

# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Thomas A. Faha  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO AMERICAN WATER OPERATIONS AND MAINTENANCE, INC. FOR AN UNPERMITTED DISCHARGE**

### **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 American Water Operations and Maintenance, Inc. regarding an unpermitted discharge from the Fort Belvoir sanitary sewer collection system, for the purpose of resolving certain violations of the State Water Control Law and the applicable 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. "American Water" means American Water Operations and Maintenance, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. American Water 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. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
10. "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.
11. "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.
12. "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.

13. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "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.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "VPDES" means Virginia Pollutant Discharge Elimination System.

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

1. American Water owns and maintains the sanitary sewer collection system associated with the Fort Belvoir Facility. The Fort Belvoir collection system is considered a "satellite system" discharges from which are not covered by a VPDES permit. The wastewater from Fort Belvoir, via the collection system, flows into the collection system owned and operated by Fairfax County and ultimately flows to the Noman M. Cole Pollution Control Plant for treatment.
2. The unpermitted discharge event that is the subject of this Order was to an unnamed tributary of Mason Run. The unnamed tributary to Mason Run is located in the Accotink Bay Basin. Both the unnamed tributary to Mason Run and Mason Run have not been monitored or assessed by DEQ. The unauthorized discharge location is approximately 0.6 mile upstream of the confluence of the unnamed tributary with Mason Run. From this confluence point, Mason Run flows approximately 1 mile until the confluence with the tidal portion of Accotink Bay. Tidal Accotink Bay is listed with PCB and dissolved oxygen impairments in the Draft 2014 Water Quality Integrated Assessment. The fish consumption use is listed as impaired due to PCBs in fish tissue, based on the fish consumption advisory issued by the Virginia Department of Health. The aquatic life use and the open water aquatic life sub-use are listed as not supporting due to dissolved oxygen concentrations not meeting the thirty day mean during the summer season. The fish consumption use impairment is addressed by the Potomac River Watershed PCB TMDL and the dissolved oxygen impaired is addressed by the Chesapeake Bay TMDL.
3. On June 9, 2015, American Water staff reported to DEQ-NRO that an unpermitted discharge had occurred between May 27, 2015, and June 9, 2015, from manhole 18-030. The manhole is located approximately 75 yards east from Franklin Street and the intersection of 30<sup>th</sup> and Engineer Road in Fairfax County.

4. American Water estimates that approximately 750,000 gallons of raw sewage was discharged to the unnamed tributary to Mason Run between May 27, 2015 and June 9, 2015.
5. American Water notified DEQ-NRO that the discharge occurred because the line was plugged from what appeared to be wipes that had been flushed and a grease blockage. American Water informed DEQ that the flow to this manhole initiates from residential single family dwellings located on the Fort Belvoir military installation. American Water personnel informed DEQ that the blockage was fixed, the area adjacent to the manhole in question was limed, and that the receiving stream had been inspected, and no evidence of environmental harm was evident at the time personnel inspected the receiving stream.
6. Notice of Violation No. W2015-08-N-001 was issued to American Water on August 18, 2015 for the unpermitted discharge event.
7. American Water met with DEQ-NRO staff on August 18, 2015, to discuss the aforementioned unpermitted discharge event and the Notice of Violation.
8. American Water responded to the NOV by submitting a letter to DEQ-NRO on September 12, 2015, which contained scheduled corrective action to ensure that similar unpermitted discharges do not occur in the future from the sanitary sewer collection system.
9. 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.”
10. 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.
11. The Department has issued no permits or certificates to American Water.
12. The unnamed tributary to Mason Run is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
13. Based on the results of notification submitted to DEQ on June 9, 2015,, the Board concludes that American Water has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging raw sewage into a state water as described in paragraph C(3) through C(5), above.
14. In order for American Water to complete its return to compliance, DEQ staff and representatives of American Water 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 American Water, and American Water agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$11,375.00 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

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

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

And it is so ORDERED this 14 day of March, 2016.

A handwritten signature in cursive script, reading "Thomas A. Faha", written over a horizontal line.

Thomas A. Faha NRO Regional Director  
Department of Environmental Quality

----- (Remainder of Page Intentionally Blank) -----



American Water Operations and Maintenance, Inc. voluntarily agrees to the issuance of this Order.

Date: 1-14-2016 By: Todd Duerr, VICE PRESIDENT  
(Person) (Title)  
[American Water Operations and Maintenance, Inc.]

~~Commonwealth of Virginia~~  
City/County of Burlington

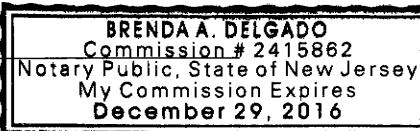
The foregoing document was signed and acknowledged before me this 14<sup>th</sup> day of January, 2016, by Todd Duerr who is Vice President of American Water Operations and Maintenance, Inc., on behalf of the corporation.

Brenda A Delgado  
Notary Public

Registration No.

My commission expires:

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

American Water Operations and Maintenance, Inc. shall:

1. **Unpermitted Discharge/Spill**

a. Provide DEQ-NRO with semi-annual updates until January 2017 on the enhanced system maintenance described in the September 10, 2015, letter received by DEQ on September 12, 2015, to include: the status and results of acoustic inspections of all waste water mains, any upgrades made to the SCADA system, and the status of monthly manhole inspections. Updates shall be submitted to DEQ by February 10, 2016, July 10, 2016, and January 10, 2017.

b. Provide proof to DEQ that the SCADA system has been upgraded by December 31, 2016.

2. **DEQ Contact**

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

Attention Enforcement  
VA DEQ –NRO Regional Office  
13901 Crown Court  
Woodbridge, VA 22193