COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

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Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
W.C. SPRATT, INCORPORATED
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 W.C. Spratt, Incorporated, 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 sanitary sewer collection system owned by Stafford County.

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

9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

10. "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.

11. "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.

12. "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.

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

14. "SSO" means Sanitary Sewer Overflow.

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

16. "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.

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

18. "VAC" means the Virginia Administrative Code.

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

20. "W.C. Spratt" means W.C. Spratt, Incorporated, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. W.C. Spratt, Incorporated. is a "person" within the meaning of Va. Code § 62.1-44.3.

SECTION C: Findings of Fact and Conclusions of Law

1. W.C. Spratt owns and operates a construction company based in Fredericksburg, Virginia, which was contracted to repair and construct portions of the sanitary sewer collection system, owned and operated by Stafford County.

2. Falls Run Creek flows into Rappahannock River. In the 2012 305(b) Integrated Report, this segment of Falls Run is listed as impaired for aquatic life use due to poor benthic macroinvertebrate community. The source of the stressor on the benthic macroinvertebrates is unknown.

3. On March 14, 2014, Troutman Sanders, LLP on behalf of W.C. Spratt, notified DEQ of an unauthorized discharge from a section of the Stafford County sanitary sewer collection system into Falls Run Creek. The discharge occurred on February 17, 2014.

4. On March 18, 2014, W.C. Spratt submitted a letter to DEQ stating that the unauthorized discharge was caused when a 18-inch pipe plug installed in an 18" sewer line on the west side of I-95 failed, causing sewage to fill a pit where a manhole was partially installed on the north side of Falls Run Creek. W.C. Spratt's project superintendent ordered sewage from the pit to be pumped and bailed into Falls Run Creek. In the letter, W.C. Spratt asserted that it did not discover the discharge until it was reported by one of its employees involved in the project on March 13, 2014.

5. W.C. Spratt estimated that the maximum duration of the incident was 14.5 hours and that approximately 1,998 gallons of sewage was discharged to Falls Run Creek during the incident.

6. W.C. Spratt's internal investigation of the discharge resulted in the termination of the superintendent for the repair project.

7. DEQ issued a Notice of Violation, NOV No. W2014-05-N-0101, to Spratt on May 21, 2014. W.C. Spratt responded to the NOV on May 29, 2014.

8. Based on the results of the March 14, 2014 notification and documentation submitted to DEQ by W.C. Spratt on May 29, 2014, and June 23, 2014, the Board concludes that W.C. Spratt has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging to State waters without a permit, as described in paragraph C(3) through C(5), above.

9. 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."

10. 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.

11. The Department has issued no permits or certificates to Spratt.

12. Falls Run Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

13. On June 23, 2014, Troutman Sanders, LLP on behalf of Spratt submitted documentation to DEQ, including a detailed diagram of the SSO, SSO training materials, SSO response plan, and a spill prevention plan.

14. W.C. Spratt has submitted documentation that demonstrates that it implemented procedures to prevent the type of violations as described in paragraph C(3) through C(5), above, in the future.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders W.C. Spratt, and W.C. Spratt agrees to pay a civil charge of $5,050.00 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

W.C. Spratt 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, W.C. Spratt 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 W.C. Spratt for good cause shown by W.C. Spratt, 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, W.C. Spratt admits 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. W.C. Spratt 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. W.C. Spratt 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 W.C. Spratt 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. W.C. Spratt 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. W.C. Spratt shall

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

b. W.C. Spratt 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 W.C. Spratt.

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

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, W.C. Spratt voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2014.

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

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W.C. Spratt, Incorporated voluntarily agrees to the issuance of this Order.

Date: 8/8/2014 By: D. Douglas Tait, president
(Person) (Title)
W.C. Spratt, Incorporated

Commonwealth of Virginia
City/County of Fredericksburg

The foregoing document was signed and acknowledged before me this 8th day of August, 2014, by D. Douglas Tait who is President of W.C. Spratt, Incorporated, on behalf of the corporation.

H Cornell
Notary Public

#308816
Registration No.

My commission expires: 7/31/2017

Notary seal:

NOTARY PUBLIC
VIRGINIA
COMMONWEALTH OF
HEATHER H CORNELL