COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
GEI STRATFORD, LLC and STRATFORD –BETHANY, LLC
FOR
STRATFORD HILLS APARTMENTS
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 GEI Stratford, LLC and Stratford-Bethany, LLC, regarding the Stratford Hills Apartments, 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. "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. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

8. "EPA" means The Environmental Protection Agency.

9. "Landmark" means Landmark Property Services, Inc., a corporation that manages the Stratford Apartments where the Pump Station is located.

10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

11. "O&M" means operations and maintenance.

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. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

16. "Pump Station" means the Stratford Apartments pump station located 2517 W. Tremont Court, Richmond, Virginia.

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

18. "SCADA" means Supervisory Control and Data Acquisition, a computer system that monitors and controls facility equipment, and alarms facility operators of problems.

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

20. "SAV" means submerged aquatic vegetation.

21. "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.

22. "Stratford Apartments" means the Stratford Hills Apartment property located at 2517 W. Tremont Court, Richmond, Virginia, at which is located a Pump Station that discharges untreated domestic sewage to the City of Richmond's Wastewater Treatment Plant Collection System for the residents of Stratford Hills Apartment complex.

23. "Stratford LLC" means GEI Stratford, LLC and Stratford-Bethany, LLC, two limited liability companies that co-own the Stratford Apartments and which are authorized to do business in Virginia and their affiliates, partners, subsidiaries, and parents. The LLCs are "person(s)" within the meaning of Va. Code § 62.1-44.3.

24. "TMDL" means total maximum daily load.

25. "Va. Code" means the Code of Virginia (1950), as amended.

26. "VAC" means the Virginia Administrative Code.

27. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. GEI Stratford, LLC and Stratford-Bethany, LLC (Stratford LLC) co-own, and their affiliate Landmark operates, the Stratford Apartments in Richmond, Virginia. The officers and directors of Landmark are managing members of Stratford-Bethany, LLC. Stratford LLC does not have a permit to discharge to state waters. The Pump Station at the Stratford Apartments discharges untreated domestic sewage to the City of Richmond's Wastewater Treatment Plant collection system for the residents of Stratford Apartments.

2. Powhite Creek is located in the Lower James River Basin and is listed in DEQ's 305(b) report as impaired of the Recreation Use due to E. coli exceedances and of the Aquatic Life Use due to an altered benthic community. The Fish Consumption and Wildlife Uses were fully supporting. The Bacterial TMDL for the James River and Tributaries – City of Richmond was approved by the EPA on November 4, 2010. Stratford Apartments did not receive an E. coli wasteload allocation. In addition, the Chesapeake Bay TMDL was approved by the EPA on December 29, 2010. The TMDL addresses dissolved oxygen and SAV impairments in the Chesapeake Bay and its tidal tributaries by allocating total nitrogen, total phosphorus, and total suspended solids wasteloads to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. Stratford Apartments was not assigned a wasteload allocation.

3. On September 5, 2010, the Department received a citizen complaint that sewage was discharging to Powhite Creek behind Crestwood Elementary School. A Department investigation traced the source of the sewage discharge to the Stratford Apartments pump station located approximately 2 miles upstream. Department staff observed heavy growths of Sphaerotilus bacteria downstream of the discharge. Upon arrival Department staff observed the station's pumps were not running and the alarms were not activated. The sewage pumps were reset and the area limed. In-stream samples collected by the Department approximately 25 feet below the discharge indicated a dissolved oxygen level of 0.1 mg/L and E. coli levels were greater than 8000 CFU/100 ML.

4. On November 22, 2011, the Department received a citizen complaint that the Stratford Apartments Pump Station was discharging sewage to Powhite Creek. Department personnel responding to the complaint collected in-stream samples which indicated a dissolved oxygen level of 3.4 mg/L. There is no record of a report of this discharge by Stratford Apartments.

5. On May 15, 2012, the Department received a citizen complaint that the Stratford Apartments Pump Station was discharging sewage to Powhite Creek behind Crestwood Elementary School. Department personnel responding to the complaint, observed an

unauthorized discharge of untreated sewage from the Stratford Apartments pump station to Powhite Creek and heavy growths of Sphaerotilus bacteria in the Creek, and sampled the discharge in-stream and 25 feet below the discharge. Samples indicate that E. coli levels were greater than 8000 CFU/100 ML at both locations.

6. On May 25, 2012, the Department issued a Notice of Violation (NOV) to Landmark for the unauthorized discharges that occurred at Stratford Apartments on September 5, 2010, November 22, 2011, and May 15, 2012.

7. On June 8, 2012, the Department met with representatives of Landmark and Stratford-Bethany, LLC to discuss the NOV and the unauthorized discharges. A history of the Pump Station since its acquisition in 2003 was presented, as well as a corrective action plan to assure that discharges will not reoccur. Landmark stated that pump failures would occur on occasion from lateral line clogging and restricted outflow pipes. In August of 2007, the pumps failed and were replaced. While the pumps were being replaced, Landmark had a pump and haul truck hauling sewage. Landmark also hired a third party contractor to inspect and maintain the Pump Station. Issues with pump failures reoccurred in November of 2007, and December of 2008, and on both occasions Landmark made repairs. In May of 2010, Landmark repaired a pump failure issue, but that was not enough to prevent a discharge on September 5, 2010.

8. During the June 8, 2012, meeting, Landmark stated that on November 22, 2011, the new pump installed in 2007 failed and a discharge occurred. Having trouble with the third party maintenance contractor, Landmark hired two independent experts to look at the pumps in the station and make repairs. Both reported that the pump installation was poor and the pumps had bad seals. Landmark then severed the initial maintenance contract and hired a new company to repair the Pump Station and conduct routine inspections and repairs.

9. During the June 8, 2012, meeting, Landmark stated that on May 15, 2012, a maintenance staff member conducted an inspection of the Pump Station without looking in the wet well. The staff member did not therefore note that a flip-flop style shoe had managed to block flow to the Pump Station resulting in the pumps not pushing water to the City's collection system and the subsequent discharge to Powhite Creek. On May 31, 2012, Landmark bought a new pump and is currently repairing the failed pump to use as a spare.

10. During the June 8, 2012, meeting, Landmark presented a corrective plan that included the following actions: 1) twice a day inspections to include physically opening the wet-well, 2) Alarm floats and contacts were to be inspected and repaired, 3) C&W Septic on contract for emergency service, 4) Bailey's Plumbing and Sewer, Inc. is now contracted to conduct weekly Pump Station inspections including functionality of alarms, pumps, and the electrical box, 5) Dillon's Plumbing is now under contract to jet clean the lateral lines leading to the Pump Station on a quarterly basis, 6) a SCADA auto dialer is being

installed to contact plumber and on call maintenance staff during alarms, and 7) report any discharges within 24 hours.

11. Va. Code § 62.1-44.5.A 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. Va. Code § 62.1-44.5.B states that: "Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act.

13. 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.

14. The Regulation at 9 VAC 25-31-50.B states that : "Any person in violation of 9VAC25-31-50 A, who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section shall notify the department of the discharge, immediately upon discovery of the discharge but in no case later than 24 hours after said discovery."

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

16. The Department has issued no permits or certificates to Stratford LLC to discharge to state waters.

17. Powhite Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

18. Based on the results of the September 5, 2010, November 22, 2011, and May 15, 2012, investigations, and the June 8, 2012, meeting, the Board concludes that Stratford LLC has violated Va. Code 62.1-44.5.A & B. and 9 VAC 25-31-50 by discharging untreated sewage to state waters from Stratford Apartments and failing to report the discharges to the Department, as described above.

19. Stratford LLC stated during the June 8, 2012, meeting that they had not reported the discharges to the Department. Stratford LLC has been informed of the legal requirement to report discharges to the Department and they agreed to report any future discharges. In order for Stratford LLC to complete their return to compliance, DEQ staff and representatives of Stratford LLC 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 Stratford LLC, and Stratford LLC agrees to:

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

2. Pay a civil charge in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
October 15, 2012	$2,625 or balance
January 15, 2013	$2,625 or balance
April 15, 2013	$2,625 or balance
July 15, 2013	$2,625 or balance
October 15, 2013	$2,625 or balance
January 15, 2014	$2,625 or balance
April 15, 2014	$2,625 or balance
July 15, 2014	$2,625

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order and the Department may demand in writing full payment by Stratford LLC. Within 15 days of receipt of such letter, Stratford LLC shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

4. 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

Stratford LLC shall include their Federal Employer Identification Numbers (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 Stratford LLC for good cause shown by Stratford LLC, or on their 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, Stratford LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Stratford LLC 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. Stratford LLC declares they have received fair and due process under the Administrative Process Act and the State Water Control Law and they waive 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 Stratford LLC 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. Stratford LLC 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 their control and not due to a lack of good faith or diligence on their part. Stratford LLC shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Stratford LLC 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 Stratford LLC. Nevertheless, Stratford LLC 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 Stratford LLC has completed all of the requirements of the Order;

    b. Stratford LLC 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 Stratford LLC.

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

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 their signatures below, Stratford LLC voluntarily agree to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2012.

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

GEI Stratford, LLC voluntarily agrees to the issuance of this Order.

Date: 7/19/12 By: _____, PRESIDENT
(Person) (Title)
GEI Stratford, LLC

Commonwealth of Virginia
City/County of Richmond

The foregoing document was signed and acknowledged before me this 19th day of July, 2012, by Morton G. Thalhimer III who is President of GEI Stratford, LLC, on behalf of the limited liability company.

_____
Notary Public

7036392
Registration No.

My commission expires: July 31, 2014

Notary seal:

SARAH J. TRAYLOR
NOTARY PUBLIC
Reg. # 7036392
COMMONWEALTH OF VIRGINIA
My Comm. Expires July 31, 2014

Stratford-Bethany, LLC voluntarily agrees to the issuance of this Order.

Date: 7/19/2012 By: _____, managing member
(Person) (Title)
Stratford-Bethany, LLC

Commonwealth of Virginia
City/County of HENRICO

The foregoing document was signed and acknowledged before me this 19 day of

JULY, 2012, by PINSON NEAL who is

MANAGING MEMBER of Stratford-Bethany, LLC, on behalf of the limited liability company.

K.D. Evans
Notary Public

_____
Registration No.

Kimberly D. Evans
Commonwealth of Virginia
Notary Public
Commission No. 7197624
My Commission Expires 10/31/2012

My commission expires: _____

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. On or before October 1, 2012, Stratford LLC shall submit to the Department for review and approval an O&M manual for the Stratford Apartments Pump Station. The O&M manual shall include at a minimum 1) detailed maintenance logs/records; 2) established schedules for inspection of laterals lines, alarm floats, electrical contacts, and pump upkeep, including twice a day inspections of the pumps and effluent flow; 3) a sewer/lateral line cleaning and inspection program; 4) a spare parts inventory; 5) a septic contact for emergency service; 6) a schedule for frequent jet cleaning of the lateral lines; and, 7) phone contacts for reporting any discharges within 24 hours.

2. A copy of the approved Pump Station O&M manual shall be kept on site in a location that Stratford LLC staff, emergency contractors, and the Department staff can have access to it for information and review.

3. On or before October 1, 2012, provide the Department with a copy of the contract(s) with a plumbing and sewer company to conduct routine maintenance, inspections, and emergency service on the Pump Station.

4. On or before October 1, 2012, installation of a SCADA auto dialer to contact plumbers and on call maintenance staff during Pump Station alarm events.

5. <u>DEQ Contact</u>

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

   Frank Lupini
   Enforcement Specialist
   VA DEQ –Piedmont Regional Office
   4949A Cox Road,
   Glen Allen, Virginia 23060
   Frank.Lupini@deq.virginia.gov