



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director

Thomas L. Henderson  
Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

#### **SPECIAL ORDER BY CONSENT**

#### **ISSUED TO**

**The Town of Crewe  
Permit Number VA0020303**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15 (8a) and (8d), between the State Water Control Board and the Town of Crewe for the purpose of resolving violations of an Order of the Board, and violations of State Water Control Law and regulations.

#### **SECTION B: Definitions**

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

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizen 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.
5. "Order" means this document, also known as a Consent Special Order.
6. "1999 Order" means the Consent Special Order issued by the Board to the Town of Crewe on October 8, 1999.
7. "Town" or "Crewe" means the Town of Crewe located in Nottoway County,

Virginia.

8. “SCRO” means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
9. “VPDES” means the Virginia Pollutant Discharge Elimination System.
10. “Permit” means VPDES Permit number VA0020303 issued to the Town.
11. “Facility” means the wastewater treatment plant owned and operated by the Town of Crewe.
12. “Sewer System” means the system owned and operated by the Town designed to convey wastewater to the Facility for treatment, including transmission lines, pumping facilities, manholes and related appurtenances.
13. “Infiltration” means the water entering the Sewer System and service connections from the ground through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguishable from, Inflow.
14. “Inflow” means the water discharged into the Sewer System, including service connections, from such sources as, but not limited to, roof leaders, cellar, yard and areas drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm sewers, surface run-off, street wash waters, or drainage. Inflow does not include, and is distinguishable from, Infiltration.
15. “I & I” means the total quantity of water from both Infiltration and Inflow without distinguishing the source.
16. “I & I Analysis” means an engineering and economic analysis that identifies defects in the Sewer System, and demonstrates excessive and non-excessive I & I in the Sewer System.
17. “Excessive I & I” means the quantities of I & I that can be economically eliminated from

the Sewer System by Rehabilitation, as determined by an I & I Analysis that compares the cost for correcting the I & I condition with the total cost for transportation and treatment of the I & I at the Facility. (See 40 Code of Federal Regulations (“CFR”) § 35.2005(b)(16).)

18. “Non-excessive Infiltration” means the quantity of flow which is less than 120 gallons per capita per day (domestic base flow and Infiltration) or the quantity of Infiltration which cannot be economically and effectively eliminated from the Sewer System as determined in an I & I Analysis. (See 40 CFR § 35.2005(b)(28).)
19. “Non-excessive Inflow” means the maximum total flow rate during storm events which does not result in chronic operational problems related to hydraulic overloading of the Facility or Sewer System, or does not result in a total flow of more than 275 gallons per capita per day (domestic base flow plus Infiltration plus Inflow). (See 40 CFR § 35.2005(b)(29).)
20. “Rehabilitation” means repair work on sewer lines, manholes and other Sewer System appurtenances that have been determined to contain Excessive I & I. The repair work may involve grouting of sewer pipe joints or defects, sewer pipe relining, inversion and de-slipping, sewer pipe replacement and various repairs or replacements of other Sewer System appurtenances.
21. “SSO” or “Sanitary Sewer Overflow” means any discharge of wastewater to waters of the State from Crewe’s Facility or Sewer System through a point source not specified in the Permit, as well as any release of wastewater from Crewe’s Sewer System to public or private property that does not reach waters of the State. For the purposes of this Order a SSO does not include wastewater backups into buildings that have connections to the Sewer System that are prohibited by Crewe’s sewer ordinance or that are caused by blockages, flow conditions, or malfunctions in a building lateral, other piping, or conveyance system that is not owned or under the operational control of Crewe.

22. “Hydraulic Overloading” means: (a) monthly average influent from the Sewer System to the Facility in excess of 475,000 gallons occurring for any consecutive three-month period; and (b) influent flow from the Sewer System that causes the Facility to exceed any effluent limitation in the Permit, or causes an SSO from the Facility or the Sewer System.

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

1. Va. Code § 62.1-44.5 and 9 Virginia Administrative Code (“VAC”) 25-31-50 provide, *inter alia*, that except in compliance with a permit issued from the Board it is unlawful to discharge into State waters “sewage, industrial wastes, other wastes, or any noxious or deleterious substances[.]”
2. The Facility is subject to the Permit, which authorizes the Town to discharge treated wastewater into an unnamed tributary of Deep Creek in strict compliance with the terms, limitations, and requirements delineated in the Permit. The 1999 Order was issued to the Town to address Permit effluent limits violations, I & I to the Facility, and failure by the Town to submit reports required by the Permit. The 1999 Order required the Town to study and correct its I & I problems.
3. The unnamed tributary to Deep Creek is reported on Part 1A of the 2002 303(d) Total Maximum Daily Load (“TMDL”) Priority List, as required by the Clean Water Act 33 U.S.C. § 1313(d), to the Environmental Protection Agency as impaired for benthic and zinc. The unnamed tributary was first reported on the TMDL Priority list in 1994. The alleged impairment source is the Facility and SSOs from the Sewer System.
4. On August 1, 2000, the Piedmont Regional Office (“PRO”) of the Department issued Notice of Violation (“NOV”), number W2000-05-P-0011, for failure to submit a sewer use ordinance, and failure to submit quarterly progress reports in 2000 in

violation of the 1999 Order; such violations constitute violations of an order from the Board in contravention of Va. Code § 62.1-44.31. The NOV also noted the Town failed to submit quarterly progress reports in 2000 in violation of Part 1 C of the Permit; and, failed to comply with effluent limits for Total Kjeldahl Nitrogen (“TKN”) in December 1999, January 2000, February 2000, March 2000, and May 2000; Biochemical Oxygen Demand (“BOD”) in April 2000, and Total Suspended Solids (“TSS”) in March 2000.

5. On March 30, 2001, the PRO of the Department issued NOV, number 2001-03-P-0002, to the Town for effluent limit violations of TKN for the month of January 2001.
6. On October 15, 2001, the SCRO of the Department issued NOV, number 01-10-SCRO-009, to the Town for effluent limit violations of TKN in March, April, and May 2001; failure to submit Quarterly Progress Reports due the 10<sup>th</sup> of January, April, and July 2001; failure to submit the annual Water Quality Standards Monitoring Report due August 10, 2001; and improper operation and maintenance of the Facility that resulted in an unauthorized discharge of sewage into State waters.
7. On February 4, 2002, the DEQ mailed a draft amended Consent Special Order to the Town. The Town acknowledged receipt of the draft amended Order on February 6, 2002. The Town submitted a formal response to the draft Order on May 17, 2002.
8. From February 12 through February 14, 2002, the DEQ, in an effort to provide compliance assistance to the Town, conducted a comprehensive performance evaluation of the Facility and issued a Diagnostic Evaluation Report (hereinafter referred to as the “Report”) on April 1, 2002. The Report noted, *inter alia*, that the wastewater treatment plant was susceptible to “severe [I & I].”
9. On June 10, 2002, the DEQ and the Town met in Crewe to discuss the terms of the

draft amended Order. The Town objected to certain provisions of the Order including the provision requiring elimination of overflows caused by I & I from the conveyance system. The DEQ requested that the Town propose alternative provisions.

10. On November 4, 2002, the DEQ received a counter proposal to the draft amended Order from the Town. The DEQ countered this offer of settlement on November 27, 2002. On January 3, 2003, the DEQ received another counter proposal from the Town; this offer stated the Town would reduce I & I to the Facility by 43 to 50 percent.
11. The Facility's Permit is for 0.5 million gallons per day ("mgd") design flow capacity. During the rain events of February through April 2003, the Facility consistently exceeded 1 mgd in daily flows with a peak of 1.7 mgd. Based on this recent flow data and the Report, DEQ determined that 43 to 50 percent reduction in I & I induced flows would be insufficient to ensure that the Facility did not continue to experience Hydraulic Overloading or chronic overflows in the Sewer System.
12. On February 28, 2003, the SCRO issued NOV, number W2003-02-L- 0001, to the Town for effluent limits violations of TKN in November and December 2002, and January 2003, and failure to report Total Recoverable Zinc in January 2003. Subsequently, the Town replaced the chief operator at the Facility; the Town has not exceeded any effluent limit since February 2003.
13. On April 2, 2003, the SCRO issued NOV, number W2003-04-L-0001, to the Town for an unpermitted bypass of the Facility at the headworks, which resulted in an unauthorized discharge to State waters, and several SSOs throughout the Sewer System. The Town attributes the overflows to I & I.
14. On April 24, 2003, the SCRO issued NOV, number W2003-04-L- 0004, to the

Town for unauthorized discharges to State waters from SSOs in the Sewer System that occurred on April 9, 10, and 11, 2003. The Town attributes the overflows to I & I.

15. Part I D 5 (formally Part I D 1) of the Permit requires the Town to submit written notice to DEQ within 30 days of the end of the third consecutive month of exceeding 95 percent of Facility's design flow capacity. Part I D 5 also requires the Town to submit a plan of action within 90 days from the end of the third consecutive month of exceeding 95 percent design flow capacity. The Facility exceeded 95 percent design flow capacity in March, April, May, and June 2003. The Town did not submit the required written notice or the required plan of action within the time frame required by the Permit; the Town stated by letter dated November 4, 2003, that it was unaware of this requirement in the Permit. The plan of action for the Town is delineated in Appendix A of this Order.
16. On September 23, 2003, the SCRO issued NOV, number W2003-09- L-0002, to the Town for an unauthorized discharge to State waters from the Sewer System. The Town attributes the unauthorized discharge to root infiltration and grease in the sewage conveyance line.
17. On October 8, 2003, the SCRO received a preliminary schedule for I & I corrective action from the Town.
18. On October 26, 2004, the SCRO issued NOV, number W2004-10-L-0013, for thirteen (13) unauthorized discharges to State waters that occurred in December of 2003, and February, March, June, and August 2004, and submitting one (1) late overflow report in July 2004.
19. Given the extent of non-compliance by the Town the Board is issuing a new order to supersede the 1999 Order, rather than amending the 1999 Order.

**SECTION D: Agreement and Order**

Accordingly, the State Water Control Board, by virtue of the authority granted in Va. Code § 62.1-44.15 (8a) and (8d), orders Crewe, and Crewe consents, to perform the actions contained in Appendix A of this Order. Further, the Board orders Crewe, and Crewe consents, to pay a civil charge of \$5,000.00 in settlement of the violations cited herein. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification number for Crewe. The 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 10150  
Richmond, Virginia 23240

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Crewe, for good cause shown by Crewe, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein. 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 that occur after this Order is issued; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect enforcement actions by other state, local, or federal regulatory authorities, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, and for

no other purpose, Crewe admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein. This Order shall not be admissible in any proceeding, other than a proceeding for enforcement or amendment of this Order, as evidence of the facts stated herein.

4. Crewe 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. Crewe declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the State Water Control Law, Va. Code § 62.1-44.2 *et seq.*, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation with respect to the violations alleged in this Order, and to judicial review of any finding of fact or conclusion of 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 other action taken by the Board or Director, including action to enforce this Order.
6. Failure by Crewe to comply with any term of this Order shall constitute a violation of an Order of the Board. Nothing herein shall preclude appropriate enforcement actions or the issuance of additional orders as appropriate by the Board, or the Director, as a result of such violations.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of this Order shall remain in full force and effect.
8. Crewe shall be responsible for failure to comply with any of the terms and conditions of this Order. Provided that timely notification is made as specified in this paragraph, it shall be a defense if compliance is made impossible by earthquake, flood, other acts of

God, war, strike, vandalism, or other occurrence beyond the reasonable control of Crewe, notwithstanding the exercise of good faith and due diligence by Crewe. Crewe shall demonstrate that circumstances resulting in noncompliance were beyond the reasonable control of Crewe and were not caused or aggravated by Crewe's lack of good faith or due diligence. Crewe shall notify the SCRO Director by telephone and in writing 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 SCRO Director by telephone not later than the close of business on the following business day, and in writing within (5) business days, after learning of any condition that Crewe intends to assert will result in the impossibility of compliance, shall preclude the assertion of such condition as a defense in any action to enforce this Order. Failure to apply for loans, grants, or other available financial mechanisms shall not constitute a defense under this paragraph.

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 the Director, or his designee, and Crewe by its authorized representative.
11. This Order shall continue in effect until:

- a. Crewe petitions the SCRO Director to terminate the Order after it has completed all requirements of the Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
- b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Crewe.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Crewe from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Unless otherwise specified herein, all correspondence related to this Order shall be sent to:

Harry F. Waggoner  
Department of Environmental Quality  
South Central Regional Office  
7705 Timberlake Road  
Lynchburg, Virginia 24502

and to:

Henry Crittenden  
Mayor, Town of Crewe  
125 East Carolina Avenue  
Crewe, Virginia 23930

and to:

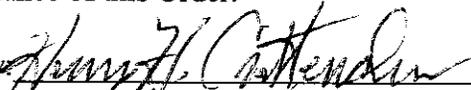
Timothy G. Hayes  
Hunton & Williams  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219

13. By its signature below, Crewe consents to the issuance of this Order.

And it is so ORDERED this 23rd day of March, 2005.

  
\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

The Town of Crewe consents to the issuance of this Order.

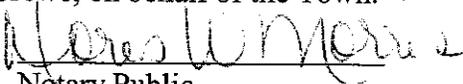
By   
\_\_\_\_\_  
Henry Crittenden, Mayor, Town of Crewe

Date: 1-10-05

Commonwealth of Virginia

City/County of NOTTOWAY

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of January, 2005,  
by Henry Crittenden who is the Mayor of Town of Crewe, on behalf of the Town.

  
\_\_\_\_\_  
Notary Public

My commission expires: 9/30/06

## APPENDIX A

In order to attain compliance with the requirements of this Order and the Permit, the Town of Crewe shall do the following:

1. Within six (6) months of the issuance of the Order Crewe shall conduct an I & I Analysis of the Sewer System. The I & I Analysis shall incorporate the cost-effectiveness analysis delineated in Chapter 4 of the Environmental Protection Agency (“EPA”) Handbook, *Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030 October 1991. Crewe shall incorporate, either in whole or in part, elements of the analysis set forth in Chapter 3 and 4 of the EPA Handbook, and may incorporate elements of I & I studies performed prior to the date of this Order, provided they are consistent with the requirements herein. Crewe shall submit the I & I Analysis to DEQ within thirty (30) days of completion.
2. The I & I Analysis shall begin with:
  - a. identification of flow metering locations and flow metering methodology to determine actual flows in the Sewer System under reasonably anticipated weather and operating conditions;
  - b. conducting day and night wet and dry weather flow metering;
3. Once Crewe, by conducting the flow monitoring in item 2 of this Appendix, identifies which parts of the Sewer System have Non-Excessive Infiltration and Non-Excessive Inflow pursuant to the definitions in Section B of this Order, Crewe may choose not to

conduct further analysis of those parts of the Sewer System.

4. Crewe shall continue the I & I Analysis of the parts of the Sewer System that do not contain Non-Excessive Infiltration and Non-Excessive Inflow, and this portion of the I & I Analysis shall contain, at a minimum, the following:
  - a. public information program;
  - b. sewer transmission line inspection and testing, using appropriate technology;
  - c. Identification of all connections to the Sewer System that are prohibited by Crewe's sewer ordinance;
  - d. evaluation of security and leakage for all pump stations, manhole covers and other sewerage transmission line access points in the Sewer System;
5. Within ninety (90) days of submitting the I & I Analysis to DEQ, Crewe shall submit a Rehabilitation plan ("Crewe Plan of Action" or "CPA"), to DEQ for approval. During preparation of the CPA Crewe shall consult with DEQ to develop an approvable plan. Crewe shall incorporate, either in whole or in part, elements of the rehabilitation plan set forth in Chapter 6 of the EPA Handbook to remove Excessive I & I from the Sewer System and eliminate Hydraulic Overloading of the Facility. The CPA shall contain quarterly milestones and a completion date. Upon approval by DEQ, the CPA shall become a part of this Order and enforceable under the terms herein.
6. Upon receipt of DEQ's approval of the CPA, Crewe shall immediately implement the CPA in accordance with DEQ's approval.
7. Upon completion of the CPA, Crewe shall so notify DEQ in writing. Crewe shall be deemed to have satisfied the requirements of this Appendix A by documenting that for twelve (12) months following the date of such notice, the Facility did not exceed, on a monthly average, 95 percent of its design flow capacity, that during the same twelve (12) month period the Facility did not violate any Permit effluent limit because of excess

influent flow attributable to I & I, and that no SSOs occurred in the Sewer System as a result of I & I.

8. At no time shall the I & I Analysis of the Sewer System, the CPA, or implementation of the CPA exceed thirty (36) months from the effective date of this Order without the written consent from the Director.
9. Within sixty (60) days of the issuance of this Order Crewe shall establish an escrow fund in the amount of \$60,000.00 that shall be used to reimburse Town residents for the cost of disconnecting sump-pumps, rain leader connections, floor and yard drains, and other similar connections to the Sewer System. Crewe shall provide DEQ with monthly progress reports, which shall be due on the 10<sup>th</sup> of every month and lasting until the escrow fund is depleted, of the dollar amount and home address of recipient(s) that receive funds under this paragraph.

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