



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE

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Secretary of Natural Resources

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FREDERICK-WINCHESTER SERVICE AUTHORITY AND
FREDERICK COUNTY SANITATION AUTHORITY
FOR
PARKINS MILL WWTF
VPDES Permit No. VA0075191**

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, Frederick-Winchester Service Authority and Frederick County Sanitation Authority, regarding the Parkins Mill WWTF for the purpose of resolving certain violations of the State Water Control Law, 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. "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. “Facility” or “Plant” means the Parkins Mill WWTF located at 158 West Parkins Mill Road, Winchester, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of FWSA and FCSA.
10. “FCSA” means Frederick County Sanitation Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* FCSA is defined as a “person” within the meaning of Va. Code § 62.1-44.3.
11. “FWSA” means Frederick-Winchester Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* FWSA is defined as a “person” within the meaning of Va. Code § 62.1-44.3.
12. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. “O&M” means operations and maintenance.
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. “Owner” means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates,

charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia.

16. "Owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the VPDES program.
17. "Permit" means VPDES Permit No. VA0075191 which was reissued under the State Water Control Law and the Regulation to FWSA on January 1, 2018 and which expires on December 31, 2022. At the time of the violations, FWSA was subject to Permit No. VA0075191, issued January 1, 2013 and expired December 31, 2017.
18. "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.
19. "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.
20. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
22. "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.
23. "Va. Code" means the Code of Virginia (1950), as amended.

24. "VAC" means the Virginia Administrative Code.
25. "VPDES" means Virginia Pollutant Discharge Elimination System.
26. "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. FWSA owns the Facility and FCSA operates the Facility. FWSA is subject to Permit No. VA0075191 effective January 1, 2018. The Permit allows the Facility to discharge treated sewage and other municipal wastes from the Plant, to Opequon Creek, in strict compliance with the terms and conditions of the Permit. At the time of the violations, FWSA was subject to the Permit issued January 1, 2013.
2. Opequon Creek is located in the Potomac River Basin. Opequon Creek is listed in DEQ's 305(b) report as impaired for benthic macro-invertebrate bioassessments and impaired due to E. coli. Pollution sources for impairments are listed as agriculture, municipal point source discharges, non-point sources, and wildlife other than waterfowl.
3. In submitting its DMRs, as required by the Permit, FWSA and FCSA have exceeded a discharge limitation as contained in Part I.A.1 of the Permit, for the following:

Month	Outfall	Parameter	Maximum	Reported	Legal Requirement*	No. Ex.
October 2016	001	159 CBOD ₅	Concentration Maximum	23 mg/L	12 mg/L	1
November 2016	001	159 CBOD ₅	Concentration Maximum	17 mg/L	12 mg/L	1
December 2016	001	159 CBOD ₅	Quantity Average	≥50 kg/D	150 kg/D	0
December 2016	001	159 CBOD ₅	Quantity Maximum	≥121 kg/D	230 kg/D	0
December 2016	001	159 CBOD ₅	Concentration Average	≥6 mg/L	8 mg/L	0
December 2016	001	159 CBOD ₅	Concentration Maximum	>10 mg/L	12 mg/L	0
May 2017	001	120-E.Coli	Concentration Average	>12 n/CML	126 n/CML	0

4. DEQ issued a WL and a NOV for the exceedances listed in C(3) as follows: WL No. W2017-07-V-1006, issued July 14, 2017 and NOV No. W2017-01-V-0001, issued January 17, 2017.
5. In response to the WL and NOV, FCSA stated that it was investigating the source of the Facility's effluent violations. FCSA submitted a 5-day letter to DEQ on November 10, 2016, which stated that influent from the HP Hood, LLC (HP Hood) facility, which contributes approximately 25-30% of the average daily flows to the Facility, is the main contributor of TSS and COD. HP Hood violated their pre-treatment permit effluent limits

for 29 out of the 31 days in October 2016. FCSA conveyed that the November and December 2016 violations were a result of continuing high strength effluent from the HP Hood facility.

6. 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.”
7. 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.
8. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
9. The Department has issued no permits or certificates to FWSA other than VPDES Permit No. VA0075191.
10. Opequon Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
11. On January 27, 2017, DEQ staff met with FCSA representatives and FWSA representatives in response to the NOV. FWSA and FCSA stated that nearly a third of their treatment plant flow is contributed by HP Hood. On June 9, 2016, FWSA and FCSA jointly issued a Consent Special Order to HP Hood for violations of the pretreatment permit effluent limits. The Consent Special Order required HP Hood to perform a study reviewing the pretreatment process, submit a corrective action plan for process changes or upgrades, and reimburse for additional costs associated with treating HP Hood’s effluent during pretreatment permit noncompliance.
12. On May 30, 2017, FCSA attributed the E-coli violation to a UV outage that has since been repaired. Additionally, on September 28, 2017, FCSA submitted documentation to DEQ detailing actions taken since the January 27, 2017 meeting.
13. On May 18, 2018, FCSA submitted a memorandum that stated that the Consent Special Order between FWSA, FCSA, and HP Hood was terminated, as HP Hood completed the upgrades required, and has been in compliance with pretreatment permit effluent limits for at least the six previous months.
14. Based on the results of the January 27, 2017 meeting and the submitted DMRs, the Board concludes that FWSA and FCSA have violated the Permit, 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 paragraph C(3), above.
15. There have been no further Permit effluent violations at the Facility since May of 2017.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders FWSA and FCSA, and FWSA and FCSA, jointly and severally, agree to:

Pay a civil charge of \$17,920 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

FWSA and FCSA, jointly and severally, shall include their Federal Employer Identification Numbers (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, FWSA and FCSA, jointly and severally, 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 FWSA and FCSA for good cause shown by FWSA and FCSA or on their 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. W2017-01-V-0001, dated January 17, 2017, and Warning Letter No. W2017-07-V-1006, dated July 14, 2017. 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, FWSA and FCSA admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. FWSA and FCSA consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. FWSA and FCSA declare they have received fair and due process under the Administrative Process Act and the State Water Control Law and they waive 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 FWSA and FCSA 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. FWSA and FCSA, jointly and severally, 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. FWSA and FCSA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FWSA and FCSA 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.

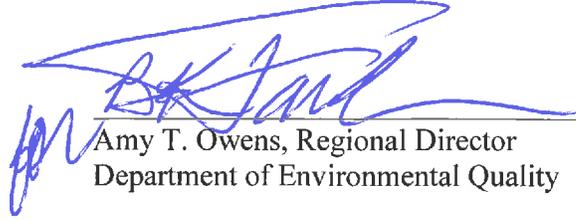
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and FWSA and FCSA. Nevertheless, FWSA and FCSA agree to be bound by any compliance date 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 FWSA and FCSA have completed all of the requirements of the Order;
 - b. FWSA and FCSA 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 FWSA and FCSA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve FWSA and FCSA from their 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 FWSA and FCSA 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 representatives of FWSA and FCSA 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 FWSA and FCSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of FWSA and FCSA.
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 their signatures below, FWSA and FCSA voluntarily agree to the issuance of this Order.

Consent Order
Frederick-Winchester Service Authority; Frederick County Sanitation Authority
VPDES Permit No.-VA0075191
Page 9 of 11

And it is so ORDERED this 4th day of October, 2018.



Amy T. Owens, Regional Director
Department of Environmental Quality

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Frederick-Winchester Service Authority and Frederick County Sanitation Authority voluntarily agrees to the issuance of this Order.

Date: 8/6/2018 By: [Signature], _____
Eric R. Lawrence Executive Director, FCSA

Date: 8/6/18 By: [Signature], _____
Richard Helm Executive Director, FWSA

Commonwealth of Virginia
City/County of Frederick

The foregoing document was signed and acknowledged before me this 6th day of August, 2018, by Eric R. Lawrence who is Executive Director of Frederick County Sanitation Authority on behalf of the Authority.

[Signature]
Notary Public

7265287
Registration No.

My commission expires: 8-31-2021

Notary seal:

Tashema Lavonne Long
NOTARY PUBLIC
Commonwealth of Virginia
Reg. # 7265287
My Commission Expires 8-31-2021

Commonwealth of Virginia
City/County of Winchester Frederick

The foregoing document was signed and acknowledged before me this 6th day of
August, 2018, by Richard S. Helm who is
Executive Director of Frederick-Winchester Service Authority on behalf of the
Authority.

Nancy C. Grimm (Kramer)
Notary Public

7156869
Registration No.

My commission expires: September 30, 2019

Notary seal:

