COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
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STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO THE FAIRFAX COUNTY SCHOOL BOARD FOR THE GUNSTON ELEMENTARY SCHOOL SEWAGE TREATMENT PLANT *(VPDES PERMIT NO. VA0023299)*

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and the Fairfax County School Board, regarding the Gunston Elementary School Sewage Treatment Plant , for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

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. "BOD_5" means 5 day Biochemical Oxygen Demand.

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

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

7. "Order" means this document, also known as a "Special Order by Consent" or a "Consent Special Order."

8. "Permit" means VPDES Permit No. VA0023299, which was issued by authority of the Board to Fairfax County School Board on June 30, 2007, and which expires on June 29, 2012.

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

10. "School Board" means the Fairfax County School Board, a body corporate charged with the supervision of schools within Fairfax County. The School Board is a "person" within the meaning of Va. Code § 62.1-44.3.

11. "STP" means the Gunston Elementary School Sewage Treatment Plant located at 10100 Gunston Road, Lorton in Fairfax County, Virginia, which treats and discharges sewage for the Gunston Elementary School.

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

12. "TSS" means Total Suspended Solids.

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

14. "VAC" means the Virginia Administrative Code.

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

16. "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 School Board owns and operates, through its consultant, the STP.

2. The STP is the subject of the Permit, which authorizes the School Board to discharge treated sewage via Outfall 001 to South Branch Massey Creek which is located in the Potomac River basin. South Branch Massey Creek is a state water within the definition of Va. Code §62.1-44.3.

3. The School Board has reported, through its consultant effluent violations of Permit Condition Part I A(1) for TSS, BOD_5, Ammonia as N, Dissolved Oxygen and Chlorine. DEQ sent the School Board the following NOVs and WLs:

a. WL No. W2007-04-N-1005, dated April 9, 2007, (for the February 2007 monitoring period), citing violations of the maximum and average concentration Permit effluent limits for Ammonia as N.

b. While not included in the April 9, 2007 Warning Letter for the February 2007 monitoring period, there was a report of an overflow of the STP. The overflow, due to a frozen distributor arm in the sandbed, was contained within the sandbed filter and did not reach state waters.

c. While not included in a Warning Letter, the School Board during the March 2007 monitoring period had reported violations of the average and maximum concentration Permit effluent limits for Ammonia as N.

d. WL No. W2007-06-N-1001, dated June 6, 2007, (for the April 2007 monitoring period), citing violations of the maximum concentration Permit effluent for Ammonia as N, of the maximum and average concentration Permit effluent limits for Chlorine residual, and of the instantaneous minimum Permit limit for Chlorine.

e. WL No. W2007-07-N-1002, dated July 6, 2007, (for the May 2007 monitoring period), citing violations of the maximum and average concentration Permit limits for Chlorine, of the instantaneous minimum Permit limit for Chlorine and of the total Chlorine Permit limit.

f. NOV No. W2007-08-N-0001, dated August 9, 2007, (for the June 2007 monitoring period) citing violations of the maximum and average Permit effluent limits for concentration and quantity for BOD_5 and quantity for TSS; of the average and max concentration Permit limit for Chlorine; and the average and max concentration Permit effluent limits for Ammonia as N.

g. NOV No. W2007-11-N-0001, dated November 6, 2007, (for the September 2007 monitoring period) citing violations of the instantaneous concentration minimum Permit effluent limit for Dissolved Oxygen. The NOV further cites that the School Board violated the Permit requirement to submit for DEQ approval an O&M manual update by September 30, 2007.

h. NOV No. W2008-02-N-0009, dated February 6, 2008, (for the November and December 2007 monitoring period), citing violations of the maximum and average Permit limits for concentration for Residual Chlorine, of the instantaneous minimum Permit limit for Chlorine, and of the total Chlorine Permit limit.

i. NOV No. W2008-05-N-0001, dated May 2, 2008, (for the March 2008 monitoring period), citing violations of the maximum and average Permit

limits for concentration and quantity for BOD_5 and the quantity average Permit effluent limit for TSS.

j. NOV No. W2008-07-N-0001, dated July 9, 2008, (for the May 2008 monitoring period), citing violations of the maximum and average Permit limits for concentration for Residual Chlorine.

k. NOV No. W2009-01-N-0001, dated January 9, 2009, (for the November 2008 monitoring period), citing violations of the maximum and average Permit effluent limits for concentration for Ammonia as N.

l. NOV No. W2009-04-N-0001, dated April 8, 2009, (for the January 2009 monitoring period), citing violations of the maximum and average Permit effluent limits for concentration for Ammonia as N.

m. NOV No. W2009-06-N-0001, dated June 9, 2009, (for the April 2009 monitoring period), citing violations of the maximum and average Permit effluent limits for concentration for Total Residual Chlorine.

4. The School Board through its consultant has taken multiple steps to correct the underlying problems associated with the violations experienced at the STP. The School Board asserts that the majority of the violations were weather-related.

a. Since November 2007, the School Board's consultant increased the checking of the sludge depth in both the nitrification chamber and chlorine tank to prevent the accumulation of solids and the associated BOD_5, TSS and Ammonia as N violations.

b. On January 21, 2008, two drain holes were drilled into the inlet pipe to the sand filter rotary distributor to prevent the freezing problems with the distributor which led to the overflow in the sand bed in February 2007 and the associated BOD_5, TSS and Ammonia as N violations.

c. On February 1, 2008, auxiliary chlorine and de-chlorination feed units were placed in the contact tank and dechlorination unit discharge to minimize the chlorine violations experienced at the STP.

d. On March 11, 2008, a recirculation pump was installed in the chlorine contact tank to allow for periodic freshening of the chlorinated water standing in the tank to minimize the chlorine violations experienced by the STP.

e. On February 9, 2009, a new hole was drilled into the distribution arm standpipe. The new hole was drilled at a deeper point than the previous holes drilled in January 2008 to prevent the freezing of the distributor arm which led to an overflow from the dosing tanks on January 16, 2009.

5. In March 2008, issues of Inflow and Infiltration (I&I) arose at the STP. The cause was thought to be improper grading next to the sand filter. The land was re-graded: however, the problems during rain events remained. Thus, it was determined that the source of the problem was a crack in the piping between the filter inlet and the nitrification tank. The I&I work was completed on-site in September 2008.

6. On April 1, 2009, a representative acting on behalf of the School Board and an employee of Environmental Systems Service, Ltd (ESS), the School Board's consultant, met with DEQ staff to discuss the most recent NOVs and methods to ensure future compliance with permitted limits. These measures have been incorporated into Appendix A of this order.

7. On April 3, 2009, ESS measured a Chlorine residual of 10.1mg/L at the STP. In a letter, dated May 5, 2009, attached with the DMR report for April 2009, ESS detailed the explanation for the permit limit violation. ESS claimed that due to heavy rains the dechlorination tablets were completely washed out. ESS further claims that the problem can be addressed with I&I work supplementing the work previously completed in September 2008.

8. 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..[D]ischarge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."

9. The Virginia Administrative Code at 9 VAC 25-31-.50.A states that: "[E]xcept in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to…[D]ischarge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."

10. The Board has issued no permits to the School Board, other than the Permit defined above, regarding discharges from the STP.

11. As detailed in the findings of fact above, DEQ concludes that the Fairfax County School Board has violated Parts I A(1) and C of the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31.50.A.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15 8(a) and 8(d) the Board orders the Fairfax County School Board and the Fairfax County School Board agrees to:

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

2. Pay a civil charge of $4,850 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

Fairfax County School Board shall include its Federal Employer Identification Number 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 the Fairfax County School Board for good cause shown by the Fairfax County School Board, or on its own motion pursuant to the Administrative Process Act 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 STP; 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 Fairfax County School Board admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. The Fairfax County School Board 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 Fairfax County School Board declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Water Pollution 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 Fairfax County School Board 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 Fairfax County School Board 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 Fairfax County School Board shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Fairfax County School Board 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 Fairfax County School Board 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 Fairfax County School Board. Nevertheless, the Fairfax County School Board 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 Fairfax County School Board 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 Fairfax County School Board.

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

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 Fairfax County School Board voluntarily agrees to the issuance of this Order.

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

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

The Fairfax County School Board voluntarily agrees to the issuance of this Order.

By: _____

Date: 2/24/2010

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 24th day of February, 2010, by Kathy L. Smith, who is Chairman of the Fairfax County School Board on behalf of the School Board.
(title)

Pamela Goddard
Notary Public

#250712
Registration No.

My commission expires: 10/31/13

Notary seal:

PAMELA GODDARD
NOTARY PUBLIC
REG. #250712
MY COMMISSION EXPIRES 10/31/2013
COMMONWEALTH OF VIRGINIA

APPENDIX A

The School Board shall:

1. Within 90 days of the execution of this Order, submit to DEQ for review and approval, a plan for one of the following options: repair or modification of the existing STP. The plan will include the project costs and schedule for completion of the chosen option. Upon approval by DEQ, the plan and schedule shall become an enforceable part of this Order.

2. Complete chosen option within 2 years of DEQ approval pursuant to paragraph 1. If the School Board is unable to meet the 2 year deadline due to lack of sufficient funding, it may submit notification to DEQ and submit a request for modification of the schedule.

3. Submit monthly progress reports, due on the 10th of the month.

4. Within 30 days of the completing construction of the chosen option or from issuance of the CTO if applicable, achieve consistent compliance with Permit effluent limits for Ammonia as N and Total Residual Chlorine, and submit to DEQ for review and approval an updated Operations and Maintenance (O&M) manual to reflect the changes in treatment of wastewater at the STP.

5. Operate the STP in a workman-like manner in order to produce the best quality effluent of which the STP is capable during implementation of this schedule.

All correspondence required by this Order, shall be submitted to:

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