COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VIRGINIA-AMERICAN WATER COMPANY
FOR
HOPEWELL LOW SERVICE PUMP STATION
Oil Discharge and Unpermitted Discharge

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15 & 62.1-44.34:20 between the State Water Control Board and Virginia-American Water Company, regarding the Hopewell Low Service Pump Station, 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. "DMR" means Discharge Monitoring Report.

8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

9. "Facility" or "Site" means the Low Service Pump Station located at 915 Riverside Avenue, Hopewell, Virginia, which pumps water from the Appomattox River to VAWC's Hopewell drinking water treatment plant and is the area affected by the oil and unauthorized discharge.

10. "VAWC" means Virginia-American Water Company, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. VAWC is a "person" within the meaning of Va. Code § 62.1-44.3.

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

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

13. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.

14. "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.

15. "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.

16. "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.

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

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

19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses Discharge of Oil Into Waters.

20. "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.

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

22. "VAC" means the Virginia Administrative Code.

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

SECTION C: Findings of Fact and Conclusions of Law

1. VAWC owns and operates the Facility which is the Low Service Pump Station located at 915 Riverside Avenue, Hopewell, Virginia, which pumps water from the Appomattox River to VAWC's Hopewell drinking water treatment plant.

2. The Appomattox River is located in the James River Basin. During the 2012 305(b)/303(d) Integrated Water Quality Assessment, the Appomattox River was impaired of the Recreation Use due to E. coli exceedances. The Fish Consumption Use was

impaired due to Virginia Department of Health's fish consumption advisory for PCBs; in addition, kepone is considered a non-impairing observed effect. The Aquatic Life Use was impaired due to inadequate submerged aquatic vegetation (SAV) and sediment toxicity; in addition, altered benthic community, mercury sediment exceedances, and PCB sediment exceedances were observed effects. The Public Water Supply and Wildlife Uses were fully supporting. The Appomattox River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

3. On March 2, 2015, the DEQ Piedmont Regional Office (PRO) received a report of a surface sheen in the Appomattox River in Hopewell, Virginia adjacent to the Low River Pump Station owned and operated by VAWC. Upon arrival, DEQ staff discovered the Hopewell Fire Department on site. VAWC notified the Hopewell Fire Department who deployed their HazMat team. VAWC contacted its preferred response contractor, Clean Harbors, to respond to the spill. VAWC also notified the Virginia Department of Health (VDH), and provided telephone notice to the National Response Center.

4. The river was included in the study area for the Appomattox River Basin Bacterial TMDL (EPA approval August 30, 2004, SWCB approval December 20, 2005). The discharge was not addressed in the TMDL. In addition, the discharge was not included in the Chesapeake Bay TMDL, which 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 to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. The Appomattox River is considered a Tier 1 water.

5. Department investigation revealed that a diesel fuel tank that powered backup generators at the VAWC intake facility overflowed, resulting in a 600 gallon discharge of oil in the form of diesel fuel into the Appomattox River and surrounding wetlands near the intake of the VAWC drinking water treatment facility. The resulting sheen covered and impacted 3 miles of the Appomattox River. The Coast Guard determined that the sheen had made its way to the I-295 Bridge located 2.3 miles upstream of the intakes. The diesel fuel inventory log sheet showed that 600 gallons of diesel were lost (or unaccounted for). While investigating the spill and the contaminated soil outside of the pump house, free floating oil was observed in the sump pump located in the crawl space of the VAWC building. The sump was actively pumping oil contaminated water to the River which contributed to the surface sheen.

6. Va. Code § 62.1-44.34:18.A states "The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines."

7. On March 3, 2015 at approximately 2:30 a.m. the potable water side of the treatment plant was shut down after fuel was detected at the plant.

8. On March 4, 2015, the EPA issued an Emergency Response Administrative Order to VAWC for the remediation of the fuel spill.

9. On March 25, 2015, DEQ staff conducted a site inspection at the VAWC Low Service Pump Station to examine several unidentified pipes emanating from the main building that were discovered during remediation of the oil discharge. DEQ water compliance and permitting staff observed three pipes discharging wastewater with a total residual chlorine level of 1.73-1.81 mg/L to the Appomattox River. The observed discharges do not have a permit or certificate issued by the Board, DEQ has no record of receiving a permit application for the discharges, and there is no record that VAWC reported the discharges to DEQ.

10. Va. Code § 62.1-44.5(A) states that: "[e]xcept in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses . . .." The Department has issued no permits or certificates to VAWC for the discharge of wastewater to State waters.

11. Va. Code § 62.1-44.5(B) states "[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 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."

12. On April 1, 2015, the Department issued Notice of Violation (NOV) number 15-2-PRO-503 to VAWC for discharging oil to state waters, discharging process water without a permit, and failure to report the unpermitted discharge.

13. On May 11, 2015, EPA determined that VAWC had met all the terms of the Order and issued a Notice of Completion.

14. On May 12, 2015, the Department met with VAWC to discuss the NOV. VAWC stated that the oil discharge occurred when a solenoid bypass valve was accidently left open preventing the solenoid from stopping the flow of fuel during a routine weekly refill of a

day storage fuel tank. Fuel then filled the tank and began to overflow through a vent pipe and discharge onto the ground 10 feet from the Appomattox River. With respect to the three pipes discharging process water without a permit, VAWC stated that the facility had discharged pump seal packing water for many years and was not aware that it required a permit. Pump seal packing water is drinking water that flows continuously onto leather packing seals to hold together the bearings and provide heat dissipation and lubrication. VAWC, without knowing a permit was required subsequently did not report the discharge or apply for a permit to discharge the process water. VAWC was not sure how long they have been operating in this manner.

15. In order to prevent recurrence, VAWC has changed the top filling procedure for the day fuel tanks, trained employees on the new procedure, and locked all the bypass valves to prevent accidental discharge. In addition, the three pipes noted with the unpermitted process water discharges will be connected to the City of Hopewell's wastewater treatment system. VAWC has met with the City and they have agreed to allow the connection.

16. Based on the results of March 25, 2015, inspection, the May 12, 2015, meeting, and site visits conducted during remediation of the Oil from March 2 through May 11, 2015, the Board concludes that VAWC has violated Va. Code 62.1-44.34:18(A), 62.1-44.5(A), and 62.1-44.5(B), by discharging oil to state waters, allowing process water to discharge to state waters, and failure to report the process water discharge, as described above.

17. In order for VAWC to return to compliance, DEQ staff and representatives of VAWC 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 VAWC, and VAWC agrees to:

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

2. Pay a civil charge of $23,700 within 30 days of the effective date of the Order.
   a) $3,250 in settlement of the unpermitted discharge violation cited in this Order.
   b) $10,286 in settlement of the oil discharge violation cited in this Order.
   c) $10,164 to reimburse DEQ for oil discharge investigative costs

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

VAWC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment above is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF) and the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, VAWC 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 VAWC for good cause shown by VAWC, 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, VAWC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

   b. VAWC 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 VAWC.

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

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, VAWC 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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Virginia-American Water Company voluntarily agrees to the issuance of this Order.

Date: 8/14/2015 By: _____, PRESIDENT
(Person) (Title)
Virginia-American Water Company

Commonwealth of Virginia

City/~~County of~~ Alexandria

The foregoing document was signed and acknowledged before me this 14th day of August, 2015, by William R. Walsh who is President of Virginia-American Water Company, on behalf of the corporation.

_____
Notary Public

7609124
Registration No.

My commission expires: 04/30/2018

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Unpermitted Discharge/Spill

   a. Thirty (30) days after the issuance of the Order, VAWC shall submit to the Department for review the adjusted operating procedures for filling the day tanks, employee training records, and photographic documentation that the bypass valves have been locked and secured.

   b. Thirty (30) days after the issuance of the Order, VAWC shall submit to the Department a copy of the signed (or executed) contractual agreement with the City of Hopewell for connecting the flow process water to the City's wastewater treatment facility.

   c. Sixty (60) days after the issuance of the Order, VAWC shall submit a final report with photographic documentation of the completion of connection to the City's wastewater treatment facility.

2. DEQ Contact

   Unless otherwise specified in this Order, VAWC 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