



*Commonwealth of Virginia*

*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

NORTHERN REGIONAL OFFICE  
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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
County of Orange  
FOR  
Orange County Airport  
VPDES Permit No. VAR05  
Registration No. VAR050986**

**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 County of Orange, regarding the Orange County Airport, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and/or regulation.

**SECTION B: Definitions**

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

1. "2014 Permit" or "Permit" means VPDES Permit No. VAR05, the VPDES General Permit for Stormwater Discharges Associated with Industrial Activity, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expired on June 30, 2019. The County of Orange applied for coverage under General Permit No. VAR05 for the Orange County Airport Facility, and was issued Registration No. VAR050986 on August 14, 2014.

2. “2019 Permit” means VPDES Permit No. VAR05, the VPDES General Permit for Stormwater Discharges Associated with Industrial Activity, which was issued under the State Water Control Law and the Regulation on July 1, 2019 and which expires on June 30, 2024. While under coverage of the 2014 Permit, the County of Orange submitted a registration statement to apply for coverage under the 2019 Permit, and DEQ granted coverage under the 2019 Permit to Orange County on September 6, 2019.
3. “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.
4. “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.
5. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
8. “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.
9. “DMR” means Discharge Monitoring Report.
10. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
11. “Facility” or “Airport” means the Orange County Airport, located at 11275 Aviation Way, Orange County, Virginia, from which discharges of stormwater associated with industrial activities occurs.
12. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. “NRO” means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

14. "O&M" means operations and maintenance.
15. "Orange County" or "County" means the County of Orange, a political subdivision of the Commonwealth of Virginia. The County of Orange is a "person" within the meaning of Va. Code § 62.1-44.3.
16. "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.
17. "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.
18. "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.
19. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
21. "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.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.

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

1. Orange County owns and operates the Facility. The 2014 Permit allowed, and the 2019 Permit allows, Orange County to discharge stormwater associated with industrial activities from the Facility, to Mountain Run, an unnamed tributary (UT) of Mountain Run, and an UT of Church Run, in strict compliance with the terms and conditions of each Permit.
2. Mountain Run, the UT of Mountain Run, and the UT of Church Run are surface waters located wholly within the Commonwealth and are a “state water” under State Water Control Law.
3. A summary of surface water impairments present in surface water located downstream from the Facility, but not necessarily attributed to the Facility’s discharges, according to information in DEQ’s 2018 305(b) report, is as follows:

Approximately 7.7 miles downstream of the Facility, Mountain Run has a listed impairment for the aquatic life use (benthic macroinvertebrates). The UT of Mountain Run has been neither monitored nor assessed; however, the UT of Mountain Run discharges to Mountain Run, so the downstream aquatic life use impairment in Mountain Run applies to the UT of Mountain Run as well. The UT of Church Run has been neither monitored nor assessed. Approximately 2.4 miles downstream of the Facility, there is a listed aquatic life use impairment for Pamunkey Creek.

4. Part I.A.1.b, of the 2014 Permit required Orange County to conduct benchmark monitoring of stormwater discharges from Outfalls 002, 003 and 004 from the Facility for the presence of pollutants of concern once during each semi-annual monitoring period, and to record the benchmark monitoring results on a DMR.
5. Part I.B.7.b, of the 2014 Permit required Orange County to perform Chesapeake Bay TMDL monitoring of stormwater discharges from Outfalls 002, 003 and 004 from the Facility once during the first four semi-annual monitoring periods of the Permit (July through December 2014, January through June 2015, July through December 2015, and January through June 2016), and to record the Bay TMDL monitoring results on a DMR.
6. Parts I.A., and II.C. of the 2014 Permit required Orange County to submit the results of the benchmark and Chesapeake Bay TMDL monitoring on a DMR to the Department by January 10 and July 10 of each year, with Bay TMDL monitoring only being required for the first four semi-annual monitoring periods.
7. In submitting its DMRs, Orange County did not collect stormwater discharge samples for benchmark and/or Chesapeake Bay TMDL monitoring from the Facility, and reported “No Discharge” on DMRs for the following monitoring periods:
  - a. January through June 2015 all three outfalls (benchmark and Bay TMDL);

- b. January through June 2016 all three outfalls (benchmark and Bay TMDL);
  - c. July through December 2016 Outfalls 003 and 004 (benchmark);
  - d. January through June 2017 all three outfalls (benchmark);
  - e. July through December 2017 all three outfalls (benchmark);
  - f. January through June 2018 all three outfalls (benchmark); and
  - g. July through December 2018 all three outfalls (benchmark).
8. On March 20, 2019, DEQ staff performed an inspection of the Facility and a review of Facility records. DEQ observed missing, incomplete, and/or insufficient documentation to support the lack of sample collection and the County's reporting of "No Discharge" on DMRs (described above in paragraph C[6]), as follows:
- a. For January through June 2015, no rain data records or other records to justify the lack of sample collection maintained by the County.
  - b. For January through June 2016, no rain data records or other records to justify the lack of sample collection maintained by the County.
  - c. For July through December 2016, no rain data records or other records to justify the lack of sample collection maintained by the County.
  - d. For January through June 2017, rain data was documented, but in the comments section of the rainfall record the permittee noted unattended hours for January 24 and 28, 2017, in which there was rainfall on both days but the permittee was not present to observe if there was a discharge.
  - e. For July through December 2017, rain data was documented, but in the comments section of the rainfall record the permittee noted either unattended hours or rainfall had occurred, no rainfall amount was recorded, or the outfall was not observed, for September 8-11, September 22-26, October 11-14, October 25, November 5, 6, and 12, and December 15 and 30, 2017. Additionally, the rainfall record noted staff on vacation November 17-25, 2019 with no observation of rainfall data or visual confirmation of no discharge at the outfall.
  - f. For January through June 2018, rain data was documented, but in the comments section of the rainfall record the permittee noted unattended hours for January 12 and 13, 2018, in which there was rainfall on both days but the permittee was not present to observe if there was a discharge.

- g. For July through December 2018, no rain data records or other records to justify the lack of sample collection maintained by the County.
9. Part I.A.2.e of the 2014 Permit states: “Documentation explaining a facility's inability to obtain a sample (including dates and times the outfalls were viewed or sampling was attempted), of no rain event, or of no "measurable" storm event shall be maintained with the SWPPP. Acceptable documentation includes, but is not limited to, National Climatic Data Center (NCDC) weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.”
10. Based on the information above in paragraphs C(4), C(6), C(7) and C(8), Orange County failed to perform benchmark monitoring for seven semi-annual monitoring periods in accordance with Part I.A.1.b of the Permit, via a failure to provide documentation/justification [in accordance with Part I.A.2.e of the Permit] for reporting “No Discharge” on submitted DMRs.
11. Based on the information above in paragraphs C(4), C(5), C(7) and C(8), Orange County failed to perform Chesapeake Bay TMDL monitoring for two semi-annual monitoring periods in accordance with Part I.B.7.b of the Permit, via a failure to provide documentation/justification [in accordance with Part I.A.2.e of the Permit] for reporting “No Discharge” on submitted DMRs.
12. 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.”
13. 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.
14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
15. The Department has issued no permits or certificates to Orange County for the Facility other than VPDES Permit Registration No. VAR050986.
16. On May 30, 2019, NRO issued Notice of Violation (NOV) No. W2019-05-N-0005 to Orange County.
17. The County stated via email that its May 20, 2019 response to DEQ’s inspection report would serve as its response to the NOV. The County’s response included documentation showing that a new record keeping system had been implemented to better maintain rainfall records at the Facility moving forward.
18. On September 11, 2019, DEQ staff met with representatives of the County to discuss the NOV and the County’s response and plans for compliance. Orange County explained the

noncompliance was primarily a result of a lack of understanding of the Permit requirements related to sample collection during non-business hours.

19. During the September 11, 2019 meeting, DEQ stated that the County's new system for maintaining rainfall records sufficiently addressed that issue.
20. During the September 11, 2019 meeting, DEQ and Orange County also discussed the new 2019 Permit (coverage issued to Orange County on September 6, 2019), and how it relates to this enforcement action and bringing the Facility into compliance.

In accordance with its registration under the 2019 Permit, Orange County is no longer required to collect benchmark monitoring discharge samples. Additionally, the 2019 Permit requires Orange County to complete any Chesapeake Bay TMDL monitoring that was not performed by the County during the 2014-2019 permit cycle.

21. On January 10, 2020, DEQ received Orange County's submission of Chesapeake Bay TMDL data and calculations for the Facility in compliance with the 2019 Permit. Based on the calculations, a corrective action plan to reduce the discharge of total suspended solids, Total Nitrogen, and/or Total Phosphorus was not required.
22. Based on the results of the March 20, 2019 inspection and records review, Orange County's May 20, 2019 NOV/inspection response, the September 11, 2019 meeting, and related correspondence between DEQ and representatives of Orange County, the Board concludes that Orange County has violated Parts I.A.1.b, I.A.2.e, and I.B.7.b of the 2014 Permit by failing to perform benchmark and Chesapeake Bay TMDL monitoring and failing to provide adequate documentation to justify the non-performance of stormwater discharge sample collection as described above.
23. No further corrective actions are required by Orange County to address the NOV.

As described above in C(20) and C(21), Orange County has submitted the required Chesapeake Bay TMDL items, and benchmark monitoring (and maintaining corresponding rainfall records) is no longer required by Orange County under the 2019 Permit.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Orange County, and Orange County agrees to pay a civil charge of **\$5,230** 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

Orange County 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, Orange County 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 Orange County for good cause shown by Orange County, 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. W2019-05-N-0005 dated May 30, 2019. 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, Orange County admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Orange County 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. Orange County 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 Orange County 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. Orange County 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. Orange County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Orange County 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 Orange County. Nevertheless, Orange County 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 Orange County has completed all of the requirements of the Order;

- b. Orange County 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 Orange County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Orange County 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 Orange County 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 Orange County 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 Orange County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Orange County.
- 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, Orange County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 13<sup>th</sup> day of July, 2020.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

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The County of Orange voluntarily agrees to the issuance of this Order.

Date: May 20, 2020 By: Kent Hildebrand, Asst. County Administrator for Operations  
(Person) (Title)  
County of Orange

Commonwealth of Virginia  
City/County of Orange

The foregoing document was signed and acknowledged before me this 20<sup>th</sup> day of May, 2020, by Kent L. Hildebrand who is \_\_\_\_\_ of the County of Orange, on behalf of the County.

Carol J. Faulk  
\_\_\_\_\_  
Notary Public

354452  
\_\_\_\_\_  
Registration No.

My commission expires: June 30, 2020

Notary seal:

