Piedmont Regional Office
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# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

# STATE WATER CONTROL BOARD
# ENFORCEMENT ACTION - ORDER BY CONSENT
# ISSUED TO
# AQUA VIRGINIA UTILITIES, INC.
# FOR
# MANAKIN FARMS LAGOON
# Permit No. VA0027910

## 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 Aqua Virginia Utilities, Inc., regarding the Manakin Farms Lagoon.

## 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. "Aqua" means Aqua Virginia Utilities, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Aqua 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. "Facility" or "Plant" means the Manakin Farms Lagoon located at Route 6 & Hermitage Road in Manakin (Goochland County), Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents of Manakin Farms Subdivision.

7. "Manakin Farms" means Manakin Water and Sewerage Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Manakin Farms is a "person" within the meaning of Va. Code § 62.1-44.3.

8. "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.

9. "Permit" means VPDES Permit No. VA0027910, which was issued under the State Water Control Law and the Regulation to Manakin Farms on September 30, 2008 and which expires on September 29, 2013. Aqua purchased the Facility on August 1, 2011.

10. "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.

11. "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.

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

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

14. "SCC" means the State Corporation Commission.

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. "TKN" means Total Kjeldahl Nitrogen.

18. "TSS" means Total Suspended Solids.

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

20. "VAC" means the Virginia Administrative Code.

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

**SECTION C: Findings of Fact and Conclusions of Law**

1. On August 1, 2011, Aqua purchased the Facility serving the residents of Manakin Farms Subdivision in Goochland County from Manakin Farms. The Permit has been transferred to Aqua who is now the owner and operator of the Facility. The Permit allows Aqua to discharge treated sewage and other municipal wastes from the Facility to an unnamed tributary of the Little River, in strict compliance with the terms and conditions of the Permit.

2. Little River is located in the Middle James River Basin. The unnamed tributary was not assessed during the 2010 305(b)/303(d) Water Quality Assessment. Manakin Farms was included in Bacterial TMDL for the James River and Tributaries – City of Richmond, which was approved by the EPA on November 4, 2010. The facility received an E. coli waste load allocation and was addressed in the Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010. The discharge was included in the aggregated waste load allocations of total nitrogen, total phosphorus, and total suspended solids for non-significant wastewater dischargers in the upper James River tidal freshwater segment (JMSTF2). The stream is considered a Tier 1 water and is not currently proposed for designation as a Tier 3 Exceptional Water.

3. On June 25, 2010, the Department issued a Consent Order to Manakin Farms for exceeding Permit discharge limitations for TKN, ammonia, and TSS. The Order required Manakin Farms to either upgrade the Facility to consistently meet Permit limits or sell the Facility.

4. Manakin Farms choose to sell the Facility to Aqua, who after a final Order from the State Corporation Commission (SCC) issued on June 30, 2011, purchased the Facility on August 1, 2011.

5. The effluent from the Facility does not yet comply with the ammonia and total kjeldahl nitrogen limits in the Permit, but does comply with the interim limits established in the order of June 25, 2010.

6. Aqua, having just purchased a facility that cannot meet Permit effluent limits without an upgrade, has requested a schedule and continued interim limits provided for in the Order until the upgrade can be expeditiously completed.

7. The unnamed tributary of the Little River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

8. In order to allow Aqua time to upgrade the Facility to consistently meet Permit effluent limits, and time to provide a schedule to upgrade the Facility expeditiously, the Department and Aqua have agreed to the schedule contained in 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(8a) and (8d), the Board orders Aqua, and Aqua agrees to perform the actions described in Appendices A and B of this Order.

## SECTION E: Administrative Provisions

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

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

    b. Aqua 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 Aqua.

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

14. This Order constitutes the entire agreement and understanding of the parties 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, Aqua voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2011.

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

Aqua Virginia Utilities, Inc. voluntarily agrees to the issuance of this Order.

Date: 10.17.11 By: Gregory K. Odell, who is Vice President
Title

of Aqua Virginia Utilities, Inc.

Federal Employer Identification Number (FEIN) 45-0610749

Commonwealth of Virginia
City/County of Goochland, VA

The foregoing document was signed and acknowledged before me this 17th day of

October, 2011, by Gregory K Odell who is Vice President of Aqua

Virginia Utilities, Inc., on behalf of the corporation.

Patricia Ann Forsyth
Notary Public

7076731
Registration No.

My commission expires: 12/31/2011

Notary seal:

PATRICIA ANN FORSYTH
NOTARY PUBLIC
REG # 7076731
MY COMMISSION EXPIRES 12/31/2011
COMMONWEALTH OF VIRGINIA

# APPENDIX A
# SCHEDULE OF COMPLIANCE

1. On or before January 28, 2012, Aqua must submit to DEQ for review and approval, a detailed corrective action plan (CAP) and implementation schedule addressing how Aqua will achieve consistent compliance with ammonia and total kjeldahl nitrogen Permit effluent limitations. Upon DEQ approval the CAP and schedule will become enforceable parts of this Order, and shall be implemented by Aqua.

2. On or before June 1, 2012, Aqua must develop and submit to DEQ for review and approval, a final engineering report for an upgrade to the Facility to achieve consistent compliance with the ammonia and total kjeldahl nitrogen Permit effluent limitations. The report will contain the concept of the proposed new wastewater treatment Facility, a wastewater characterization, results from influent flow rate monitoring in the collection system, pre-construction field survey work, a copy of the contract with the engineer awarded the bid for Facility design and an application for a Certificate to Construct (CTC).

3. On or before August 15, 2012, Aqua must have finished the bidding process for the project construction.

4. On or before September 15, 2012, Aqua must issue a notice of award for the project construction.

5. On or before October 25, 2012, Aqua must issue a notice to proceed with construction to the contractor.

6. On or before October 25, 2013, Aqua must complete construction and request a Certificate to Operate (CTO) from the Department.

7. On or before December 25, 2013, Aqua must have an issued CTO and be in compliance with Permit effluent limits.

8. On or before March 1, 2014, submit to the Department a copy of an adjusted O&M manual for the new Facility.

9. Aqua must submit quarterly construction project progress reports to the Department. The first report will be due on January 15, 2012 and subsequent reports will be due every quarter thereafter on the 15th until the construction is complete.

10. DEQ Contact Unless otherwise specified in this Order, Aqua 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**

## APPENDIX B
## INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

From the effective date of this Order until December 25, 2013, or the completion of construction whichever comes sooner, Aqua shall monitor and limit the discharge from Outfall No. 001 of the Facility in accordance with VPDES Permit Number VA0027910, except as specified below. These interim limits shall retroactively apply, if applicable, as of the first day of the month in which this Order becomes effective.

These requirements shall be construed in light of the Regulation.

| **Parameter Description** | **Parameter Limits** | | | |
|---|---|---|---|---|
| | **Monthly Average** | | **Weekly Average** | |
| Ammonia December-March | 11.4 mg/L | | 15.7 mg/L | |
| TKN April-November | Concentration | Quantity | Concentration | Quantity |
| | 20 mg/L | 5300 g/day | 28 mg/L | 7400 g/day |