

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

**SPECIAL ORDER BY CONSENT**

**ISSUED TO**

**FAIRFAX COUNTY BOARD OF SUPERVISORS**

**FOR**

**NOMAN M. COLE JR. POLLUTION CONTROL PLANT  
(VPDES PERMIT NO. VA0025364)**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code ' ' 62.1-44.15 (8a) and 10.1-1185 between the State Water Control Board and Fairfax County Board of Supervisors regarding the Noman M. Cole Jr. Pollution Control Plant for the purpose of ensuring compliance with the State Water Control Law and Regulations.

**SECTION B: Definitions:**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code ' ' 62.1-44.7 and 10.1-1184.

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.
5. "Order" means this document, also known as a Consent Special Order.
6. "PCP" means the Norman M. Cole Jr. Pollution Control Plant located in Fairfax County, Virginia.
7. "County" means the Fairfax County Board of Supervisors.
8. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Permit" means Virginia Pollutant Discharge Elimination System (VPDES) Permit No. VA0025364.

### **SECTION C: Finding of Facts and Conclusions of Law**

1. The County owns and operates the PCP which discharges wastewater to an unnamed tributary of Pohick Creek and to Pohick Creek in the Potomac River Basin. Discharges of wastewater are the subject of the Permit No. VA0025364 that was reissued on April 13, 1998 and will expire on April 13, 2003.
2. The Permit requires that the County upgrade the PCP to achieve compliance with final Permit effluent limits for ammonia by April 3, 2002, in accordance with the Policy for Potomac River Embayments. Construction of the upgrade is in progress, but the County anticipated it will not meet the April 3, 2002 deadline for achieving compliance with final limits at the facility. In a letter to DEQ staff dated January 18, 2002, the County requested that the deadline for achieving compliance with final Permit effluent limits for ammonia be extended from April 3, 2002, until January 1, 2003. In semiannual progress reports to NVRO, the County explained that the construction schedule had been delayed due to a shortage of skilled manpower in the labor market to complete the project.
3. Appendix A of this Order requires that the County achieve compliance with the final Permit limits for ammonia that are listed in Part I of the Permit at page two of twenty at the PCP by January 1, 2003. Appendix B of the Order provides interim limits for ammonia until January 1, 2003.

### **SECTION D: Agreement and Order**

Accordingly the Board, by virtue of the authority granted it in Va. Code ' 62.1-44.15(8a), orders the Fairfax County Board of Supervisors, and the Fairfax County Board of Supervisors agrees, to comply with the terms of Appendix A of this Order and with the interim effluent limits provided in Appendix B of this Order.

### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the County for good cause shown by the County or on its own motion after notice and opportunity to be heard.
2. 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 subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the County admits the jurisdictional allegations.
4. The County declares it has received fair and due process under the Administrative Process Act, Va. Code ' 9-6.14:1 *et seq.*, 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 enforce this Order.
5. Failure by 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.
6. 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.

7. The County shall be responsible for its failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by any natural or man made emergency including but not limited to earthquake, flood, other acts of God, war, strike, or such other occurrence. The County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County shall notify the DEQ Regional Director in writing 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 within two 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.

8. This order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and the County.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the County. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By its signature below, the County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

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

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2002, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of the Fairfax County Board of Supervisors.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

**APPENDIX A**  
**Schedule of Compliance**

Fairfax County Board of Supervisors shall:

1. By January 1, 2003, achieve compliance with the final Permit effluent limits for ammonia that are listed in Part I of the Permit at page two of twenty at the Noman M. Cole Jr Pollution Control Plant.