



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO HIGHLANDS SWIM AND TENNIS CLUB, INC. UNPERMITTED DISCHARGE

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 Highlands Swim and Tennis Club, Inc, regarding an unpermitted discharge event at the Highlands Swim and Tennis Club, 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. "Highlands " means Highlands Swim and Tennis Club, Inc. a not for profit corporation authorized to do business in Virginia and its, affiliates, partners and subsidiaries. Highlands is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "Integrated Report" means a biennial state submittal that includes the state's findings on the status of all its assessed waters, (as required under §305(b) of the Clean Water Act) a listing of its impaired waters and the causes of impairment, and the status of actions being taken to restore impaired waters (as required under §303(d) of the Clean Water Act).
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. "Property" means the Highland Pool and Tennis Club, located at 1515 Bryan Branch Road in McLean, Virginia, which includes two 25-meter swimming pools, an infant pool, tennis courts and associated infrastructure.
15. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Highlands operates a pool and tennis facility in McLean, Virginia. Bryan Branch is located adjacent to the property and confluences with Pimmit Run.
2. The segment of Pimmit Run that is just downstream of the Property is listed with several impairments in the 2012 Integrated Report. The recreation use is listed as not supporting due to exceedances of the *E. coli* bacteria criterion. A bacteria TMDL for Pimmit Run was completed and approved by EPA in September 2013. The aquatic life use is listed as not supporting due to poor health in the benthic macroinvertebrate community. The fish consumption use is listed as not supporting due to PCBs in fish tissue.
3. On May 22, 2014, DEQ received notification from the Virginia Department of Emergency Management that a fish kill had occurred on Pimmit Run in the vicinity of Bryan Branch Road. On the evening of May 22, 2014, the Fairfax County Fire Department responded to Pimmit Run in the vicinity of Bryan Branch Road as a result of a citizen complaint. The Fire Department noted that many fish of various species, including eels, were observed deceased in Pimmit Run downstream of the Bryan Branch Road area.

4. On May 23, 2014, DEQ staff arrived on site to investigate the fish kill. DEQ staff investigated Bryan Branch which is located adjacent to the Property, and confluences with Pimmit Run. DEQ staff observed that several outfall pipes from the Highlands Club pool area were located along Bryan Branch. As hereinafter discussed, there was evidence that the larger steel pipe on the property had recently discharged from the pool area to Bryan Branch. DEQ staff observed that the stream water below the aforementioned pipe was greenish in appearance, similar to pool water observed in the Highlands' pool, and the water downstream of this location exhibited similar qualities. DEQ staff observed that this discoloration continued into Pimmit Run and downstream. Only live fish were observed by DEQ upstream of this confluence. Fish, both live and dead, and dead aquatic life other than fish were observed downstream of the confluence.
5. A transect survey of deceased aquatic life was performed in the kill zone by DEQ staff. During this survey 120 fish, 5 salamanders, and 11 aquatic worms, all deceased were counted by DEQ staff. Based on these observed totals, it was estimated by DEQ staff that 2267 fish, 94 salamanders, and 208 aquatic worms were killed throughout the kill zone.
6. While DEQ staff was onsite, DEQ staff spoke with U.S. Aquatics staff, the Highlands Swim and Tennis Club's contracted operator. U.S. Aquatics' staff indicated pool preparation had been ongoing for the last several days, and that cleaning activities involving the use of muriatic acid and draining of the pool had occurred in the last several days. DEQ also observed runoff from US Aquatics' staff cleaning of the pool deck and furniture while onsite and observed the runoff from the cleaning activities going into the deck drain system.
7. On June 10, 2014, DEQ staff met with US Aquatics representatives at the Highlands' property. The representatives confirmed that pool cleaning activities had occurred around the week of May 19, 2014. The representatives stated that the pool water was discharged down deck drains immediately around the pool, and cleaning water with chemical additives was discharged to the sanitary sewer collection system. While onsite, DEQ staff requested to observe a discharge from the deck drain system. DEQ staff observed the discharged water flow out through a corrugated pipe at the base of the slope below the pools and into a storm drain drop inlet. The drop inlet discharged through a culvert pipe on the other side of the fence located approximately 120 feet west of the storm water drop inlet. The culvert pipe discharged to a heavily vegetated drainage way and into Bryan Branch. US Aquatics staff informed DEQ that the pool discharged through the steel pipe observed in Bryan Branch. DEQ staff did observe a discharge from the valve drain in the pool house into Bryan Branch.
8. The Department has issued no permits or certificates to Highlands to authorize any discharge.
9. NRO issued Notice of Violation No. W2014-07-N-001 on August 4, 2014, to Highlands for the unauthorized discharge event.

10. 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.”
11. Pimmit Run is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
12. Based on documentation provided to DEQ by Fairfax County Fire and Rescue and information gathered by DEQ staff regarding the unpermitted discharge, the Board concludes that Highlands Swim and Tennis Club has violated Va. Code § 62.1-44.5 by the unpermitted discharge of pool and cleaning water to state waters as described in C(2) through C(3) above.
13. DEQ met with representatives from Highlands and U.S. Aquatics on September 22, 2014, to discuss the aforementioned unpermitted discharge, and the steps Highlands will take to prevent future unpermitted discharges and manage its pool water and cleaning activities.

SECTION D: Agreement and Order

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

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$9,100.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order; and
3. Reimburse DEQ \$1,273.22 for DEQ fish kill investigative costs within 30 days of the effective date of the Order; and
4. Reimburse DGIF \$881.43 for DGIF fish replacement costs within 30 days of the effective date of the 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

Highlands Swim and Tennis Club, 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Highlands Swim and Tennis Club, Inc. for good cause shown by Highlands Swim and Tennis Club, Inc., 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, Highlands Swim and Tennis Club, Inc. admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Highlands Swim and Tennis Club, Inc. 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. Highlands Swim and Tennis Club, Inc. 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 Highlands Swim and Tennis Club, Inc. 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. Highlands Swim and Tennis Club, Inc. 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. Highlands Swim and Tennis Club, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Highlands Swim and Tennis Club, Inc. 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 Highlands Swim and Tennis Club, Inc.. Nevertheless, Highlands Swim and Tennis Club, Inc. 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 Highlands Swim and Tennis Club, Inc. has completed all of the requirements of the Order;
 - b. Highlands Swim and Tennis Club, Inc. 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 Highlands Swim and Tennis Club, Inc.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Highlands Swim and Tennis Club, Inc. 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 Highlands Swim and Tennis Club, Inc., 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 Highlands Swim and Tennis Club, Inc. 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 Highlands Swim and Tennis Club, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Highlands Swim and Tennis Club, Inc.
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, Highlands Swim and Tennis Club, Inc voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5th day of June, 2015.



Thomas A. Faha Regional Director
Department of Environmental Quality

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Highlands Swim and Tennis Club, Inc. voluntarily agrees to the issuance of this Order.

Date: 4/13/15 By: [Signature] Vice President + GC
(Person) (Title)
Highlands Swim and Tennis Club, Inc.

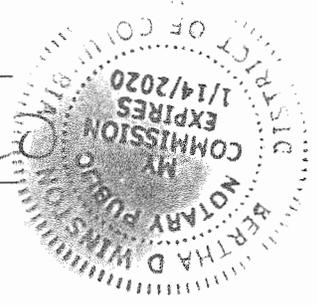
Bk
[Signature]
Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this 13th day of April, 2015, by Philip Norton Bakker Sr who is Vice President and GC of Highlands Swim and Tennis Club, Inc. on behalf of the corporation.

[Signature]
Notary Public
District of Columbia
Registration No.

My commission expires: 1/14/2020

Notary seal:



APPENDIX A
SCHEDULE OF COMPLIANCE

Highlands Swim and Tennis Club, Inc. shall:

1. Submit a plan to DEQ by May 1, 2015, for review, that outlines the steps Highlands will take to prevent future unauthorized discharges and manage its pool water and cleaning activities. Upon notice by DEQ, said plan shall be implemented.