COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
HHHunt CORPORATION

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185, 62.1-44.15(8a) and (8d) between the State Water Control Board and HHHunt Corporation, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.

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.

5. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.

6. "Grubbed" means to clear a land surface by digging up roots and stumps.

7. "HHHunt" means HHHunt Corporation, a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

8. "NOV" means Notice of Violation.

9. "Order" means this document, also known as a Consent Special Order.

10. "Permit" means Virginia Water Protection Permit number 05-1612, issued to HHHunt Corporation on June 7, 2007.

11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

12. "Rutland" or "Site" means the Rutland residential development, located on the northwest side of Route 301, approximately 1 mile north of the intersection or Route 301 and Interstate 295 in Hanover County, Virginia.

13. "Surface waters" means all state waters that are not ground water as defined in §62.1-255 of the Code of Virginia.

14. "VWPP" means Virginia Water Protection Permit.

SECTION C: Findings of Fact and Conclusions of Law

1. HHHunt is a person pursuant to 9 VAC 25-210-50, which defines a "person" as one or more individuals, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

2. On June 7, 2007, DEQ issued HHHunt VWPP permit number 05-1612. The Permit authorizes impacts to 4.36 acres of forested wetlands and 2,337 linear feet of stream channel associated with Rutland. A portion of the authorized impacts will result from construction of the T-40 Regional Stormwater Basin ("basin") on Opossum Creek.

3. Part I.I.1 of the Permit requires compensatory mitigation, including the restoration of 3,355 linear feet of stream channel downstream of the Site. Part I.L of the Permit requires development and implementation of a water quality study of the Opossum Creek watershed, up- and downstream of the basin, to prove the basin's effectiveness at protecting the watershed.

4. On June 21, 2007, HHHunt notified DEQ that Site construction was beginning.

5. On July 20, 2007, HHHunt submitted a final compensatory mitigation plan to DEQ.

6. On September 11, 2007, DEQ notified Williamsburg Environmental Group (the agent of HHHunt) that the plan could not be approved because the stream restoration project conflicted with a sanitary sewer installation project proposed by Hanover County.

7. On January 22, 2008, DEQ compliance staff conducted an inspection of Rutland and observed the following impacts that were not authorized by the Permit:

   (a) Approximately 0.10 acre of forested wetlands was cleared and grubbed during construction of a sediment trap.

   (b) Approximately 0.025 acre of forested wetlands and 80 linear feet of stream were filled with 4 to 12 inches of sediment due to ineffective erosion and sedimentation controls.

8. Va. Code §62.1-44.15:20 and 9 VAC 25-210-50 state that no person shall fill wetlands or surface waters, or cause significant alteration or degradation of existing wetland acreage or functions, or otherwise alter the physical, chemical or biological properties of surface waters to make them detrimental to animal or aquatic life, unless such activities are conducted in compliance with a VWP permit.

9. The activities described in Items 7(a) and 7(b) were not conducted in compliance with a VWP permit and resulted in the significant alteration and degradation of existing wetland acreage and function and alteration of the physical and biological properties of surface waters, making such waters detrimental to animal and/or aquatic life, in violation of Va. Code §62.1-44.15:20 and 9 VAC 25-210-50.

10. During the January 22, 2008 inspection and a subsequent file review, DEQ compliance staff also observed the following Permit violations:

   (a) Although impacts began on June 21, 2007, the construction of the stream restoration area had not commenced. Part I.J.4 of the Permit states that if compensation site construction has not commenced within 180 calendar days of beginning construction activity in any permitted impact area, work in the permitted impact areas shall cease, unless otherwise authorized by DEQ. DEQ had not authorized continued work in permitted impact areas, and most impacts were complete by January 2008.

   (b) HHHunt did not submit documentation of its purchase of 8.57 wetland mitigation bank credits prior to initiating work in impact areas, as required by Permit Part I.H.2.

   (c) DEQ received the stream restoration plan on July 20, 2007 and informed HHHunt of deficiencies on September 11, 2007. No plan revisions have been submitted; however most impacts have been completed. Part I.J.2 of

the Permit states that the final compensation plan must be approved prior to construction activity in permitted impact areas.

(d) DEQ compliance staff observed no hydrologic connection between wetlands and streams upstream of the basin and those downstream, as required by Part I.C.4 of the Permit. A pump was set up to convey flow from upstream to downstream areas; however the pump was not running at the time of the inspection.

(e) The quarterly construction monitoring report regarding June, July, and August 2007 was not received by DEQ until January 2008. The monitoring report regarding September, October, and November 2007 was not received until May 2008. No additional construction monitoring reports have been received to date. Part I.G.10 of the Permit requires that HHHunt submit quarterly construction monitoring reports by the 10th calendar day of the month after the quarter in which monitoring occurs.

11. HHHunt's failure to comply with certain conditions of its Permit, as described in Item 10 above, is a violation of Va. Code §62.1-44.15:20(A) and 9 VAC 25-210-90(A), which require such compliance.

12. A meeting was held between DEQ permitting staff and HHHunt representatives on April 16, 2008 to discuss the violations. HHHunt representatives submitted documentation of the required purchase of wetland credits during the meeting. The credits had been purchased prior to initiation of wetland impacts on the Site. Submittal of this documentation resolved the violation of Permit Part I.H.2 described above in Item 10(b).

13. Notice of Violation number 08-04-PRO-701 was issued to HHHunt on April 25, 2008 for the unauthorized impacts to wetlands and streams and failure to comply with all permit conditions.

14. A file review conducted on May 28, 2008 indicated that HHHunt also failed to submit the water quality monitoring plan for the Opossum Creek watershed, as required by the Permit Part I.L.

15. A meeting was held between HHHunt representatives and DEQ staff on May 28, 2008 to discuss the NOV. HHHunt representatives indicated that Items 7(a) and 7(b) have been resolved through restoration of these areas. HHHunt does not want to begin stream restoration until construction of the stream sewer line begins, in order to avoid additional environmental impact to these areas.

16. On June 4, 2008, HHHunt submitted the water quality monitoring plan, which was approved by DEQ the same day. HHHunt also provided water quality

monitoring results from monitoring conducted in 2006. No monitoring was conducted in 2007.

17. On June 26, 2008, DEQ allowed HHHunt to proceed with the completion of impacts associated with the T-40 basin, in order to ensure that the area was stabilized. The June 26, 2008 letter to HHHunt stated, in part, "...in accordance with Part I.J.4 of VWP Permit No. 05-1612, no additional work [other than that associated with the T-40 basin] may occur in jurisdictional areas without prior written authorization from this office".

18. DEQ conditionally approved the Final Stream Compensatory Mitigation Plan for Rutland on July 10, 2008, with final approval to be via execution of a Consent Order containing a schedule for mitigation.

19. On July 23, 2008, HHHunt submitted an impact map to DEQ, indicating that impact area P14 was not impacted as of that date.

20. On August 18, 2008, DEQ staff conducted an inspection of Rutland. Staff observed that approximately 50 linear feet of stream channel in area P14 had been impacted.

21. On August 19, 2008, DEQ issued NOV #08-08-PRO-701 to HHHunt for continuing work in permitted impact areas although stream restoration construction had not yet begun, in violation of Part I.J.4 of the Permit. Noncompliance with the Permit is a violation of Va. Code §62.1-44.15:20(A) and 9 VAC 25-210-90(A).

22. On August 21, 2008, HHHunt indicated that the work cited in NOV# 08-08-PRO-701 was due to contractor error. The contractor confirmed this account. The areas impacted have been restored.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d) and §62.1-44.34:20, orders HHHunt, and HHHunt voluntarily agrees to perform the actions described in Appendix A this Order. In addition, HHHunt voluntarily agrees to pay a civil charge of **$55,000** 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

Either on a transmittal letter or as a notation on the check, HHHunt shall include its Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of HHHunt Corporation, for good cause shown by the HHHunt Corporation, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued to HHHunt Corporation by DEQ on April 25, 2008 and August 19, 2008. 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 Project as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, HHHunt Corporation admits the jurisdictional allegations, but neither admits nor denies the factual findings and conclusions of law contained herein.

4. HHHunt Corporation 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. HHHunt Corporation declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 enforce this Order.

6. Failure by HHHunt Corporation 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. HHHunt Corporation 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 occurrence. HHHunt Corporation shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. HHHunt Corporation shall notify the DEQ Regional Director in writing 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 within 24 hours of learning of any condition above, which HHHunt Corporation intends 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, their 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 HHHunt Corporation. Notwithstanding the foregoing, HHHunt Corporation agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to HHHunt Corporation Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve HHHunt Corporation from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, HHHunt Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 11th day of December, 2008.

Gerard Seeley, Jr., Regional Director
Department of Environmental Quality

HHHunt Corporation voluntarily agrees to the issuance of this Order.

By: _____

Date: 10-12-08

Commonwealth of Virginia
City/County of Henrico

The foregoing document was signed and acknowledged before me this 12th day of October, 2008, by Daniel T. Schmitt (name), who is Vice President (title) of HHHunt Corporation, on behalf of HHHunt Corporation.

Mary S. Marye
Notary Public

My commission expires: 12.31.09.

Notary Registration Number 250494

MARY S. MARYE
COMMONWEALTH OF VIRGINIA COMMISSION # 250494
NOTARY PUBLIC

APPENDIX A

1. Construction or other land disturbance is prohibited in uplands or surface waters (including wetlands) within the limits of Section IV of Rutland until:

   (a) HHHunt submits preservation and construction access easements to DEQ for all portions of the stream restoration and buffer preservation areas depicted on the Final Stream Compensatory Mitigation Plan (approved by DEQ on July 10, 2008);

   OR

   (b) HHHunt submits a supplemental mitigation plan and schedule as described in Item 2, below, the plan is approved by DEQ, and evidence of all necessary easements is submitted to DEQ.

2. If HHHunt cannot obtain all easements necessary for construction and preservation as proposed in the Final Stream Compensatory Mitigation Plan (approved by DEQ on July 10, 2008), HHHunt shall so notify DEQ (and send a copy of this notification to the Corps) **no later than December 1, 2008**. DEQ, in its sole discretion and in consultation with the Corps, shall determine the amount of mitigation required to fulfill any outstanding wetland or stream credits, and shall notify HHHunt of the amount of mitigation required. **No later than 60 days from the date of DEQ's notification**, HHHunt shall submit a modified mitigation plan and schedule that includes at least the amount of mitigation specified by DEQ. Any proposed mitigation must be in the Opossum Creek watershed and, in addition to meeting standard mitigation criteria, must provide water quality benefits to the watershed, as determined by DEQ, in consultation with the Corps. HHHunt shall provide any information requested by DEQ regarding the modified mitigation plan **within 15 days of the date of DEQ's request**, and shall copy the Corps on this information. Approval of the amount and location of the proposed mitigation is in the sole discretion of DEQ, in consultation with the Corps. HHHunt shall comply with the modified mitigation plan and schedule as approved by DEQ.

3. All mitigation shall be completed and the protective instrument(s) described in Part I.K.3 of the Permit shall be recorded **no later than February 1, 2010**.

4. HHHunt shall submit a copy of its land disturbance permit(s) for the stream restoration work to DEQ **no later than 5 days after issuance by Hanover County**.

5. Stream restoration work on "Tributary 2" and the portions of "Tributary 1" that are unaffected by Hanover County's sewer line shall be completed in accordance with the Final Stream Compensatory Mitigation Plan (approved by DEQ on July 10, 2008), or an alternative plan approved by DEQ, as follows:

(a) HHHunt shall begin restoration work on Tributary 2 **no later than 30 days** from Hanover County's issuance of the land disturbance permit for the Tributary 2 restoration work.

(b) HHHunt shall begin restoration work on the portions of Tributary 1 that are unaffected by the sewer line **no later than 30 days** from Hanover County's issuance of the land disturbance permit for the Tributary 1 restoration work. If no land disturbance permit is required, HHHunt shall begin this work **no later than December 1, 2008**.

(c) HHHunt shall notify DEQ **at least 10 days prior** to the date that stream restoration construction commences.

6. Stream restoration work on the sections of "Tributary 1" and Opossum Creek affected by the sewer line shall be completed in accordance with the Final Stream Compensatory Mitigation Plan (approved by DEQ on July 10, 2008), or an alternative plan approved by DEQ, as follows:

   (a) HHHunt shall begin restoration work on the remaining sections of Tributary 1 and Opossum Creek within 1 week of Hanover County's commencement of construction of the sewer line on Opossum Creek, as described in HHHunt's submittal to DEQ entitled "Rutland Proposed Mitigation Tasks and Timeline Narrative" received by DEQ on July 25, 2008.

   (b) HHHunt shall notify DEQ **at least 10 days prior** to the date that stream restoration construction commences.

7. HHHunt shall obtain an irrevocable standby letter of credit for $204,571 and submit the original letter to the Director **no later than November 1, 2008**. **No additional impacts to surface waters may occur until the Director receives the original letter of credit.** The issuing institution shall be a bank or other financial institution that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Commonwealth of Virginia, by a federal agency, or by an agency of another state. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for restoration. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date it shall, at least 120 days before the date, notify both HHHunt and the Director by certified mail of that decision. The 120-day period will begin on the date of receipt by the Director as shown on the signed return receipt. Expiration cannot occur, while an enforcement action is pending. Within 60 days of receipt of notice from the issuing institution that it does not intend to extend the letter of credit, HHHunt shall obtain alternate financial assurance and submit it to the Director.

(a) **Every year, beginning August 1, 2009 until DEQ determines financial assurance is no longer necessary,** HHHunt shall submit an updated cost estimate for the remaining restoration work. Whenever the cost estimate increases such that the letter of credit covers less than 50% of the cost estimate, HHHunt shall, within 60 days of the increase, cause the amount of credit to be increased to an amount at least equal to 50% of the new estimate or obtain other financial assurance approved by DEQ to cover the increase. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of 50% of the new estimate following written approval by the Director. The issuing institution shall send the notice of an increase or decrease in the amount of the credit to the Director by certified mail within 60 days of the change.

(b) If the DEQ determines that HHHunt has not met its obligations under the CSO, the Director of DEQ or his designee, shall give written notice to HHHunt, specifying the deficiency. Any notice required hereunder shall be deemed effective if given by registered mail, return receipt requested.

(c) In the event of unsatisfactory completion of the stream restoration required by this Order (as determined by DEQ), or HHHunt's failure to meet the deadline set by DEQ for completing the stream restoration, the Director may cash the letter of credit.

(d) HHHunt may cancel the letter of credit only if alternate financial assurance acceptable to the Director is substituted as specified in this article or if HHHunt is released by the Director from the requirements of Appendix A.

(e) The Director shall return the original letter of credit to the issuing institution for termination when:

i. HHHunt substitutes acceptable alternate financial assurance for the restoration work; or
ii. Restoration work has begun in accordance with Appendix A, Item 6 and the Director notifies HHHunt that it is no longer required to maintain financial assurance for the restoration work.

8. All requirements of Appendix A of this Order shall be submitted to:

Allison C. Dunaway
Enforcement Manager
VA DEQ – PRO
4949-A Cox Road
Glen Allen, VA 23060
Phone: (804) 527-5086
Fax: (804) 527-5106
Email: acdunaway@deq.virginia.gov