



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3821

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
COUNTY OF FAIRFAX
FOR
I-95 LANDFILL COMPLEX
VPDES Permit No. VAR05
Stormwater Registration No. 1076**

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 Fairfax County, regarding the I-95 Landfill Complex, 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. "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 the discharge of a pollutant.
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. "Facility" or "Site" means the I-95 Landfill Complex located at 9850 Furnace Road, Lorton, Virginia, from which discharges of stormwater associated with industrial activity occur.
9. "Fairfax County" means the County of Fairfax, a political subdivision of the Commonwealth of Virginia. Fairfax County 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. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "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.
13. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2009, which expired on June 30, 2014 and which was reissued on July 1, 2014. The County of Fairfax applied for continued coverage under the Permit and was issued registration number VAR051076 on July 1, 2014.
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. "Registration statement" means a registration statement for coverage under a storm water general permit.
17. "Regulation" means "The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity," 9 VAC 25-151-10, *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "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.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Fairfax County owns the Facility located at 9850 Furnace Road in Lorton, Virginia, which discharges stormwater associated with industrial activity. The Facility is operated by the Fairfax County Department of Public Works and Environmental Services.
2. The Permit allows Fairfax County to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary to the Occoquan River (identified by Fairfax County as Messier Creek) and Mills Branch, in strict compliance with the terms and conditions of the Permit.
3. Mills Branch and the unnamed tributary to the Occoquan River are located in the Potomac and Shenandoah River Basins. Mills Branch is listed in DEQ's 305(b) report as impaired for Fecal Coliform and PCBs. The source of the impairment is unknown. The unnamed tributary has not been monitored or assessed by DEQ.

4. In submitting its 2013 DMR on January 9, 2014, as required by the Permit, Fairfax County has indicated that it exceeded discharge limitations contained in Part IV.E of the Permit, for Total Suspended Solids (TSS) for the year 2013. Fairfax County conducted follow-up sampling as required by the Permit which demonstrated compliance with TSS limits.
5. Part IV.E of the Permit states that the maximum monthly average effluent limit for TSS is 27 mg/L and the maximum daily effluent limit is 88 mg/L.
6. On March 7, 2014, Fairfax County notified DEQ of a discharge of approximately 100,000 gallons of stormwater that was stained black in color after being in contact with vegetation waste, i.e. leaves and leaf mulch. The contaminated stormwater flowed into Sediment Basin 25 and discharged into Mills Branch. The discharge was caused by snow and ice melt through piles of leaves and mulch stored approximately 25 yards upstream of the basin.
7. On March 17, 2014, Fairfax County notified DEQ of a discharge of leachate to Stormwater Basin 20 leading to Mills Branch. The discharge was caused by Pump Station 2 ceasing operations over the preceding weekend.
8. On March 20, 2014, Fairfax County notified DEQ of an approximately 5,000 gallon discharge of potentially contaminated groundwater that was discovered on March 19, 2014. The discharge flowed from Pump Station 4 into the stormwater conveyance system to Mills Branch. The discharge was caused by saturated ground conditions and a failed pump float.
9. On April 5, 2014, Fairfax County notified DEQ of a discharge of leachate that was discovered on April 4, 2014. The discharge originated from Pump Station B and flowed to Mills Branch. The discharge amount is unknown and was the result of damage to aging pump station infrastructure resulting in a broken pipe.
10. On May 16, 2014, Fairfax County notified DEQ of a discharge of approximately 25,000 gallons of stormwater contaminated with ash waste. The discharge was the result of hydraulic pressure from heavy rains forcing a cap off of the stormwater collection system leading to the stormwater coming into contact with ash fill material in the Area 3 lined landfill and discharging to Stormwater Basin 24 and from there to Mills Branch.
11. Va. Code § 62.1-44.5 and the Permit Part II.F. 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.”
12. 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.

13. Mills Branch is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
15. The Department has not issued coverage under any permits or certificates to Fairfax County for the Facility for discharges to State waters other than under VPDES Permit No. VAR05. The Permit does not allow discharges of leachate, contaminated groundwater or waste contaminated stormwater.
16. NRO issued Warning Letters and Notices of Violation for the violations noted above as follows: WL No. W2014-03-N-1011, issued March 7, 2014; NOV No. W2014-05-N-0010, issued May 19, 2014; NOV No. W2014-07-N-003, issued July 18, 2014.
17. On June 27, 2014, Department staff met with representatives of Fairfax County to discuss the violations, including Fairfax County’s written responses.
18. Based on the notifications submitted by Fairfax County, the Board concludes that Fairfax County has violated conditions Part II.F and Part IV.E of the Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50 as noted in paragraphs 4 through 10 of this Order.
19. In order for Fairfax County to return to compliance, DEQ staff and Fairfax County have agreed to the Schedule of Compliance, which is incorporated as Appendix A 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 Fairfax County, and Fairfax County agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$12,530.00 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

Fairfax 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, Fairfax 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 the County of Fairfax for good cause shown by the County of Fairfax, 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, the County of Fairfax admits the jurisdictional allegations, but neither admits nor denies the findings of fact, and conclusions of law contained herein.
4. The County of Fairfax consents to venue in the Fairfax County Circuit Court for any civil action taken to enforce the terms of this Order.
5. The County of Fairfax 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 the County of Fairfax 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. The County of Fairfax 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. The County of Fairfax shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County of Fairfax 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 the County of Fairfax. Nevertheless, the County of Fairfax 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 the County of Fairfax has completed all of the requirements of the Order;
 - b. the County of Fairfax 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 the County of Fairfax.

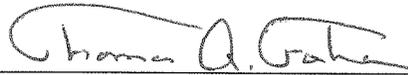
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County of Fairfax from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the County of Fairfax 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 the County of Fairfax 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 the County of Fairfax to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the County of Fairfax.
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, the County of Fairfax voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 11th day of September, 2015.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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

Date: 7/9/2015 By: Edward L Long Jr. County Executive
(Person) (Title)
The County of Fairfax

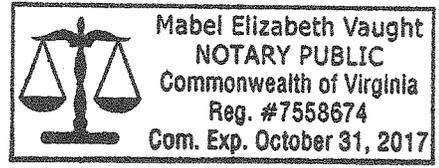
Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 9th day of July, 2015, by Edward L Long Jr who is County Executive of the County of Fairfax on behalf of the County.

Mabel Elizabeth Vaught
Notary Public

7558674
Registration No.

My commission expires: Oct. 31, 2017



Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

The County of Fairfax shall:

1. Within 90 days of execution of this Order, submit to DEQ an evaluation report of the leachate pumping system at the Facility. This report shall document the system's infrastructure and assess its reliability including power supply, communications and alarms, pumping capacity, and storage capacity. Pump stations that are used to convey sanitary wastewater shall be evaluated for compliance with 9 VAC 25-790-390.
2. Within 90 days of execution of this Order, submit to DEQ an updated leachate control design plan. The design plan shall include an evaluation of the current capacity and condition of the leachate collection system and shall meet the requirements set forth in 9 VAC 20-81-210(A)(1).
3. Within 120 days within execution of this Order, submit to DEQ for review and approval a plan and schedule to complete any repairs and upgrades identified by the reports required by paragraphs 1 and 2 above. Upon approval, the plan and schedule shall become an enforceable part of the Order.