



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
NEW KENT COUNTY  
FOR  
PARHAM LANDING WASTEWATER TREATMENT PLANT  
VPDES Permit No. VA0088331**

## **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 New Kent County, regarding the Parham Landing 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. "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. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" or "Plant" means the Parham Landing Wastewater Treatment Plant located at 7800 Parham Landing Road, New Kent County, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of New Kent County.
10. "New Kent" means New Kent County, a political subdivision of the Commonwealth of Virginia. New Kent is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "O&M" means operations and maintenance.
13. "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.
14. "Permit" means VPDES Permit No. VA0088331, which was issued under the State Water Control Law and the Regulation to New Kent on October 18, 2010, and which expires on October 17, 2015.
15. "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.

16. "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.
17. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "SCADA" means supervisory control and data acquisition, a computer system that monitors and controls facility equipment, and alarms facility operators of problems.
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
21. "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.
22. "TKN" means total kjeldahl nitrogen.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means the Virginia Administrative Code.
25. "VPDES" means Virginia Pollutant Discharge Elimination System.
26. "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. New Kent owns and operates the Facility in New Kent County, Virginia. The Permit allows New Kent to discharge treated sewage and other municipal wastes from the

Facility, to the Pamunkey River, in strict compliance with the terms and conditions of the Permit.

2. The Pamunkey River is located in the York River Basin. During the 2010 305(b)/303(d) Integrated Water Quality Assessment, the Pamunkey River was impaired of the Recreation Use due to enterococci exceedances, the Aquatic Life Use due to benthic alteration and EPA overlisting, and the Fish Consumption Use due to Virginia Department of Health advisories for mercury and PCBs. DDT in sediment and arsenic in fish tissue were considered non-impairing observed effects. The Wildlife Use was not assessed. The Upper York River/Lower Pamunkey River Bacterial TMDL was approved by the EPA on July 28, 2010 and by the SWCB on December 31, 2010. The Facility received a wasteload allocation of 2.24E+09 enterococci/day. In addition, the Chesapeake Bay TMDL was approved by the EPA on December 29, 2010. The Facility is considered a significant wastewater discharger and received individual nutrient and sediment allocations.
3. On March 31, 2011, New Kent reported to DEQ that there was an upset at the Facility that resulted in the Facility's inability to nitrify. New Kent stated that the ammonia nitrogen increased, while nitrates decreased at the Facility. In response, New Kent increased air to the Facility and added liquid nitrifying bacteria purchased from a third party vendor. After 2 days, the Facility began to nitrify and New Kent contacted Henrico County Jail and SDI Disposal, dischargers to the Facility, to see if they were conducting any cleaning or maintenance work that may have allowed chemicals into the influent wastewater flow to the system.
4. New Kent reported TKN violations on the DMR for the April 2011 monitoring period. New Kent indicated that it believed the exceedances were related to toxins introduced into the Facility's collection system which caused an inhibition of biological nitrification.
5. On July 31, 2011, New Kent reported an upset similar to the March 31, 2011 event. SCADA system trends at the Facility indicated that within three hours the Plant stopped nitrifying. New Kent and its consultant, who is also connected to the Facility SCADA system, determined that the Facility was operating correctly and determined that the only possible cause was a toxin that inhibited biological nitrification. New Kent's response was similar to the last event; it increased air to the Facility; added liquid nitrifying bacteria; and, contacted dischargers to the system. Liquid nitrifying bacteria is now kept in stock at the Facility for future events.
6. New Kent reported TKN violations on the DMR for the August 2011 monitoring period. New Kent indicated that it believed the exceedances were related to toxins introduced into the Facility's collection system which caused an inhibition of biological nitrification.
7. After the July 31, 2011 upset, New Kent began making contact with all commercial businesses to check for chemical use that may be detrimental to the Facility. New Kent stated it would educate the business owners of the deleterious effect that chemicals and grease has on the Facility's ability to treat wastewater.

8. On November 3, 2011, PRO issued Notice of Violation No. W2011-11-P-0001 to New Kent for the TKN violations in April and August of 2011. New Kent reiterated what was reported to the Department on March 31 and July 31 of 2011, that it believed the exceedances were related to toxins introduced into the Facility's collection system which caused an inhibition of biological nitrification.
9. On February 22, 2012, Department staff conducted a Facility site visit to conduct an enforcement conference and to determine if additional corrective action is required to address permit effluent limit violations. Violations cited in the November 3, 2011 NOV were discussed and the Department determined that additional injunctive relief was not required as the Facility had stabilized and was meeting TKN Permit limits since September 2011.
10. On February 10, 2012, New Kent reported a Total Nitrogen (Calendar Year) average concentration violation on the DMR for the January through December 2011 monitoring period. Total nitrogen is a calculated parameter consisting of the sum of TKN, nitrite, and nitrate. New Kent stated, and the Department confirmed, that this annual Total Nitrogen average concentration violation is due to the high TKN concentrations reported for the April and August 2011 monitoring periods.
11. On April 19, 2012, PRO issued Notice of Violation No. W2012-03-P-0001 to New Kent for the annual Total Nitrogen average concentration violation.
12. New Kent's operating logs indicate that it discharged treated wastewater or distributed reclaimed water from the Plant every day from January 1, 2011, through December 31, 2011.
13. 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."
14. 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.
15. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
16. The Department has issued no individual permits or certificates to New Kent other than VPDES Permit No. VA0088331. The Board has issued coverage to New Kent under the General Permit for Nitrogen and Phosphorus Discharges to the Chesapeake Bay. That coverage does not authorize the effluent limit exceedances discussed above.
17. The Pamunkey is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

18. Based on the 2011 DMRs submitted by New Kent to the Department, the Board concludes that New Kent has violated the Permit and Va. Code 62.1-44.5 and 9 VAC25-31-50, by discharging treated sewage and municipal wastes from the Facility while concurrently failing to comply with the conditions of the Permit, as described above.
19. New Kent has submitted documentation that verifies, and a Department staff inspection on February 2, 2012, verified that further injunctive relief is not required to address the violations described above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders New Kent, and New Kent 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 New Kent for good cause shown by New Kent, 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, New Kent admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. New Kent 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. New Kent 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 New Kent 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. New Kent 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. New Kent shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. New Kent 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.

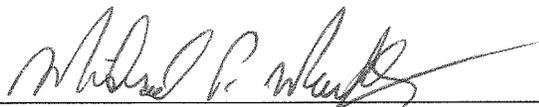
9. This Order is binding on the parties hereto, and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and New Kent. Nevertheless, New Kent agrees to be bound by any compliance date which 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 New Kent has completed all of the requirements of the Order;

- b. New Kent 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 New Kent.

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

And it is so ORDERED this 27<sup>th</sup> day of SEPTEMBER, 2012.

  
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Michael P. Murphy, Regional Director  
Department of Environmental Quality

New Kent County voluntarily agrees to the issuance of this Order.

Date: 8/2/2012 By: [Signature], Acting County Administrator  
(Person) (Title)  
New Kent County

Commonwealth of Virginia  
City/County of New Kent

The foregoing document was signed and acknowledged before me this 02 day of  
August, 2012, by Rodney A. Hathaway who is  
Acting County Administrator of New Kent County, on behalf of the County.

[Signature]  
Notary Public  
352061  
Registration No.

My commission expires: 09.30.2012

Notary seal:



APPENDIX A

1. On or before September 15, 2012, New Kent shall submit to the Department a list of non-residential users connected to the collection system. New Kent shall review its sewer use ordinance for potential changes to strengthen the ordinance with respect to the County's ability to regulate and control the introduction of materials into the system which could pass through or interfere with the treatment processes of the Plant.
2. On or before October 15, 2012, New Kent shall develop educational materials to distribute to non-residential system users informing them of the effects of illicit discharges to the collection system on the treatment plant and reclamation/reuse system, as well as the benefits that accrue from maintaining the collection system's integrity. New Kent shall submit these materials to the Department for review.
3. On or before January 15, 2013, New Kent shall distribute the educational materials to the non-residential system users. When an existing non-residential system user changes ownership, or when a new non-residential system user opens in the County, New Kent shall schedule an inspection of the user's premises to check for chemical use that may be detrimental to the Facility, to acquaint the user with the provisions of the sewer use ordinance and to provide the user with a copy of the educational materials described in paragraph 2 above.
4. On or before November 15, 2012, New Kent shall submit to the Department for review and approval an upset response plan. This plan will contain:
  - a. The procedure for deciding whether to send reclaimed water to the reuse distribution system, to store the water for recycling through the treatment works once the Plant recovers from the upset, or to discharge the water to state waters after full treatment in the Plant, and
  - b. The procedure for tracing an illicit discharge to the collection system, whether or not the illicit discharge results in an upset at the Plant. This procedure shall include a list of test kits, probes, samplers or a combination of the aforementioned devices necessary to trace the illicit discharge to its origin. For purposes of this Order the term "illicit discharge" means any introduction of materials to the collection system not allowed under the County's sewer use ordinance.

Upon Department approval, the upset plan will be incorporated by reference in the Facility Operations and Maintenance Manual and New Kent shall confirm to the Department, in writing, that the plan has been incorporated in the Manual's provisions. New Kent shall expeditiously respond to any Department requests for revisions to the upset plan and shall in any event ensure that Department has received all materials necessary to approve the plan on or before January 1, 2013.

5. Sixty days after the Department approves the upset response plan, New Kent shall acquire (and, as applicable, install) the equipment cited in Paragraph 4.b. (above) and begin monitoring the collection system in the manner described in the approved plan.
  
6. If further Plant upsets do not occur before March 1, 2014 then New Kent may request that this Order be terminated based on its implementation of an apparently successful education program.