COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
McLANE/MID-ATLANTIC, INC.
FOR
McLANE MID-ATLANTIC FACILITY
VPDES Permit No. VAR05
Storm Water Registration No. VAR051028

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 McLane/Mid-Atlantic, Inc. regarding the McLane Mid-Atlantic Facility 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. "CSCE" means comprehensive site compliance evaluation.

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 the discharge of a pollutant.

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. "DMR" means Discharge Monitoring Report.

9. "Facility" or "Site" means the McLane Mid-Atlantic Facility from which stormwater is discharged, located at 56 McLane Drive in Falmouth, Virginia, from which discharges of stormwater associated with industrial activity occur.

10. "McLane" means McLane/Mid-Atlantic, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. McLane/Mid-Atlantic, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.

11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

13. "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.

14. "2014 Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014, and which expired on June 30, 2019. McLane/Mid-Atlantic, Inc. applied for registration under the Permit and was issued Registration No. VAR051028 on December 22, 2014.

15. "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.

16. "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.

17. "Registration statement" means a registration statement for coverage under a stormwater general permit.

18. "Regulation" means 'The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater Associated with Industrial Activity," 9 VAC 25-151-10, *et seq.*

19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

20. "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.

21. "SWP3" means Stormwater Pollution Prevention Plan.

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. McLane owns and operates the Facility located at 56 McLane Drive, in Falmouth, Virginia, which discharges stormwater associated with industrial activity.

2. The 2014 Permit allows McLane to discharge stormwater associated with industrial activity from the Facility to an unnamed tributary to England Run, in strict compliance with the terms and conditions of the 2014 Permit.

3. This Facility discharges to an unnamed tributary to England Run that has been neither monitored nor assessed. Starting approximately 2.2 miles downstream from this Facility, the Rappahannock River is impaired for the fish consumption use for Polychlorinated Biphenyls (PCBs) in fish tissue; a Total Maximum Daily Load (TMDL) for this impairment has not been developed.

4. Part I.A.1.a.1 of the 2014 Permit requires McLane to perform and document quarterly visual examinations of the quality of the stormwater discharging from the Facility's outfalls.

5. Part I.A.1.b of the 2014 Permit requires McLane to conduct benchmark monitoring of stormwater discharges from the Facility's storm water outfalls for the presence of pollutants of concern once during each benchmark monitoring period and record benchmark monitoring results on a DMR.

6. Part I.A.2.b of the 2014 Permit requires McLane to take a minimum of one grab sample from the discharge associated with industrial activity resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event"), providing the interval from the preceding measurable storm event is at least 72 hours.

7. Part I.A.5.a of the 2014 Permit requires McLane to submit results of Semiannual Monitoring on a DMR by January 10 and July 10.

8. During a DEQ Facility inspection on September 5, 2019, and previous DEQ file review, DEQ staff documented the following compliance deficiencies with respect to the monitoring requirements of the 2014 Permit:

    a. The quarterly visual examinations of stormwater quality required by Part I.A.1.a.1 of the 2014 Permit had not been performed for the first and second quarters of 2019.

    b. The benchmark monitoring of stormwater discharges required by Part I.A.1.b of the 2014 Permit had not been performed for the July through December 2018 monitoring periods.

    c. The benchmark monitoring DMRs for the July through December 2017 monitoring period were submitted late, benchmark monitoring was conducted for the January through June 2019 monitoring period, however the DMR was not submitted to DEQ as required by Part I.A.5.a. of the 2014 Permit, and benchmark monitoring was conducted for the July through December 2019 monitoring period, however DMRs were not submitted.

d. Benchmark monitoring samples for the January through June 2017 monitoring period were not collected at least 72 hours from the preceding measurable storm event as required by Part I.A.2.b of the Permit.

9. McLane violated conditions Part I.A.1.a.1., Part I.A.1.b, Part I.A.5.a and Part I.A.2.b, of the 2014 Permit as noted in paragraphs C(4) through C(8) of this Order.

10. McLane is required to develop and implement a Facility SWP3 according to requirements outlined in Part III of the 2014 Permit.

11. Part III.B.5 of the 2014 Permit requires that the Facility be inspected at least quarterly for compliance with the Facility SWP3.

12. Part III.E of the 2014 Permit requires that a CSCE be conducted at least annually.

13. Part III.D.2.a. of the 2014 Permit requires that an outfall evaluation for unauthorized discharges of each outfall be conducted at least annually.

14. During the DEQ Facility inspection on September 5, 2019, DEQ staff documented compliance deficiencies with respect to the SWP3 requirements of the 2014 Permit, including the following:.

    a. The quarterly routine Facility inspections required by Part III.B.5 of the 2014 Permit had not been conducted for the fourth quarter of 2017, and the first and second quarter of 2019.

    b. Annual CSCEs had not been performed as required by Part III.E of the 2014 Permit for 2016, 2017, and 2018.

    c. Annual outfall evaluations for unauthorized discharges had not been performed as required by Part III.D.2.a. of the 2014 Permit for 2016, 2017, and 2018.

15. Based on the results of the September 5, 2019, inspection, the Board concludes that McLane has violated conditions Part III.B.5, Part III.E, Part III.D.2.a of the 2014 Permit as noted in paragraphs C(10) through C(14) of this Order.

16. NRO issued Notices of Violation for the violations noted above as follows: NOV No. 2017-08-N-0017 issued on September 20, 2017; NOV No. 2018-03-N-0008 issued on March 28, 2018; NOV No. 2019-02-N-0013 issued on February 25, 2019; NOV No. 2019-08-N-0010 issued on September 4, 2019; and NOV No.W2020-06-N-0009 issued on June 22, 2020.

17. 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

18. The Regulation, at 9 VAC 25-151-70, 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.

19. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

20. The Department has issued coverage under no other VPDES permits or certificates to McLane other than under VPDES Permit No. VAR051028. The Department reissued coverage to McLane under VAR051028 in November 2019.

21. The unnamed tributary of England Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

22. Based on the results of September 5, 2019, DEQ inspection of the Facility and the late submittals and non submittals of DMRs, the Board concludes that McLane has violated the Permit, as described in paragraphs C(4) through C(8) and C(10) through C(14) above.

23. In order for McLane to return to compliance, DEQ staff and McLane 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 McLane/Mid-Atlantic, Inc. and McLane/Mid-Atlantic, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $7,112.00 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

McLane/Mid-Atlantic, Inc. 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, McLane/Mid-Atlantic, Inc. 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 McLane/Mid-Atlantic, Inc. for good cause shown by McLane/Mid-Atlantic, Inc., 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, McLane/Mid-Atlantic, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. McLane/Mid-Atlantic, Inc. 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. McLane/Mid-Atlantic, Inc. 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 McLane/Mid-Atlantic, Inc. 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. McLane/Mid-Atlantic, Inc. 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. McLane/Mid-Atlantic, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. McLane/Mid-Atlantic, Inc. 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 McLane/Mid-Atlantic, Inc.. Nevertheless, McLane/Mid-Atlantic, Inc. 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 McLane/Mid-Atlantic, Inc. has completed all of the requirements of the Order;

    b. McLane/Mid-Atlantic, Inc. 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 McLane/Mid-Atlantic, Inc..

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve McLane/Mid-Atlantic, Inc. 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 McLane/Mid-Atlantic, Inc. 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 McLane/Mid-Atlantic, Inc. 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 McLane/Mid-Atlantic, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of McLane/Mid-Atlantic, Inc..

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, McLane/Mid-Atlantic, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 30th day of October, 2020.

Thomas A. Faha

Thomas A. Faha, Regional Director
Department of Environmental Quality

McLane/Mid-Atlantic, Inc. voluntarily agrees to the issuance of this Order.

Date: 9-1-20 By: _____, Vice President Distribution
(Person) (Title)
(McLane/Mid-Atlantic, Inc.)

Commonwealth of Virginia
City/County of Stafford

The foregoing document was signed and acknowledged before me this 1 day of September, 2020, by Kevin Swanson who is Vice President Distribution of McLane/Mid-Atlantic, Inc., on behalf of the corporation.

Gail Burton Perry
Notary Public

7371490
Registration No.

My commission expires: Jul 31, 2022

Notary seal:

GAIL BURTON PERRY
Notary Public
Commonwealth of Virginia
Registration No. 7371490
My Commission Expires Jul 31, 2022

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Stormwater Discharge**

   a. Submit documentation that quarterly visual examinations of stormwater quality, and quarterly routine facility inspections have been completed for July-September 2020, and October-December 2020. McLane shall submit said documentation by January 15, 2021.

   b. Submit documentation to show that the annual outfall evaluation for unauthorized discharges in 2020 was conducted. McLane shall submit said documentation by January 15, 2021.

2. **DEQ Contact**

   Unless otherwise specified in this Order, McLane/Mid-Atlantic, Inc. shall submit all requirements of Appendix A of this Order to:

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