



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703)583-3800
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
AT&T Services, Inc.
FOR
AT&T Oakton
VPDES Permit No. VAG25
Registration No. VAG250126**

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 AT&T Services, Inc., regarding the AT&T Oakton facility, 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. "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. "AT&T" means AT&T Services, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. AT&T 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. “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. “DMR” means Discharge Monitoring Report.
9. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. “Facility” means the commercial office building located at 3033 Chain Bridge Road, Fairfax County, Virginia, from which discharges of noncontact cooling water occur.
11. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. “NRO” means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
13. “Oakton” or “AT&T Oakton” or “Oakton Office Park” refers to the “Facility,” as defined above.
14. “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.
15. “Permit” means VPDES Permit No. VAG25, the VPDES General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less, which was issued under the State Water Control Law and the Regulation on March 2, 2018 and which expires on March 1, 2023. AT&T applied for coverage under General Permit No. VAG25 and was issued Registration No. VAG250126 on April 17, 2018.

16. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
17. "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: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) 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; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "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.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "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. AT&T owns and operates the Facility. The Permit allows AT&T to discharge noncontact cooling water from the Facility, to an unnamed tributary to Accotink Creek, in strict compliance with the terms and conditions of the Permit.
2. Accotink Creek is located in the Potomac River Basin. Accotink Creek is listed in DEQ's 305(b) report as impaired for aquatic life use (benthic macroinvertebrate bioassessment).

3. Part I.A.1 of the Permit requires AT&T to monitor and limit certain effluent characteristics in discharges to freshwater receiving waterbodies.
4. DEQ file review of Permit-required DMR submissions indicate that AT&T has reported that it exceeded discharge limitations contained in Part I.A.1 of the Permit as follows:
 - a. total recoverable copper: 4th quarter 2017 and 1st, 2nd, and 3rd quarters 2018 for Outfalls 001 and 002;
 - b. total recoverable zinc: 1st quarter 2018 for Outfall 001; and 4th quarter 2017 and 1st, 2nd, and 3rd quarters 2018 for Outfall 002; and
 - c. total residual chlorine (TRC): 2nd quarter 2018 for Outfall 001.
5. 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.”
6. 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.
7. The Facility’s previous coverage under General Permit VAG25 was issued March 20, 2013, and authorized AT&T coverage for noncontact cooling water discharges through March 1, 2018. The permit registration statement to apply for continuing coverage under General Permit VAG25 was due by January 26, 2018, and DEQ received this registration statement on March 6, 2018. The late submission of the registration statement resulted in the Facility discharging without permit coverage from March 2, 2018 through April 16, 2018.
8. Part II.M of the Permit requires a new registration statement be submitted at least 30 days before expiration of the existing permit when applying for renewal.
9. The 3rd quarter 2018 DMRs for Outfall 001 and Outfall 002 were due by October 10, 2018, and DEQ received these DMRs on October 23, 2018.
10. Part II.C.1 of the Permit requires monitoring results to be submitted to DEQ by the 10th day of the month following the end of the monitored period.
11. NRO issued a Warning Letter and Notices of Violation for the violations described above in paragraphs C(1) through C(8) as follows:
 - a. WL No. W2018-02-N-1015, issued February 13, 2018;
 - b. NOV No. W2018-05-N-0004, issued May 10, 2018;
 - c. NOV No. W2018-08-N-0007, issued August 15, 2018; and
 - d. NOV No. W2018-11-N-0010, issued November 14, 2018.
12. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.

13. The Department has issued no permits or certificates to AT&T other than coverage under VPDES General Permit VAG25, Registration No. VAG250126.
14. Accotink Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
15. Based on the results of the file review and correspondence between DEQ and AT&T, the Board concludes that AT&T has violated condition Parts I.A.1, II.C.1, and II.M of the Permit, by discharging noncontact cooling water from the Facility while concurrently failing to comply with the conditions of the Permit, and for late document submissions; as described above in paragraphs C(1) through C(14).
16. To remedy the violations described above, AT&T connected the cooling tower discharge to a local sanitary sewer to eliminate the Facility’s discharge to state surface water. In letter and email correspondence dated November 6, 2018 and November 15, 2018, AT&T stated that construction of this process was completed on September 14, 2018, and that discharge from pre-existing outfalls had ceased on August 30, 2018.
17. On January 11, 2019, DEQ received “no discharge” DMRs for the 4th quarter 2018, confirming that discharges to state surface water has ceased.
18. On November 30, 2018, DEQ received a Notice of Termination (NOT) from AT&T to terminate their coverage under VPDES General Permit VAG25. DEQ approved the NOT request on January 16, 2019, stating that the permit registration termination would become effective on February 15, 2019.
19. By ceasing discharges to state surface waters and initiating termination of their coverage under VAG25, AT&T has adequately resolved the violations described above in paragraphs C(1) through C(15).

SECTION D: Agreement and Order

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

1. Pay a civil charge of **\$7,087.50** 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

AT&T 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, AT&T shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of AT&T for good cause shown by AT&T, 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 and in NOV No. W2018-11-N-0010 dated November 14, 2018, NOV No. W2018-08-N-0007 dated August 15, 2018, NOV No. W2018-05-N-0004 dated May 10, 2018, and WL No. 2018-02-N-1015 dated February 13, 2018. 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, AT&T admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. AT&T 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. AT&T 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 AT&T 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. AT&T 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. AT&T shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. AT&T 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 AT&T. Nevertheless, AT&T 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 AT&T has completed all of the requirements of the Order;
 - b. AT&T 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 AT&T.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve AT&T 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 AT&T 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 AT&T certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind AT&T to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of AT&T.
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, AT&T voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 1st day of November, 2019.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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AT&T Services, Inc. voluntarily agrees to the issuance of this Order.

Date: 9/4/2019 By: P. Shuf, AVP - Senior Legal Counsel
(Person) (Title)
AT&T Services, Inc.

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this 4 day of September, 2019, by Michelle Garay who is Assistant of AT&T Services, Inc., on behalf of the corporation.

Michelle D. Garay
Notary Public

MICHELLE D. GARAY
Registration No. _____
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 2021
My commission expires: _____

Notary seal: