COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BROOK HILL PARTNERS, LLC
FOR
VILLAGE AT THE ARBORS 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 Brook Hill Partners, LLC regarding the Brook Hill Partners, LLC's Village at the Arbors 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. "Brook Hill" means Brook Hill Partners, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Brook Hill 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. "EPA" means Environmental Protection Agency.

11. "Facility" means the Village at the Arbors Apartments located at 5613 Crenshaw Road, Richmond, Virginia owned by Brook Hill Partners, LLC, which includes a sanitary sewer collection system for the apartment residents, that discharges to the Henrico County's sewer collection system.

12. "MS4" means Municipal Separate Storm Sewer Systems.

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

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

15. "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.

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

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

20. SAV" means Sub Aquatic Vegetation.

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

22. "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.

23. "SWCB" means the State Water Control Board.

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.

28. "VPDES Permit" means a Virginia Pollutant Discharge Elimination System General or Individual Permit which is issued under the State Water Control Law and the Regulation.

29. "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. Brook Hill owns and operates the Facility in Richmond, Virginia. The Facility is located in close proximity to an unnamed tributary of Upham Brook.

2. Upham Brook, unnamed tributary, is the receiving body and located in the James River Basin (Lower). During the 2012 305(b)/303(d) Integrated Water Quality Assessment, the tributaries to Upham Brook were impaired of the Recreation Use due to E. coli exceedances. The Fish Consumption Use was fully supporting with observed effects due to a Virginia Department of Health advisory for kepone. The Aquatic Life Use was fully supporting and the Wildlife Use was not assessed. The receiving stream is included in two bacterial TMDLs – the Upham Brook TMDL (EPA approval 7/24/2008, SWCB approval 4/28/2009), and the Chickahominy River and Tributaries TMDL (EPA approval 9/19/2012, SWCB approval 3/25/2013). The Facility was not specifically addressed in either TMDL; however, both TMDL allocation scenarios call for a 100% reduction in sewer overflows.

   The Facility was not included in the Chesapeake Bay TMDL, which was approved by the EPA on 12/29/2010. 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 to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. The unnamed tributary is considered a Tier 1 water due to its intermittent nature.

3. On January 8, 2014, DEQ staff received notification from the Henrico County Department of Public Utilities, of an actively overflowing sewage manhole that is part of a privately owned sewage conveyance system serving the Facility. DEQ staff contacted the Facility's staff who indicated they were contracting to stop the overflow. Brook Hill did not notify DEQ of the discharge.

4. On January 9, 2014, Henrico County's MS4 staff inspected the property and notified DEQ staff that the sewage manhole was still overflowing, and informed DEQ staff that the manhole had been actively overflowing since approximately December 25, 2013. Henrico County's MS4 staff stated they instructed Facility staff to lime the grassy area around the manhole and the stormwater ditch, which leads to the unnamed tributary of Upham Brook.

5. On January 10, 2014, DEQ staff inspected the Facility and found evidence of an unpermitted discharge of sewage from the overflowing manhole to an unnamed tributary to Upham Brook. The Facility staff had used an excessive amount of lime, causing the unnamed tributary to become cloudy.

6. On January 10, 2014, Facility staff informed DEQ staff that a contractor had been hired, and the manhole was no longer overflowing and the sewage was being diverted to a

working manhole via a manually operated pump, that was to be operated by Facility staff. Facility staff also stated that the lime had been removed.

7. On January 16, 2014, Facility staff emailed DEQ stating the repairs to the Facility system were almost complete.

8. On July 15, 2014, PRO issued NOV No. 2014-07-PRO-201 to Brook Hill for the unauthorized discharges described above.

9. On September 3, 2014, PRO sent a letter to Brook Hill, as Brook Hill had not responded to the July 15, 2014, NOV.

10. On October 6, 2014, DEQ staff left a voice message with a Brook Hill representative stating the next steps in DEQ's process as no response was received after the September 3, 2014, letter.

11. On October 6, 2014, a Brook Hill representative contacted DEQ. DEQ spoke with the representative on October 7, 2014.

12. On October 14, 2014, DEQ staff discussed the NOV with counsel for Brook Hill.

13. On October 31, 2014, DEQ staff received a letter from counsel for Brook Hill regarding the NOV, stating that Brook Hill had spent $72,679.73 on maintenance, investigation and repairs to sewer lines at the Facility.

14. 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."

15. Va. Code § 62.1-44.5(B) states that "[a]ny 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 Director of the Department of Environmental Quality . . .." Written notice to the Director of the Department of Environmental Quality shall follow initial notice . . .."

16. 9 VAC 25-31-50 (A) provides that "[e]xcept in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances . . .."

17. 9 VAC 25-31-50 (B) states that "[a]ny person in violation of 9 VAC 25-31-50 (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. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge . . . ."

18. 9 VAC 25-260-20(A) states "[s]tate waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

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

20. DEQ has not issued any VPDES permits or certificates to Brook Hill which authorize the discharge of sewage.

21. The unnamed tributary to Upham Brook is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

22. Based on the results of the inspection on January 10, 2014, information from Henrico County Department of Public Utilities and information submitted by Brook Hill, the Board concludes that Brook Hill has violated Va. Code § 62.1-44.5, 9 VAC 25-31-50 and 9 VAC 25-260-20(A) by discharging untreated domestic sewage from the Facility without a permit or certificate issued by the Board, and failing to report such discharges as described above.

23. In order for Brook Hill to completely return to compliance, DEQ staff and representatives of Brook Hill 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 Brook Hill and Brook Hill agrees to:

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

2. Pay a civil charge of $15,194 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
March 31, 2015	$3,798.50 or balance
June 30, 2015	$3,798.50 or balance
September 30, 2015	$3,798.50 or balance

December 31, 2015	$3,798.50

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 Brook Hill. Within 15 days of receipt of such letter, Brook Hill 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. All payments 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

5. Brook Hill 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, Brook Hill 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 Brook Hill for good cause shown by Brook Hill, 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, Brook Hill admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.

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

    b. Brook Hill 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 Brook Hill.

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

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, Brook Hill voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2015.

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

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Brook Hill Partners, LLC voluntarily agrees to the issuance of this Order.

Date: 1/22/15 By: _____, Authorized Person
(Person) (Title)
Brook Hill Partners, LLC

Commonwealth of Virginia
City/County of New York

The foregoing document was signed and acknowledged before me this 22nd day of January, 2015, by Paul Siegel, who is Authorized Person of Brook Hill Partners, LLC, on behalf of the company.

_____
Notary Public

01L06275567
Registration No.

My commission expires: 01/28/17

Notary seal:

STEVEN M LOESCH
Notary Public - State of New York
NO. 01L06275567
Qualified in Nassau County
My Commission Expires 1/28/17

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Unpermitted Discharge**

   a. Within 60 days of the effective date of this Order, Brook Hill shall submit to DEQ for review and approval standard operating procedures for preventing, reporting and resolving sewer overflows, to be kept at the Facility and implemented immediately upon approval. Such implementation shall include training staff in the new standard operating procedures, confirmation of which shall be submitted to DEQ.

2. **DEQ Contact**

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

   Gina Pisoni
   Enforcement Specialist
   VA DEQ – Piedmont Regional Office
   4949-A Cox Road
   Glen Allen, Virginia 23060
   804-527-5156
   804-527-5106 (fax)
   Gina.Pisoni@deq.virginia.gov