



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
REYNOLDS INLINER, LLC
FOR AN
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 Reynolds Inliner, LLC, 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 the Fairfax County Board of Supervisors and operated by the Fairfax County Public Works and Environmental Services Department for the Noman Cole Jr. Pollution Control Plant.
4. "CIPP" means Cured In Place Pipe.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
8. "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.
9. "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.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "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.
13. "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.
14. "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.

15. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
16. “Reynolds ” means Reynolds Inliner, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Reynolds Inliner is a “person” within the meaning of Va. Code § 62.1-44.3.
17. “SSO” means Sanitary Sewer Overflow.
18. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. “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.
20. “Va. Code” means the Code of Virginia (1950), as amended.
21. “VAC” means the Virginia Administrative Code.
22. “VPDES” means Virginia Pollutant Discharge Elimination System.
23. “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. Fairfax County owns and the Fairfax County Public Works and Environmental Services Department operates the sanitary sewer collection system
2. Pohick Creek flows to the Potomac River. The Potomac River is within the Potomac River Basin. This receiving stream is listed in DEQ’s 2010 305(b)/303(d) Integrated Report as a water impaired for recreation due to excursions from the maximum E. coli bacteria criterion and as impaired for fish consumption because of elevated Polychlorinated Biphenyls (PCBs) and benzo(k) fluoranthene in fish tissue. The sources of the impairments are reported as unknown.
3. On December 7, 2011, Fairfax County notified DEQ that an SSO of approximately 750,000 gallons of raw sewage occurred at manhole #18 in the Collection System and discharged into Pohick Creek. Fairfax County indicated that the SSO was caused by the failure of an inflatable plug being used by Reynolds in rehabilitating a section of the Collection System on Poe Road, at Fort Belvoir.

4. On December 14, 2011, Reynolds submitted a letter to Fairfax County and an attached report detailing the events resulting in the SSO and estimating the quantity to be 775,000 gallons.
5. On April 2, 2012, representatives of Reynolds and Fairfax County met with DEQ. At the meeting, Reynolds provided DEQ with additional data, detailing the installation of a 1000 linear feet (lf) 54-inch CIPP that was scheduled at the Accotink site for December 5, 2011. Reynolds asserts its on-site personnel constantly monitored the weather which called for, "light rain or rain" for the time period required for this CIPP installation. Reynolds determined that the installation would not be impacted by the forecasted rain and that it did not see any indication of severe weather that would impact the installation of the 54-inch CIPP repair. The process of installing, processing, and completing the installation of the 1000 lf CIPP liner required approximately 60 hours. Reynolds asserts that unforeseen severe weather began approximately 40 hours after the installation of the 54-inch CIPP liner commenced. Due to the nature of the repairs, installation of the CIPP liner could not be postponed once it had started. It is Reynolds' finding that severe weather, not included in the forecast, or reasonably foreseeable by Reynolds, created a surge in sewer flow that dislodged the sewer plug installed to bypass the flow during the repairs. The unforeseen severe weather, coupled with the dislodging of the bypass sewer plug, led to the SSO. Reynolds advised that its personnel, working closely with Fairfax County, took responsible and quick action to ensure the safety of personnel and property and to minimize the impact to the environment. Once Fairfax's pump station was taken offline, Reynolds reactivated the plug within 15 minutes. Reynolds asserts it paid approximately \$100,000 in subcontracting and internal costs to quickly restore the site after this SSO event.
6. DEQ issued a Notice of Violation, NOV No. W2012-02-N-001 to Reynolds on February 29, 2012, for the SSO. Reynolds responded to the NOV by forwarding the December 14, 2011, letter and report on March 13, 2012.
7. 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."
8. 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.
9. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
10. The Department has issued no permits or certificates to Reynolds Inliner.
11. Pohick Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

12. Based on the results of the December 7, 2011 notification and on documentation submitted by Reynolds to Fairfax on December 14, 2011 and subsequently submitted to the Department on March 23, 2012, the Board concludes that Reynolds has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, as described in paragraph C(3), above.
13. Reynolds has submitted documentation that verifies that the violations as described in paragraph C(3), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Reynolds, and Reynolds agrees to pay a civil charge of \$19,500.00 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

Reynolds 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 Reynolds for good cause shown by Reynolds, 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, Reynolds admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Reynolds 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. Reynolds 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 Reynolds 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. Reynolds 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. Reynolds shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Reynolds 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 Reynolds. Nevertheless, Reynolds 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 Reynolds has completed all of the requirements of the Order;
- b. Reynolds 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 Reynolds.

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

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, Reynolds voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 27th day of September, 2012.


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

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Reynolds Inliner, LLC voluntarily agrees to the issuance of this Order.

Date: 4/27/12 By: [Signature], VICE PRESIDENT
(Person) (Title)
Reynolds Inliner, LLC

STATE OF FLORIDA
Commonwealth of Virginia
City/County of SEMINOLE

The foregoing document was signed and acknowledged before me this 27TH day of
APRIL, 2012, by MARK HARRIS who is
VICE PRESIDENT of Reynolds Inliner, LLC, on behalf of the company.

M. Kim Jacoby
Notary Public

COMMISSION # DD812856
Registration No.

My commission expires: 10/27/2012

Notary seal:

