the flow reached 95% of the design capacity. The Plant operator later stated that after his hiring in April 2009, the flow meter was found to be recording high flows when compared to instantaneous readings, and that the meter's calibration appears to drift.

6. DEQ staff noted that the DMRs for the May 2008 through February 2009 monitoring periods, received at PRO on April 10, 2009, were not submitted by Surry before the 10th day of each month after monitoring occurs, as required by Part II.C.1 of VPDES Permit VA0061646.

7. Surry had also reported total chlorine (parameter 005) on DMRs submitted for the May 2008 through March 2009 monitoring periods in a manner inconsistent with Part I.D.7 of the Permit.

8. PRO issued Notices of Violation Nos. W2008-09-P-0001 on September 19, 2008 and W2009-05-P-0002 on May 20, 2009 for the above Permit effluent limit exceedances and monitoring submission violations.

9. On June 8, 2009, the Department met with Surry to discuss the compliance issues at the Facility. Surry stated that prior to April 2009 the Facility was operated by a contract operator who failed to make required monitoring submittals to DEQ in a timely manner and allowed the Facility to fall into disrepair. The new contract operator attended the meeting and provided the Department with a detailed diagnostic evaluation of the Facility and a synopsis of conditions at the Plant and the actions taken to date to improve effluent quality. Surry submitted to the Department a list of additional interim corrective action items designed to bring the Town into compliance with its Permit effluent limits without a costly upgrade.

10. Based on a Department review of DMRs submitted by Surry for the April 2009 through October 2009 monitoring periods as required by the Permit, Surry exceeded discharge limitations contained in Part I.A.1 of the Permit for TKN in April, June and August of 2009; CBOD in April and June of 2009; total copper from April through October 2009; chlorine in June 2009; and TSS in June 2009. The violations observed in June 2009 were the result of an upset caused by a discharge of diesel fuel from a commercial garage into the collection system, which resulted in mortality of the functioning biomass. The upset was reported by Surry on June 8, 2009.

11. DMRs also indicated that the monthly average influent flow from April through September 2009 exceeded the design flow of the Facility. DEQ did not receive written notice of this exceedance. Part I, Section D.1 of the Permit requires that a written notice must be submitted when the monthly average flow influent to the sewage treatment

works reaches 95 percent of the design capacity authorized in this permit for each month of any three consecutive month period. The written notice must be submitted within 30 days from the third consecutive month for which the flow reached 95% of the design capacity.

12. DEQ staff noted that Surry had reported total chlorine (parameter 005) on DMRs submitted for the April, May, August, September, and October 2009 monitoring periods in a manner inconsistent with Part I.D.7 of the Permit. In addition, there was a discrepancy between reported TSS values on the October 2009 DMR and the operations report for October 2009 which is contrary to Part II.B.1 of the Permit.

13. In addition, Surry had failed to submit a written report of noncompliance with the DMRs, as required by Part II I.3. of the Permit, for the July, September, and October 2009 monitoring periods.

14. PRO issued a Notice of Violation No. W2009-12-P-0004 on January 4, 2010 for the Permit effluent limit exceedances, monitoring, and reporting violations listed in paragraphs C10 through C14.

15. A Department review of DMRs submitted by Surry for the November 2009 through January 2010 monitoring periods indicate that Surry failed to meet Permit effluent limits for CBOD in November 2009; copper in November 2009 through January 2010; TKN in November and December 2009; and, chlorine in January 2010.

16. Surry's operating logs indicate that it discharged treated wastewater from the Plant every day from April 1, 2008 through January 31, 2010.

17. 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."

18. 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.

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

20. The Department has issued no permits or certificates to Surry other than VPDES Permit No. VA0061646.

21. The unnamed tributary of Dark Swamp is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

22. Va. Code § 62.1-44.31 states that it shall be unlawful for any owner to fail to comply with any special order adopted by the Board.

23. Based on the results of DMRs submitted by Surry and the information received by the Department at the June 8, 2009 meeting, the Board concludes that Surry 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 while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C3 through C7 and C10 through C14, above.

24. In order for Surry to return to compliance, DEQ staff and representatives of Surry 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 Surry, and Surry agrees to:

1. The termination of the previous Consent Order issued on June 29, 2007, by virtue of the issuance of this Order.

2. Perform the actions described in Appendices A and B of this Order; and

3. Pay a civil charge of $7,020 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

Surry 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).

SECTION E: Administrative Provisions

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

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

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

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, Surry voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

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

Date: 4/15/2010 By: Will M. Gwathney Jr., Mayor
(Person) (Title)

Commonwealth of Virginia
City/County of Surry

The foregoing document was signed and acknowledged before me this 15th day of April, 2010, by Will M. Gwathney, Jr. who is Mayor of the Town of Surry, on behalf of the Town.

_____
Notary Public

172412
Registration No.

My commission expires: 7/3/10

Notary seal: PAMELA B. OWNEY
Notary Public
Commonwealth of Virginia
No. 172412
My Commission Expires 7/3/10

APPENDIX A
SCHEDULE OF COMPLIANCE

1. The Town of Surry must raise revenue for an upgrade to the Facility to meet Permit effluent limits. The Town shall be deemed to be raising upgrade project funds to the limit of its financial capability if the following criteria are met:

    a. At least annually the Town adjusts its sewer rates so that within four years of the effective date of this Order:

        i.) The annual sewer bill for residential customers (i.e. 7 ccf of average monthly use) will be at least 1.25% of median household income[1]; and
        ii.) The sewer volume rate for customers identified as industrial users in the Town's utility billing records will equal the rate charged to the Town's residential customers.

    b. The Town annually seeks grant or other funding for a Facility upgrade from all applicable federal and state sources.

<u>DMR Exceedances</u>

2. **No later than October 1, 2010**, Surry shall submit to DEQ, for review and approval, a detailed corrective action plan (CAP) addressing how Surry will achieve consistent compliance with all effective Permit effluent limits. The CAP must be accompanied by an application for a Permit modification for flow expansion and include a schedule of implementation and a funding plan. Upon DEQ approval the corrective action plan and schedule will become a part of and enforceable under the terms of this Order. Surry shall provide any DEQ-requested information or modifications to the plan in accordance with the terms or deadlines of the request.

3. **No later than October 1, 2010**, Surry shall submit to DEQ, a study plan with a schedule of implementation for the evaluation and reduction of inflow and infiltration (I&I) in the collection system of the Plant. The study plan shall include a flow monitoring program designed for collecting wastewater flow data for different areas in the collection system during dry-weather and wet-weather flow conditions. The schedule, upon Department approval, shall be incorporated into and become an enforceable part of this Order.

4. **No later than June 1, 2011**, submit to the Department the results of the I&I study plan in Appendix A 3 above. This submittal shall include a base map of the collection

[1] As reflected in the 2000 and any subsequent census. In the years between each census, the median household income (MHI) shall be adjusted based on the percent increase in the consumer price index– all urban consumers U.S. city average (CPI-U) for that year.

system, results of the flow monitoring, records of the collection system inspections and a prioritized list, with a schedule of rehabilitation work. The schedule, upon Department approval, shall be incorporated into and become an enforceable part of this Order.

5. **Upon Department approval** of the I&I rehabilitation work in Appendix A 4 above, immediately implement the sewer collection system rehabilitation work.

6. Surry must complete corrective action in accordance with the Department approved corrective action plan and schedule, or DEQ-approved modifications thereto, as expeditiously as possible, but **no later than March 1, 2012**.

7. Surry must submit a final report documenting completion of corrective action, in accordance with the corrective action plan, within 30 days of completion of corrective action but **no later than April 1, 2012**.

REPORTING

8. Surry must immediately comply with the provisions of the Permit with respect to monitoring, recordkeeping and reporting requirements.

DEQ Contact

Unless otherwise specified in this Order, the Town of Surry 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

APPENDIX B
INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

From the effective date of this Order until completion of the corrective action requirements contained in Appendix A, but no later than June 1, 2012, and in accordance with the approved schedule for such action Town of Surry shall monitor and limit the discharge from Outfall No. 001 of the Facility in accordance with VPDES Permit Number VA0061646, except as specified below. These interim limits shall retroactively apply, if applicable, as of the first day of the month in which this Order becomes effective.

These requirements shall be construed in light of the Regulation.

Parameter Description	**Parameter Limits**			
	Monthly Average		**Weekly Average**	
Total Recoverable Copper	19 µg/L		19 µg/L	
TKN	4.0 mg/L	0.91 kg/day	5.3 mg/L	1.2 kg/day
CBOD	*	*	*	*

* With respect to CBOD, the parties acknowledge that during the period of corrective action implementation, Surry may experience additional violations. Accordingly, pending completion of the Department approved corrective action plan, Surry must operate the facility in a manner that produces the lowest possible CBOD concentration of which it is capable, in order to minimize such additional violations and minimize potential impacts to water quality.