COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

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Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
AQUA VIRGINIA, INC.
FOR
LAKE LAND 'OR WASTEWATER TREATMENT PLANT
VPDES PERMIT NO. VA0060887

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 Aqua Virginia, Inc., regarding the Lake Land 'Or Wastewater Treatment Plant for the purpose of resolving certain violations of 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. "Aqua" means Aqua Virginia, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Aqua Virginia, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.

3. "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.

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. "DMR" means Discharge Monitoring Report.

9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

10. "Facility" or "Plant" means the Lake Land ' Or Wastewater Treatment Plant located at 200 Kent Drive, Ruther Glen, Caroline County, Virginia, which treats and discharges treated sewage and other domestic wastes for the residents of the Lake Land 'Or residential community.

11. "I&I" means inflow and infiltration.

12. "MGD" means million gallons per day.

13. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

14. "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.

15. "Permit" means VPDES Permit No. VA0060887, which was issued under the State Water Control Law and the Regulation to Aqua Virginia, Inc. on September 14, 2010, and which expires on September 13, 2015.

16. "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.

17. "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.

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

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

20. "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.

21. "TKN" means Total Kjeldahl Nitrogen.

22. "TSS" means Total Suspended Solids.

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.

SECTION C: Findings of Fact and Conclusions of Law

1. Aqua owns and operates the Plant in Caroline County, Virginia. The Permit authorizes Aqua to discharge treated sewage and other domestic wastes from the Plant, to an unnamed tributary to the South River, in strict compliance with the terms and conditions of the Permit. The design flow of the Plant is 0.22 MGD.

2. The South River is located in the York River Basin. This segment is not listed in DEQ's 2012 305(b)/303(d) Integrated Report. Yet the downstream segment of South River is

listed in the 2012 Integrated Report as not supporting the recreation use due to exceedances of the *E. coli* bacteria criterion. The bacteria impairment begins approximately 9.5 miles downstream of the outfall.

3. In submitting its DMRs, Aqua reported that it exceeded discharge limitations contained in Part I, Section A, Number 1, Page 1 of the Permit, for: TSS for May 2013; E. coli for May 2013; and TKN for the June 2013, July 2013; August 2013 monitoring periods; and concentration average limit for Total Phosphorus (as P) for the 2013 Calendar Year.

4. Additionally, Aqua submitted the Annual I&I Report late. The report was due to DEQ on February 10, 2013, and was received on March 1, 2013.

5. Part I, Section C, Number 14, Page 7 of the Permit states that Permitte shall submit to DEQ an annual I&I report every year no later than February 10th, detailing the previous year's I&I work.

6. 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."

7. 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.

8. Notices of Violation were issued for the violations referenced in paragraph 3 above on April 11, 2013; July 12, 2013; August 13, 2013; September 6, 2013; October 4, 2013; and February 20, 2014.

9. On October 22, 2013, Representatives of Aqua and DEQ met to discuss the violations at the WWTP.

10. At the meeting, Aqua stated that a majority of the effluent violations were due to multiple months of increased foam and the Plant being overloaded with solids because of operator error and the loss of aeration units leading to problems with nitrification/de-nitrification and the failure of the UV system.

11. Aqua hired a new operator in March 2013. Aqua stated that staff performed a complete inspection of the aeration trains and made all needed repairs which greatly improved the process. In June 2013 Aqua rehabbed the UV disinfection system resulting in a 100% UV transmission rate.

12. Aqua asserted that the Plant received a toxic shock to the system in August 2013 due to suspected illegal dumping of a non-authorized septage truck. Residents had reported seeing a septage truck discharging into the sewer system; none of Aqua's hauling contractors have permission to discharge and it is not known

which hauling company was involved. Aqua has since increased security at the Lake Land'Or Community to reduce the potential of such occurrences from happening in the future.

13. On the DMRs for March 2014, April 2014, and May 2014 monitoring periods, Aqua reported Plant flows that exceeded 95% of the maximum rated flow.

14. Part I, Section C, Number 1 of the Permit states "[a] written notice and a plan of action for ensuring continued compliance with the terms of this permit shall be submitted to the Northern Regional Office when the monthly average flow influent to the sewage treatment plant reaches 95% of the design capacity authorized in this permit for each month of any three consecutive month period. The written notice shall be submitted within 30 days and the plan of action shall be received at the Northern Regional Office no later than 90 days from the third consecutive month for which the flow reached 95% of the design capacity. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current or reasonably anticipated problem resulting from high influent flows. Failure to submit an adequate plan in a timely manner shall be deemed a violation of this permit."

15. On June 12, 2014, Aqua submitted a written notice regarding increased flow experienced at the Facility.

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

17. The South River is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.

18. Based on the DMRs and submitted documents, the Board concludes that Aqua has violated the Permit and Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and domestic wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) and C(4) above.

19. Aqua has submitted documentation, including DMRs, that verifies that the violations as described in paragraph C(3), above, have been corrected.

20. In order for Aqua to address the increased flows at the Facility, DEQ staff and representatives of Aqua have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Aqua Virginia, Inc., and Aqua Virginia, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $8,295.00 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

Aqua Virginia, Inc. 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Aqua Virginia, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

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

4. Aqua 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. Aqua 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 Aqua 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. Aqua 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. Aqua shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Aqua 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 Aqua 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 Aqua. Nevertheless, Aqua 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 Aqua has completed all of the requirements of the Order;

b. Aqua 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 Aqua.

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

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, Aqua agrees to the issuance of this Order.

And it is so ORDERED this 2nd day of September, 2014.

Thomas A. Faha

Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

Aqua Virginia, Inc. voluntarily agrees to the issuance of this Order.

Date: 8/25/14 By: _____, Manager of operations
(Person) (Title)
Aqua Virginia, Inc.

Commonwealth of Virginia
City/County of Goochland

The foregoing document was signed and acknowledged before me this 25 day of

August, 2014, by Timothy E. Castillo who is

Manager of Operations of Aqua Virginia, Inc., on behalf of the Corporation.

Luther Ghorley Jr
Notary Public

7526426
Registration No.

My commission expires: 12-31-17

Notary seal:

LUTHER SIDNEY GHORLEY JR.
NOTARY PUBLIC
REG # 7526426
MY COMMISSION EXPIRES 12/31/2017
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

Aqua Virginia, Inc. shall:

1. **I &I work**

   A. No later than September 30, 2014, submit to the Department for review and approval, a plan and schedule to perform corrective and investigative work to reduce the monthly average influent flow to below 60% of plant design capacity. Said plan shall include collection system repairs identified by Aqua and submitted to DEQ on June 27, 2014. Once approved by DEQ, the plan and schedule shall become an enforceable part of this Order.

   B. If within 90 days of the completion of work described in A.1 above, the monthly average influent flow has not been reduced to below 60% of plant design capacity, then within 30 days submit an amended plan and schedule to the Department for review and approval. Once approved by DEQ, the amended plan and schedule shall become an enforceable part of this Order.

2. **DEQ Contact**

   Unless otherwise specified in this Order, Aqua Virginia, Inc. shall submit all requirements of Appendix A of this Order to:

   Enforcement
   Virginia Department of Environmental Quality
   Northern Regional Office
   13901 Crown Court
   Woodbridge, VA 22193