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
MANAKIN WATER AND SEWERAGE CORPORATION
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 Manakin Water and Sewerage Corporation, regarding the Manakin Farms Lagoon, for the purpose of resolving certain violations of the State Water Control Law, the Virginia Pollutant Discharge Elimination System Regulation, and the Permit.

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 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.

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

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

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. 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.

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

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

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.

22. "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. Manakin Farms owns and operates the Plant in Goochland County, Virginia. The Permit allows Manakin Farms to discharge treated sewage and other municipal wastes from the Plant 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 2008 305(b)/303(d) Water Quality Assessment. The stream is considered a Tier 1 water and is not currently proposed for designation as a Tier 3 Exceptional Water.

3. Manakin Farms submitted permit required DMRs for the October 2007 through March 2008 monitoring periods, which indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for TKN in October and November of 2007; ammonia in January, February and March of 2008; and, TSS in March 2008.

4. PRO issued Warning Letters and Notice of Violations for the TKN, Ammonia and TSS exceedances as follows: WL No. W2008-01-P-1005, issued January 25, 2008; WL No.

W2008-04-P-1007, issued April 4, 2008; and NOV No. W2008-05-P-0002, issued May 19, 2008.

5. On June 10, 2008 Department staff discussed the NOV and resolution of the compliance issues at the Facility with Manakin Farms. According to Manakin Farms, new blowers were installed and placed in operation on June 6, 2008, which would allow the Facility to meet Permit limits for TKN, ammonia, and TSS. The Department agreed to allow time to determine if the solution would alleviate the compliance issues at the Facility, however the Department made clear that an alternate corrective action plan (CAP) would be required if the recent upgrade proved inadequate.

6. Manakin Farms submitted permit required DMRs for the April 2008 through June 2008 monitoring periods, which indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for TKN in April, May, and June of 2008.

7. PRO issued NOV No. W2008-08-P-003 for the TKN exceedances on August 26, 2008. Manakin Farms was also cited for failure to submit complete DMRs.

8. Manakin Farms submitted permit required DMRs for the July 2008 through December 2008 monitoring periods, which indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for TKN in July, October, and November of 2008.

9. PRO issued NOV No. W2009-02-P-002 for the TKN exceedances on February 12, 2009. Manakin Farms was also cited for using an incorrect DMR form for monthly reporting, submitting incomplete DMRs and failure to submit an approvable O&M manual and a groundwater monitoring report as noted by staff in a review of the Department's files.

10. Manakin Farms submitted permit required DMRs for the April 2009 through July 2009 monitoring periods, which indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for TKN in April, May, June, and July of 2009.

11. PRO issued NOV No. 2009-08-P-003 for the TKN exceedances on September 1, 2009. Manakin Farms was also cited for late submittal of the groundwater monitoring report, using an incorrect DMR form for monthly reporting, failure to submit complete DMRs and failure to submit an approvable O&M manual. Manakin Farms submitted the O&M manual on July 10, 2009.

12. Manakin Farms submitted permit required DMRs for the August 2009 through December 2009 monitoring periods, which indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for TKN in August, September, October, and November of 2009.

13. 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."

14. 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.

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

16. The Department has issued no permits or certificates to Manakin Farms other than VPDES Permit No. VA0027910.

17. 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.

18. Based on the results from the June 10, 2008 meeting, DEQ's file review and the DMRs submitted by Manakin Farms, the Board concludes that Manakin Farms has violated the Permit and Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C3 through C11, above.

19. In order for Manakin Farms to return to compliance, Manakin Farms have decided to sell the property to Aqua Virginia and agreed to operate the Facility in a manner that produces the best quality effluent of which it is capable, in order to minimize additional violations. These requirements are incorporated in Appendix A of this Order.

20. Manakin Farms submitted financial documents and requested an analysis for an inability to pay a civil charge. Based on a review of those documents by the Departments Office of Financial Assurance, the Department suspends the civil charge.

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 Manakin Farms, and Manakin Farms 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 Manakin Farms for good cause shown by Manakin Farms, 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, Manakin Farms admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Manakin Farms 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. Manakin Farms 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 Manakin Farms 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. Manakin Farms 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. Manakin Farms shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Manakin Farms 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 Manakin Farms 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 Manakin Farms. Nevertheless, Manakin Farms 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. Manakin Farms 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 Manakin Farms.

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

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, Manakin Farms voluntarily agrees to the issuance of this Order.

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

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

(Remainder of page left intentionally blank)

Manakin Water and Sewerage Corporation voluntarily agrees to the issuance of this Order.

Date: 4-19-2010 By: Deborah Kelley, President of Manakin Water and
Ms. Deborah Kelley

Sewerage Corporation.

Federal Employer Identification Number (FEIN) 54-0762212

Commonwealth of Virginia
City/County of HENRICO

The foregoing document was signed and acknowledged before me this 19 day of APRIL, 2010, by Ms. Deborah Kelley who is the President of Manakin Water and Sewerage Corporation, on behalf of the corporation.

Roberta Via
Notary Public

223749
Registration No.

My commission expires: 11-30-2013

Notary seal:

E. ROBERTA VIA
NOTARY PUBLIC
MY COMMISSION NUMBER 223749
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. On or before November 15, 2010, Manakin Farms must submit to DEQ, a copy of the bill of sale documenting the sale of the wastewater treatment facility and collection system to Aqua Virginia.

2. In the event that the sale is not completed, within thirty (30) days of discovery, Manakin Farms must submit to DEQ, for review and approval, a detailed corrective action plan (CAP) and implementation schedule addressing how Manakin Farms will achieve consistent compliance with Permit effluent limitations, sampling and reporting requirements. Upon DEQ approval the CAP and schedule will become enforceable parts of this Order, and shall be implemented by Manakin Farms.

3. Manakin Farms must submit quarterly progress reports on the progress with the CAP. The first report will be due 90 days after the issuance of this Order and will continue every quarter thereafter until this Order is closed.

4. The parties acknowledge that during the period of corrective action, Manakin Farms may experience additional violations of Ammonia and TKN Permit limitations. Accordingly, pending completion of the corrective action, Manakin Farms shall operate the Facility in a manner that produces the best quality effluent of which it is capable, in order to minimize such additional violations and minimize potential impacts to water quality.

5. DEQ Contact

   Unless otherwise specified in this Order, Manakin Farms 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 completion of the property transfer described in Appendix A, Manakin Farms shall monitor and limit the discharge from Outfall No. 001 of the Manakin Farms Lagoon 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	4300 g/day	28 mg/L	7400 g/day