



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### VALLEY REGIONAL OFFICE

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
FORK UNION MILITARY ACADEMY  
FOR  
FORK UNION MILITARY ACADEMY STP  
VPDES Permit No. VA0024147**

### **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 Fork Union Military Academy, regarding the Fork Union Military Academy STP, for the purpose of resolving certain violations of the State Water Control Law and the Permit, and applicable regulation. This Order supersedes and terminates that Consent Order issued by the Board to Fork Union Military Academy on January 3, 2018.

### **SECTION B: Definitions**

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

1. "305(b)/303(d) report" means the report required by Sections 305(b) and 303(d) 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. "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.

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. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "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.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "FUMA" means Fork Union Military Academy, a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. FUMA is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "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.
12. "Permit" means VPDES Permit No. VA0024147, which was issued under the State Water Control Law and the Regulation to FUMA on July 1, 2012, expired on June 30, 2017, was administratively continued on July 1, 2017, and was reissued on February 1, 2018 with an expiry date of January 31, 2023.
13. "Plant" means the Fork Union Military Academy sewage treatment plant located at 765 Academy Road in Fork Union, Virginia, that treats wastewater and discharges treated effluent from FUMA's dormitories, staff housing, dining hall, and motor lodge with restaurant under VPDES Permit No. VA0024147.

14. "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.
15. "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.
16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "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.
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.

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

1. FUMA owns and operates the Plant. The Permit allows FUMA to discharge treated wastewater from the Plant, to North Creek, in compliance with the terms and conditions of the Permit, and includes a copper limit of 15 µg/L and Total Phosphorus (phosphorus) limit of 0.185 kg/d for the 0.060 MGD permitted flow tier. Compliance with the phosphorus limit was required by September 30, 2018.

2. North Creek is located in the James River Basin and is listed in DEQ's 305(b)/303(d) report as impaired for Aquatic Life. Sources of pollution are listed as Municipal Point Source Discharges. The Plant was included in the Benthic Total Maximum Daily Load (TMDL) Development for the North Creek Watershed, approved by the U.S. Environmental Protection Agency on February 4, 2015.
3. FUMA initially became subject to a Consent Order (Order) that became effective January 3, 2018 as a result of copper effluent limit violations. The Order provided a schedule of compliance (Appendix A) to develop and implement a plan to ensure the Plant is capable of meeting the Permit's effluent limitations. Specifically, Item 1 of Appendix A required the completion of a copper reduction study by May 31, 2018 and Item 2 required submittal of the study recommendations to DEQ by June 30, 2018. The remainder of Appendix A contained subsequent deadlines for obtaining DEQ approval, completion of design and specifications, and completion of construction of an alternative treatment system or operations. The Order also provided an interim copper limit of 31 µg/L during the study phases.
4. On May 29, 2018, FUMA submitted documentation to DEQ that indicated the study required in Item 1 of Appendix A of the Order was not completed and requested a six-month extension to each scheduled activity in Appendix A due to insufficient representative data collection and the need to expand the study parameters.
5. On June 7, 2018, DEQ responded to FUMA denying the extension request, citing that FUMA failed to demonstrate sampling activities, sampling results, or analysis of additional treatment processes sufficient to document operational progress towards meeting the schedule of compliance.
6. Va. Code § 62.1-44.31 states in part that: "It shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter..."
7. On June 20, 2018, DEQ issued NOV No. 2018-VRO-0010 to FUMA for failure to comply with an Order adopted by the State Water Control Board.
8. Based on the documentation submitted by FUMA and a file review by DEQ staff, the Board concludes that FUMA has violated Va. Code § 62.1-44.31.
9. On July 30, 2018, FUMA submitted documentation to DEQ requesting amendments to the schedule of compliance contained in Appendix A of the Order and an increase in the interim copper limit to 55 µg/L based on more conservative modelling utilizing more recent effluent data. FUMA also requested that the final compliance date for the phosphorus limit match the final compliance date for the copper limit because the phosphorus removal efficiency of the treatment works is technology driven and inextricably linked to the chemical treatment remedy that is selected for copper.

10. In order for FUMA to return to compliance, DEQ staff and FUMA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order, and the interim effluent limits as incorporated in Appendix B of this Order.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders FUMA, and FUMA agrees to the items listed below. Both the Board and FUMA understand and agree that this Order supersedes and terminates the Consent Order issued to FUMA on January 3, 2018.

1. Perform the actions described in Appendices A and B of this Order; and
2. Pay the remaining outstanding civil charge of \$4,332 in settlement of the violations cited in the Order issued to FUMA on January 3, 2018 in accordance with the following schedule:

Due Date	Amount
January 10, 2019	\$2,166 or balance
March 10, 2019	\$2,166 or balance

3. Pay a civil charge of \$6,500 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
May 10, 2019	\$2,166 or balance
July 10, 2019	\$2,166 or balance
September 10, 2019	\$2,168 or balance

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

FUMA 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, FUMA 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 FUMA for good cause shown by FUMA, 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, FUMA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. FUMA 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. FUMA 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 FUMA 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. FUMA 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. FUMA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FUMA 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 FUMA. Nevertheless, FUMA 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 FUMA has completed all of the requirements of the Order;
  - b. FUMA 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 FUMA.

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

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, FUMA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14<sup>th</sup> day of December, 2018.

  
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Amy T. Owens, Regional Director  
Department of Environmental Quality

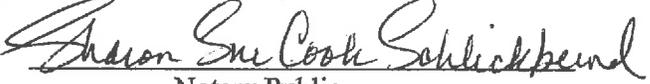
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Fork Union Military Academy voluntarily agrees to the issuance of this Order.

Date: 10-17-18 By:   
Col. Steve Macek Vice President for Operations  
Fork Union Military Academy

Commonwealth of Virginia  
City/County of Fluvanna

The foregoing document was signed and acknowledged before me this 17 day of  
October, 2018, by Stephen Macek who is  
VP of Operations of Fork Union Military Academy, on behalf of the Academy.

  
Notary Public

7190305  
Registration No.

My commission expires: March 31, 2020

Notary seal:

SHARON SUE COOK SCHLICKBERND NOTARY PUBLIC REG. #7190305 COMMONWEALTH OF VIRGINIA MY COMMISSION EXPIRES MARCH 31, 2020
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## APPENDIX A SCHEDULE OF COMPLIANCE

### Plant Upgrades

1. **By January 31, 2019**, FUMA shall complete its study of options to reduce the copper concentrations in its Plant discharges below final permit limits. The study will evaluate two primary strategies:
  - A. Installation of chemical treatment to the existing treatment trains; and/or
  - B. Construction of additional treatment processes such as tertiary flocculation and clarification, membrane filtration, potable water pretreatment, or replacement of FUMA's copper plumbing materials.
2. **By February 28, 2019**, FUMA shall submit to DEQ for review and approval the study's recommendations for the Plant and/or facility upgrades. FUMA shall address any comments by DEQ within 15 days of receipt of written comments.
3. **By October 31, 2019**, FUMA shall complete the final design plans and specifications for the selected Plant and/or facility upgrades and submit to DEQ a Certificate to Construct ("CTC") application for approval as necessary.
4. **By December 31, 2020**, FUMA shall complete construction of the Plant and/or facility upgrades, obtain a CTO if necessary, and update the Plant's O&M Manual to incorporate operation and maintenance procedures.

### General Requirements

5. FUMA shall submit quarterly progress reports to DEQ, with the first report being due **January 10, 2019**. Subsequent progress reports will be due **April 10, July 10, and October 10** along with the Plant's Discharge Monitoring Report until the cancellation of this Order. The quarterly progress reports shall contain:
  - a. a summary of all work completed since the previous progress report in accordance with this Order;
  - b. a projection of the work to be completed during the upcoming quarterly period in accordance with this Order; and
  - c. a statement regarding any anticipated problems in complying with this Order.
6. No later than **14 days** following a date identified in the above schedule of compliance FUMA shall submit to DEQ a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

7. **DEQ Contact**

Unless otherwise specified in this Order, FUMA shall submit all requirements of Appendix A of this Order to:

Tamara Ambler  
Enforcement Specialist Senior  
VA DEQ – Valley Regional Office  
P.O. Box 3000  
Harrisonburg, VA 22801  
(540) 574-7896 Phone; (540) 574-7878 Fax  
[tamara.ambler@deq.virginia.gov](mailto:tamara.ambler@deq.virginia.gov)

**APPENDIX B  
 INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

From the effective date of this Order until completion of the corrective action requirements contained in Appendix A, but in no event later than December 31, 2020, FUMA shall monitor and limit the discharge from Outfall No. 002 of the Fork Union Military Academy STP in accordance with VPDES Permit Number VA0024147, except as specified below.

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
Copper, Total Recoverable (µg/L)	55	55	NA	NA	1/Month	4-Hour Composite
Total Phosphorus (as P)	NL (mg/L)	NL (kg/d)	NA	NA	1/Week	4-Hour Composite

