COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO LOUDOUN COUNTY SANITATION AUTHORITY 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 Loudoun County Sanitation Authority, 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 Loudoun County Sanitation Authority.

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. "Loudoun County" or the "County" means the Loudoun County Board of Supervisors which supervise the government of Loudoun County, a political subdivision of the Commonwealth of Virginia.

9. "Loudoun Water" means the Loudoun County Sanitation Authority, an authority doing business as "Loudoun Water" ,created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* Loudoun Water is a "person" within the meaning of Va. Code § 62.1-44.3.

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

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

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. "Pump Station" means the Upper Foley Pump Station located in Loudoun County.

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

17. "SSO" means Sanitary Sewer Overflow.

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

19. "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.

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

21. "VAC" means the Virginia Administrative Code.

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

SECTION C: Findings of Fact and Conclusions of Law

1. Loudoun Water owns and operates the sanitary sewer collection system in the unincorporated areas of Loudoun County.

2. Foley Run flows into Bull Run and the Occoquan Reservoir. Foley Run is within the Potomac River Basin. DEQ has not monitored nor assessed the water quality of Foley Run. In the 2010 305(b) Integrated Report, this segment of Bull Run is listed as impaired for recreation due to high levels of *E. coli* bacteria. A bacteria TMDL for Bull Run has been completed and approved.

3. On June 19, 2012, Loudoun Water notified DEQ that a sanitary sewer overflow (SSO) of approximately 688,000 gallons of raw sewage had occurred at a manhole approximately 1300 feet upstream of the Upper Foley Pump Station (pump station) and discharged into Foley Run. Loudoun Water indicated that the SSO had occurred between June 16, 2012 and June 18, 2012 and was caused by a pump failure at the pump station.

4. On June 22, 2012, Loudoun Water submitted a letter to DEQ detailing the events resulting in the SSO. In the letter, Loudoun Water stated that the SSO was due to two

contributing factors. First, the pump station pumps "failed to discharge due to a failure to observe proper procedures during routine pump maintenance. The investigation determined that the pump controls were not correctly positioned while performing pump maintenance on Thursday morning, June 14." This procedure failure caused the motor control breakers to trip and at "12:30 PM the station went into back-up mode and alarmed," causing the pumps to shut down. Second, the alarm notification system failed to contact Loudoun Water personnel due to a faulty transmission/ telephone line and the Loudoun Water staff never responded to the alarm.

5. On June 20, 2012, the Loudoun County Health Department (Health Department) conducted an inspection of the site and the SSO location. The Health Department was satisfied that the area was clean and no additional clean up by Loudoun Water was required. Loudoun Water on the recommendation of the Health Department and neighboring jurisdictions posted SSO signs on the property and along Foley Run.

6. On June 28, 2012, DEQ inspected the pump station and the location of the SSO and found the area dry with flattened grass surrounding the manhole approximately 1300 feet upstream from the pump station, demonstrating the path the sewage traveled into Foley Run. Loudoun Water stated that SSO discharged from the concrete seam of the manhole and not the manhole cover, which was bolted down and had not dislodged.

7. DEQ issued a Notice of Violation, NOV No. W2012-08-N-002 to Loudoun Water on August 9, 2012, for the SSO. Loudoun Water responded to the NOV on September 7, 2012. The response letter including a copy of June 22, 2012, letter reporting the SSO.

8. On October 16, 2012, representatives of Loudoun Water met with DEQ staff to discuss the NOV. At the meeting, Loudoun Water submitted a detailed timeline of the SSO event and steps implemented to maintain future compliance.

9. After the SSO occurred, Loudoun Water staff has been cooperative, responsive, and proactive as demonstrated by: consistent communication with DEQ; the review and implementation of a revised pump station Standard Operating Procedure (SOP); the development of a draft SSO Response Plan; and the installation of a second form of alarm transmission capability at the pump station.

10. 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."

11. 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.

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

13. Based on the results of the June 19, 2012, notification and documentation submitted to DEQ by Loudoun Water on June 22, 2012, September 7, 2012, and October 16, 2012, and the June 28, 2012 inspection performed by DEQ, the Board concludes that Loudoun Water has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, as described in paragraph C(3), above.

14. In order for Loudoun Water to ensure future compliance, DEQ staff and representatives of Loudoun Water 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 Loudoun Water, and Loudoun Water agrees to:

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

2. Pay a civil charge of $11,375.00 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

Loudoun Water 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Loudoun Water for good cause shown by Loudoun Water, 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, Loudoun Water admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

    b. Loudoun Water 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 Loudoun Water.

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

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, Loudoun Water voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2013.

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

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Loudoun County Sanitation Authority voluntarily agrees to the issuance of this Order.

Date: 01/14/2013 By: Thomas O Brodnik, Deputy General Manager Operations
(Person) (Title)
Loudoun County Sanitation Authority

Commonwealth of Virginia
City/County of Loudoun

The foregoing document was signed and acknowledged before me this 14th day of January, ~~2012~~ 2013, by Thomas Brodnik who is Deputy General Manager of Loudoun County Sanitation Authority, on behalf of the Authority.

Denise Reyes
Notary Public

7350700
Registration No.

My commission expires:

Notary seal:

DENISE REYES COMMONWEALTH OF VIRGINIA NOTARY PUBLIC

Denise Reyes
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7350700
My Commission Expires
November 30, 2014

APPENDIX A
SCHEDULE OF COMPLIANCE

Loudoun Water shall:

1. Submit an up to-date map of the sanitary sewer collection system servicing the Blue Plains Waste Water Treatment Plant to DEQ by February 28, 2013. Features to include on the map shall be, but are not limited to:

    a. Location and ID# of each manhole;
    b. Location and name of each pump station;
    c. State waters (named or unnamed tributaries) in the area of the collection system;

2. Submit a completed Reliability Classification Worksheet for Sewage Pumping Stations for all pump stations owned by Loudoun Water in the Blue Plains sewer-shed by February 28, 2013. The worksheet shall include confirmation of installation of the permanent radio based SCADA system at the pump station.

3. **DEQ Contact**

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

    VA Department of Environmental Quality
    Northern Regional Office
    Attn: Enforcement
    13901 Crown Court
    Woodbridge, VA 22193