COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
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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
STAFFORD COUNTY BOARD OF SUPERVISORS
FOR
THE AQUIA WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0060968

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 the Stafford County Board of Supervisors, regarding the Aquia Wastewater Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "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.

2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "DMR" means Discharge Monitoring Report.

5. "Facility" or "Plant" means the Aquia Wastewater Treatment Plant located 75 Coal Landing Road in Stafford County, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of Stafford County.

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

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

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

9. "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.

10. "Permit" means VPDES Permit No. VA0060968, which was reissued under the State Water Control Law and Regulation to Stafford County Board of Supervisors on August 8, 2008, and which expires on August 7, 2013.

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

12. "Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other
Places together with such industrial wastes and underground,
surface, storm, or other water as may be present.

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

14. "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.

15. "The County" means "Stafford County," a political subdivision of the Commonwealth of Virginia. Stafford County is a "person" within the meaning of Va. Code § 62.1-44.3.

16. "Stafford County Board" means "the Stafford County Board of Supervisors." The Stafford County Board is the governing body for Stafford County, and is a "person" within the meaning of 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. "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. The Stafford County Board of Supervisors owns and Stafford County Utilities ("Stafford Utilities") operates the Plant in Stafford County, Virginia. The Permit allows the Stafford County Board to discharge treated sewage and other municipal wastes from the Plant, to Austin Run, in strict compliance with the terms and conditions of the Permit.

2. Austin Run is located in the Potomac River Basin. The unnamed tributary of Austin Run that the Plant discharges to has not been assessed for impairment.

3. On May 20, 2009, the County reported to DEQ that a contractor installing underground cable for Dominion Virginia Power drilled through the sanitary sewer force main from the Aquia/Bridge Pump Station. The County estimates that approximately 22,500 gallons of raw sewage flowed into Aquia Creek.

4. On July 2, 2009, the County notified DEQ that an unauthorized discharge of digested sludge from the sludge holding tank at the Plant had occurred. The County reported to DEQ that the unauthorized discharge was a result of operator error in sludge wasting practices at the Plant. The County estimates that approximately 1,000 gallons of sludge ran into the storm drain and into Austin Run Creek.

5. On August 22, 2009, the Stafford County sanitary sewer collection system exerienced two unauthorized discharge events at two separate pump stations; the Austin Run Pump Station, and the Potomac Hills Pump Station. The County notified DEQ that both unauthorized discharge events occurred during storm events and were caused by lightening strikes which disabled the flow transducers at both pump stations. The County reported that the unauthorized discharge began at approximately 4:00PM on Saturday August 22, 2009, and continued until 7:00AM on Monday August 24, 2009 at both pump stations. The County informed DEQ that the extended duration of the unauthorized discharges was due to issues with the telemetry polling system, which failed to operate and did not trigger any alarms.

6. The County estimates that 2.5 million gallons of sewage was discharged from the Austin Run Pump Station into Austin Run Creek which flows into Aquia Creek as a result of the August 22, 2009 through August 24, 2009 unauthorized discharge event.

7. The County estimates that 55,000 gallons of sewage was discharged from the Potomac Hills Pump Station into Aquia Creek as a result of the August 22, 2009 through August 24, 2009 unauthorized discharge event.

8. NRO issued Notices of Violation for the aforementioned violations as follows: NOV No. W2009-07-N-0007, issued July 16, 2009; NOV No. W2009-09-N-0006, issued September 10, 2009; and NOV. No. W2009-10-N-0006 issued October 16, 2009.

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

12. The Department has issued no permits or certificates to the Stafford Board for the Plant, other than VPDES Permit No. VA0060968. The discharges of sewage noted in this Order were unauthorized and therefore not covered under VPDES Permit No. VA0060968.

13. Austin Run, the unnamed tributary to Austin Run, and Aquia Creek are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.

14. Based on the foregoing information collected by DEQ, the State Water Control Board concludes that the Stafford County Board violated the following statutory and/or regulatory provisions as a result of the unauthorized discharges occurring from the collection system on May 20, 2009, July 2, 2009 and August 22 through August 24, 2009.

    - 9 VAC 25-31-50.A.1
    - Va. Code §62.1-44.15
    - VPDES Permit No. VA0061590, Part II, Section F

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Stafford Board, and the Stafford Board agrees to:

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

2. Pay a civil charge of $43,225.00 in settlement of the violations cited in this Order, to be paid as follows:

    a. The Stafford Board shall pay $4,322.50 of the civil charge within 30 days of the

effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The Stafford Board 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).

b. The Stafford Board shall satisfy $38,902.50 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order

c. The net project costs of the SEP to the Stafford Board shall not be less than the amount set forth in Paragraph D.2.b. If it is, the Stafford Board shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

d. By signing this Order the Stafford Board certifies that it has not commenced performance of the SEP.

e. The Stafford Board acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by the Stafford Board to a third party, shall not relieve the Stafford Board of its responsibility to complete the SEP as described in this Order.

f.. In the event it publicizes the SEP or the SEP results, the Stafford Board shall state in a prominent manner that the project is part of a settlement of an enforcement action.

g. The Department has the sole discretion to:

i. Authorize any alternate, equivalent SEP proposed by the Facility; and

ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

h. Should the Department determine that the Stafford Board has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify the Stafford Board in writing. Within 30 days of being notified, the Stafford Board shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

SECTION E: Administrative Provisions

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

4. The Stafford Board of Supervisors 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. The Stafford Board of Supervisors 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 the Stafford Board of Supervisors 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. The Stafford Board of Supervisors 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 occurrence. The Stafford Board of Supervisors shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Stafford Board of Supervisors 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 Stafford Board of Supervisors intends 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, their 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 the Stafford Board of Supervisors. Nevertheless, the Stafford Board of Supervisors 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 Stafford Board of Supervisors 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

    b. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Stafford Board of Supervisors.

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

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, the Stafford Board of Supervisors voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

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

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The Stafford Board of Supervisors voluntarily agrees to the issuance of this Order.

Date: 4.8.2010 By: _____, County Administrator
(Person) (Title)

Commonwealth of Virginia

City/County of Stafford

The foregoing document was signed and acknowledged before me this 8 day of April, 2010, by Anthony J. Romanello who is Clerk/Co. Administrator of the Stafford Board of Supervisors, on behalf of the Stafford Board of Supervisors.

Marcia C. Wollenberger
Notary Public

_____
Registration No.

My commission expires: _____

Notary seal:

MARCIA C. WOLLENBERGER
NOTARY PUBLIC
REG # 302480
MY COMMISSION EXPIRES 08/31/13
COMMONWEALTH OF VIRGINIA

APPENDIX A

The Stafford County Board of Supervisors shall:

a. Repair and upgrade the telemetry system at the Plant and applicable pump stations and provide proof of said repairs and upgrades to DEQ by January 1, 2011.

APPENDIX B

The Stafford County Board of Supervisors shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix.

1. The SEP to be performed by the Stafford County Board of Supervisors is donating $38,902.50 to the Tri-County/City Soil and Water Conservation District (SWCD) for projects along the Aquia Creek/Austin Run waterway in Stafford County.

2. The SEP shall be completed within 60 days of the execution of this Order and the Stafford County Board of Supervisors shall notify DEQ in writing within 90 days from the effective date of this Order, that the SEP has been completed in accordance with the terms of this Order.

3. Documents to be submitted to the Department, other than the civil charge payment Described in Section D of the Order shall be sent to:

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