

## **Appendix A: Amendment to the 2005 Special Order by Consent**

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# *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*

*PIEDMONT REGIONAL OFFICE*

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## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION AMENDMENT TO SPECIAL ORDER BY CONSENT ISSUED TO THE CITY OF RICHMOND Permit No. VA0063177**

### **SECTION A: Purpose**

This is a Special Order by Consent Amendment (“Amendment”) to the Special Order by Consent issued March 17, 2005 under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) between the State Water Control Board (“Board”) and the City of Richmond related to City of Richmond combined sewer overflow (CSO) impacts on the James River (“2005 Order”). The purpose of the Amendment is to revise certain provisions of the 2005 Order to align with requirements in Acts of the Virginia General Assembly, Chpt. 634, 2020 Va. SB 1064, approved April 2, 2020 and made effective July 1, 2020 (“2020 CSO Law”).

### **SECTION B: Basis for Amendment**

The 2020 CSO Law generally requires the owner or operator of any CSO system east of Charlottesville that discharges into the James River watershed to submit to the Department of Environmental Quality (“Department”) an interim and a final plan to address the requirements of any consent special order issued by the State Water Control Board (“Board”). The term “CSO system” as used herein shall have the same meaning as the term “combined sewer system” or “CSS” as defined in the 2005 Order. The law specifies dates by which the owner or operator must initiate and complete construction and related activities. As to the City of Richmond, the application of which such requirements are more specifically described below, a primary purpose of the law is to establish dates for earlier completion of CSO projects contemplated by the 2002 City of Richmond Long Term Control Plan (“LTCP”) under the 2005 Order, and to satisfy all requirements of the 2005 Order by July 1, 2035 subject to the terms of the 2005 Order, as

the 2005 Order may be amended. Further, the law allows the City of Richmond to modify the 2005 Order by substituting alternative actions not in the LTCP so long as they are at least as cost-effective as the original proposed action.

This Amendment is initiated by the Board and the City of Richmond to align the requirements of the 2020 CSO Law to the Board's 2005 Order, and to provide specific enforceable requirements under the Board's authority.

### **SECTION C: Information for Evaluation of Appropriations and Schedule Feasibility**

Pursuant to 2020 CSO Law § 4, the Governor shall take into account the reports required in Section D, Para. 5 during the preparation of the biennial budget bill and subsequent amendments thereto. Further, the General Assembly may take the reports required in Section D, Para. 5 into account in enacting the general appropriation act and may evaluate the feasibility of the deadlines in Section D, Para.'s 1.a., 2.a. and 6 on a biennial basis beginning in 2022 and modify such deadlines as necessary, taking into account any potential adverse effects on (i) the City of Richmond's bond rating; (ii) the utility rates, fees, or charges assessed by the City of Richmond; (iii) any environmental justice community, or City of Richmond utility customers living below the federal poverty level; or (iv) any other relevant aspect of the City of Richmond's operations.

### **SECTION D: Agreement and Order**

By legislative direction, the authority granted to the Board at Va. Code §§ 10.1-1185 and 62.1-44.15(8a), and pursuant to the 2005 Order, Sections E(1) – (2) and D (5), the Board orders City of Richmond, and City of Richmond agrees as follows:

1. Pursuant to 2020 CSO Law § 1(A), the City of Richmond will submit to the Department by July 1, 2021 an Interim Plan detailing all known actions the City of Richmond can initiate by July 1, 2022, to address the requirements of any consent special order issued by the Board to the City of Richmond regarding the CSO system. Pursuant to 2020 CSO Law § 1(B), the Department shall assist the City of Richmond in developing the Interim Plan and in identifying available sources of funding and financing.
  - a. Pursuant to 2020 CSO Law § 2(A) & (C), by July 1, 2022, the City of Richmond will initiate construction and related activities pursuant to the Interim Plan. Such activities shall be complete by July 1, 2027. The City of Richmond may request that the Department recommend to the Board extending the required deadlines to allow adaptive management due to a natural disaster or other act of God, or because of a lack of available funding and financing.
2. Pursuant to 2020 CSO Law § 1(B), the City of Richmond will submit to the Department by July 1, 2024 a Final Plan updating the Interim Plan detailed in

Para. 1 and detailing all actions the City of Richmond will take to satisfy all requirements of any consent special order issued by the Board regarding the CSO system. Pursuant to 2020 CSO Law § 1(B), the Department shall assist City of Richmond in developing the Final Plan and in identifying available sources of funding and financing.

- a. Pursuant to 2020 CSO Law § 2(B) & (E), by July 1, 2025, the City of Richmond will initiate construction and related activities pursuant to the Final Plan. Such activities shall be complete by July 1, 2035. The City of Richmond may request that the Department recommend to the Board extending the required deadlines to allow adaptive management due to a natural disaster or other act of God, or because of a lack of available funding and financing.
3. Pursuant to 2020 CSO Law § 1(B), the Interim Plan and the Final Plan shall be divided into discrete projects or phases that may be planned or constructed individually or in combination, and shall include for each project or phase: (i) an estimated timeline from the start of detailed planning to completion of construction, (ii) an estimated cost, (iii) the projected resultant water quality improvements, and (iv) proposed funding sources.
  4. Pursuant to 2020 CSO Law § 1(B), the City of Richmond may, subject to Department approval, substitute for any proposed action in either the Interim Plan or Final Plan an alternative action or actions to address the requirements of the 2005 Order, provided that such alternative is at least as cost-effective as the original proposed action. The term “cost-effective” as used herein shall mean CSO system performance measures including, without limitation, flow volume reduction and water quality improvement per dollar. Department approval shall be contingent upon a demonstration by City of Richmond that a proposed action achieves the same or improved CSO system performance measures as, at or below the cost of, an action substituted in the 2005 Order.
    - a. The parties anticipate that in the Interim Plan, the City of Richmond will substitute an action or actions for 2005 Order requirements, subject to Department approval in accordance with this Para. 4. By way of example, the City of Richmond may substitute real-time decision support project actions for 2005 Order requirements in the Interim Plan.
    - b. The parties anticipate that in the Final Plan, the City of Richmond will substitute an action or actions for 2005 Order requirements, subject to Department approval in accordance with this Para. 4.
  5. Pursuant to 2020 CSO Law § 3, the City of Richmond will submit to the Department Annual Reports providing progress toward the achievement of the requirements identified in the 2005 Order and this Amendment. Such Annual Reports shall also include: (i) information on the level and sources of funding and

- financing applied to the CSO system in each of the past five fiscal years; (ii) an assessment of funding needs in future years; and (iii) a request that appropriation amounts sufficient to carry out the purposes of the 2005 Order and this Amendment be included in the General Assembly's regular budget bill. The Department, in turn, is required to supplement such reporting, where appropriate, and forward by January 1 of each year a Final Report to the Chairman of the Senate Committee on Finance and Appropriations, the Senate Committee on Agriculture, Conservation and Natural Resources, the House Committee on Appropriations, and the House Committee on Agriculture, Chesapeake and Natural Resources; the Virginia delegation to the Chesapeake Bay Commission; and the Secretary of Natural Resources.
- a. City of Richmond shall submit such Annual Reports to the Department on or before December 1 of each year, beginning on December 1, 2020. A Final Annual Report shall be submitted by City of Richmond after completion of: (i) the actions required by the Final Plan; and (ii) any additional actions identified and required by Para. 6. Annual Reports pursuant to this Amendment may include and consolidate any annual report requirement under the 2005 Order, including reporting requirements at Appendix A Section A.4 of the 2005 Order.
6. Pursuant to 2020 CSO Law § 2(D), by July 1, 2030, the City of Richmond will identify and report to the Department any additional action that is applicable and necessary to meet by December 31, 2036 the requirements of the Total Maximum Daily Load ("TMDL") for bacteria impairment of the James River and its tributaries (Richmond Area), as described in the Implementation Plan (Bacteria) for such TMDL, and any subsequent revision or amendment of such Implementation Plan. The City of Richmond may request that the Department recommend to the Board extending the required deadline to allow adaptive management due to a natural disaster or other act of God, or because of a lack of available funding and financing.
  7. Pursuant to 2020 CSO Law § 4, the City of Richmond may petition the Board for, and the Board may grant, an extension to one or more of the deadlines in Para.'s 1.a, 2.a and 6 if the Board determines that: (i) the General Assembly has not extended such deadline; and (ii) funding sufficient to meet such deadline has not been secured and the City of Richmond has exhausted all reasonable options for securing such funding. City of Richmond may petition the Board for an extension to the deadlines in Para.'s 1.a, 2.a and 6 no earlier than July 1, 2025, and no more frequently than every two years thereafter.
  8. The terms of the 2005 Order not superseded or contradicted by this Amendment shall remain in full force and effect.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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David K. Paylor, Director  
Department of Environmental Quality

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**City of Richmond** voluntarily agrees to the issuance of this Order.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Lenora G. Reid, Acting Chief Administrative Officer

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ who is \_\_\_\_\_ of **City of Richmond**, on behalf of the locality.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Registration No.

My commission expires: \_\_\_\_\_

Notary seal:

Approved as to form:

\_\_\_\_\_  
A. Ross Phillips  
Assistant City Attorney