



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Molly Joseph Ward
Secretary of Natural Resources

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO FAIRFAX COUNTY BOARD OF SUPERVISORS FOR

FAIRFAX COUNTY WASTEWATER COLLECTION SYSTEM

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 Fairfax County Board of Supervisors regarding the Fairfax County Sanitary Sewer Collection System, for the purpose of resolving certain violations of the State Water Control Law and the applicable 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. "Collection System" means the wastewater sewer system owned by Fairfax County Board of Supervisors and operated by Fairfax County Public Works and Environmental Services Department.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
7. "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.
8. "Fairfax County" or the "County" means the Fairfax County Board of Supervisors which supervise the government of Fairfax County, a political subdivision of the Commonwealth of Virginia. The Fairfax County Board of Supervisors is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
11. "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.
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. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
15. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. “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.
17. “Va. Code” means the Code of Virginia (1950), as amended.
18. “VAC” means the Virginia Administrative Code.
19. “VPDES” means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Fairfax County owns the Collection System located in Fairfax County, Virginia. The portion of the Collection System that is the subject of this Order serves Fairfax County residents and conveys sewage to the Alexandria Renew Enterprises Water Resources Recovery Facility located in Alexandria, Virginia.
2. Holmes Run is located in the Potomac River Basin. Holmes Run is listed in DEQ’s 305(b) report as impaired for recreation due to exceedances of the maximum *E. coli* bacteria criterion.
3. Hunting Creek is located in the Potomac River Basin. Hunting Creek is listed in DEQ’s 305(b) report as impaired for recreation and fish consumption due to exceedances of the maximum *E. coli* bacteria criterion and PCBs.
4. On October 14, 2013, DEQ was notified by the Virginia Department of Emergency Management – Emergency Operations Center of a sanitary sewer overflow (SSO) into Holmes Run. According to the Virginia Department of Game and Inland Fisheries, this stretch of Holmes Run had recently been stocked with approximately 1000 trout. DEQ conducted a site visit on October 15, 2013, and observed dead fish as a result of the SSO. On October 21, 2013, Fairfax County submitted an incident report whereby it attributed the SSO to high flows from flooding caused by prior rain events and a line blockage. The SSO resulted in approximately 250,000 gallons of sewage being released into Holmes Run. Fairfax stopped the SSO within 5 hours thereby mitigating environmental harm. Fairfax installed a temporary bypass pumping system within one day to prevent further discharges and deployed emergency contractors to initiate pipe repair. Fairfax County conducted multiple samplings to monitor *E. coli* levels of Holmes Run upstream and downstream from the point of the sewer line break and notified the community of the

sanitary sewer line break by posting warning signs in English and Spanish at the incident site and distributed to surrounding subdivisions and provided updates on the progress of the repair and rehabilitation of the line. Additionally, the County performed additional condition assessments on the Holmes Run trunk sewer line and subsequently installed approximately 4,000 feet of cured-in-place pipe lining downstream from the break location at a cost of over \$3 million.

5. On October 17, 2013, Fairfax County notified DEQ of a SSO that occurred in an unnamed tributary to Hunting Creek. On October 24, 2013, Fairfax County submitted an incident report whereby it attributed the SSO to a tree which fell and broke a sanitary sewer pipe. The SSO resulted in approximately 17,800 gallons of sewage being released into the unnamed tributary to Hunting Creek. The County removed the fallen tree, and the area downstream from the break was dammed to stop the overflow. A bypass pump was setup to prevent additional overflows. The County replaced approximately 110 feet of existing pipe. Additionally, the County conducted multiple samplings to monitor *E. coli* levels downstream from the point of the sewer line break and notified the community of the SSO by posting warning signs.
6. On April 30, 2014, Fairfax County notified DEQ of a SSO that occurred from a manhole into Holmes Run leading to Lake Barcroft. On May 7, 2014, Fairfax County submitted an incident report whereby it attributed the SSO to heavy rains that occurred on April 30th. The SSO resulted in the release of approximately 300,000 to 400,000 gallons of sewage into Holmes Run leading to Lake Barcroft. The County conducted multiple samplings to monitor *E. coli* levels downstream from the point of the sewer line break, and notified the Lake Barcroft community regarding the overflow by posting warning signs. Fairfax County completed the Holmes Run pump station force main rehabilitation project and the pump station has been operating without any issues.
7. On May 16, 2014, Fairfax County notified DEQ of a SSO that occurred from a manhole into Holmes Run leading to Lake Barcroft. On May 19, 2014, Fairfax County submitted an incident report whereby it attributed the SSO to a pump failure at a pump station upstream. The SSO resulted in the release of approximately 3,240 gallons of sewage to Holmes Run leading to Lake Barcroft.
8. On May 19, 2014, Fairfax County notified DEQ of a SSO that occurred from the Barcroft I Wastewater Pump Station. On May 22, 2014, Fairfax County submitted an incident report whereby it attributed the SSO to power disruption to the pump controller from a faulty uninterrupted power supply (UPS). The SSO resulted in the release of approximately 6,404 gallons of sewage of which 3,904 gallons reached Lake Barcroft. The faulty UPS has since been replaced at the Barcroft I Wastewater Pump Station. Additionally, all remaining UPS systems in the wastewater pumping station system are scheduled to be replaced by early 2015.
9. On June 16, 2014, Fairfax County notified DEQ of a SSO that occurred from the Holmes Run Pump Station into Holmes Run leading to Lake Barcroft. On June 19, 2014, Fairfax County submitted an incident report whereby it attributed the SSO to a failed gasket

within a fitting in the force main to the Holmes Run Pump Station. The SSO resulted in the release of approximately 8,000 gallons of sewage of which approximately 6,000 gallons reached Holmes Run leading to Lake Barcroft. The Holmes Run pump station force main rehabilitation project has been completed and the pump station force main has been fully tested and has operated normally since substantial completion of the project.

10. NRO issued Notices of Violation Nos. W2013-12-N-001, dated December 19, 2013, and W2014-07-N-001, dated July 18, 2014, to Fairfax County for the aforementioned SSOs.
11. 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.”
12. 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.
13. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
14. The Department has issued no permits or certificates to Fairfax County for the aforementioned SSOs.
15. Holmes Run and the unnamed tributary to Hunting Creek are surface waters located wholly within the Commonwealth and are “state waters” under State Water Control Law.
16. Based on the results of the October 14 and 17, 2013 and April 30, May 16, May 19, and June 16, 2014, notifications, the October 15, 2013 site visit, the documentation submitted on October 21 and 24, 2013, and May 7, 19 and 22, and June 19, 2014, the Board concludes that Fairfax County has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging sewage into state waters without a certificate issued by the Board as described in paragraphs C(4) through C(15), above.
17. On February 5, 2014, and August 28, 2014, Department staff met with representatives of Fairfax County to discuss the violations. Fairfax County presented documentation that verifies that the violations as described in paragraphs C(4) through C(15) above have been corrected. Also, the County asserts it continues to apply appropriate risk-based total life cycle asset management best practices in the maintenance, condition assessment, and placed capital re-investment on county wastewater assets. The County’s annual capital improvement program to upgrade and rehabilitate the wastewater collection system is structured to maintain system integrity, increase reliability and level of service, and enhance environmental compliance.

SECTION D: Agreement and Order

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

1. To perform the actions described in Appendix A of this Order; and
2. To a civil charge of \$27,300.00 in settlement of the violations cited in this Order to be paid as follows:
 - a. Fairfax County shall pay \$2,730.00 of the civil charge within 30 days of the effective date of 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

Fairfax County 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, Fairfax County shall be liable for attorneys' fees of 30% of the amount outstanding.

- b. Fairfax County shall satisfy \$24,570.00 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.
- c. The net project costs of the SEP to Fairfax County shall not be less than the amount set forth in Paragraph D.2.b. If it is, Fairfax County shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost: means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of these portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
- d. By signing this Order, Fairfax County certifies that it has not commenced performance of the SEP.
- e. Fairfax County acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Fairfax County to a third party, shall not relieve Fairfax County of its responsibility to complete the SEP as described in this Order.

- f. In the event it publicizes the SEP or the SEP results, Fairfax County shall state in a prominent manner that the project is part of a settlement of an enforcement action.
- g. The Department has the sole discretion to:
 - i. Authorize any alternate, equivalent SEP proposed by Fairfax County; and
 - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
- h. Should the Department determine that Fairfax County has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Fairfax County in writing. Within 30 days of being notified, Fairfax County shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Fairfax County for good cause shown by Fairfax County, 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 and in NOV No. W2013-12-N-001 dated December 19, 2013. 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, Fairfax County admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Fairfax County 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. Fairfax County 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 Fairfax County 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. Fairfax County 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. Fairfax County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Fairfax County 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 Fairfax County. Nevertheless, Fairfax County 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 Fairfax County has completed all of the requirements of the Order;

- b. Fairfax County 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 Fairfax County.

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

And it is so ORDERED this _____ day of _____, 2015.

Thomas A. Faha, Regional Director
Department of Environmental Quality

Fairfax County Board of Supervisors voluntarily agrees to the issuance of this Order.

Date: 2/20/2015 By: Edward L. Long Jr.
Edward L. Long Jr. County Executive

Commonwealth of Virginia

City/County of FAIRFAX

The foregoing document was signed and acknowledged before me this 20TH day of FEBRUARY, 2015, by EDWARD L. LONG JR. who is COUNTY EXECUTIVE on behalf of the Board of Supervisors of Fairfax County, Virginia.

JoAnn Havach Bakos
Notary Public

178038
Registration No.

My commission expires: JULY 31, 2016

Notary seal:



Jo Ann Havach
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #178038
My Commission Expires
July 31, 2016

JoAnn Havach Bakos
I was commissioned a notary public as
JoAnn Havach.

APPENDIX A
SCHEDULE OF COMPLIANCE

Fairfax County shall:

1. Within 30 days of execution of this Order, submit to DEQ for review and comment procedures to ensure appropriate public notification is provided after occurrences of SSOs. Said procedures shall include requirements for suitable signage depending on the circumstances of the SSO event.

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

VA DEQ – Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193

APPENDIX B
FAIRFAX COUNTY BOARD OF SUPERVISORS
SUPPLEMENTAL ENVIRONMENTAL PROJECT

In accordance with Va. Code § 10.1-1186.2, Fairfax County shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmental beneficial project undertaken as partial settlement of a civil action and not otherwise required by law.

1. The SEP to be performed by Fairfax County is donating \$24,570.00 to the Virginia Department of Game and Inland Fisheries (VDGIF) Game Protection Fund for restocking trout in Holmes Run.
2. The SEP shall be completed within 30 days of execution of this Order.
3. Fairfax County shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. Fairfax County shall submit the final report and certification to the Department within 45 days from the effective date of the Order.
4. If the SEP has not or cannot be completed as described in the Order, Fairfax County shall notify DEQ in writing no later than 30 days from the effective date of this Order. Such notification shall include:
 - a. an alternate SEP proposal, or
 - b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.
5. Fairfax County hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
6. Fairfax County shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 30 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Fairfax County's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
7. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to the contact identified in Appendix A of this Order.