



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 THE HANOVER GROUP, L. L. C. VWP PERMIT NO. 01-2172

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and The Hanover Group L.L.C. for the purpose of resolving certain alleged violations of the State Water Control Law and implementing 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. "Order" means this document, also known as a Consent Special Order.

6. "The Hanover Group" or the "permittee" means The Hanover Group, L.L.C. certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Project" means the proposed construction of a residential subdivision known as Bluffs at Bell Creek and a commercial/retail/light industrial business park known as Bell Creek Park located in Hanover County, Virginia, which is bordered on the south by Pole Green Road, State Route 627, on the north by Totopotomoy Creek and bisected in an east/west direction by Verdi Lane, State Route 710.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "Permit" means Virginia Water Protection (VWP) Permit No. 01-2172.
10. "State waters" impacted by the alleged violations include an unnamed tributary (UT) to Totopotomoy Creek, Totopotomoy Creek, and an UT to Strawhorn Creek.

SECTION C: Findings of Fact and Conclusions of Law

1. The Hanover Group is constructing a residential subdivision known as the Bluffs at Bell Creek, and a commercial/retail/light industrial business park known as Bell Creek Park, in Hanover County. To address mitigation for the permanent impacts to wetlands that will result from the construction of road crossings, sewer line requirements and a pedestrian bridge, a Permit was issued to The Hanover Group on May 9, 2002. The Permit will expire on May 9, 2008.
2. The Permit allows impacts to 0.80 acres of wetlands and state waters. Compensatory mitigation includes the following: The on-site preservation of 7.151 acres of unimpacted forested wetlands and 15.8 acres of upland buffer, and a \$114,816.00 contribution to the Virginia Wetland Restoration Trust Fund. The preservation includes 1,921 linear feet of stream with 100 to 200 foot stream side buffers.
3. On August 27, 2003, DEQ, the Corps, the permittee and the consultant met onsite to conduct a site inspection. During the inspection, DEQ staff observed severe erosion problems at the site. At the conclusion of the inspection, the permittee and consultant agreed that by September 5, 2003, silt fences would be maintained, check dams would be installed and slopes stabilized with seed, and straw bales.
4. DEQ staff performed additional site inspections on September 8, 15, 23, and 30 in 2003. During these site inspections, DEQ observed the continuing failure to stabilize the site as required in the Permit and the erosion and sediment (E&S) plan. It is a matter of record that a Category 3 hurricane (Isabel) occurred during the week of September 15, 2003 and that it had been preceded by several days of heavy rain.

5. On October 8, 2003, DEQ staff walked the section of an unnamed tributary to Totopotomoy Creek that had been impacted by the sediment and measured approximately 1,020 linear feet of stream impacts.
6. DEQ issued a Notice of Violation (NOV) on March 9, 2004, citing the violations listed above.
7. On April 7, 2004, a meeting was held with the permittee to discuss the alleged violations and resolution of the violations listed in the NOV.
8. On May 5, 2004, DEQ observed what it contends were continuing E&S violations resulting in an additional 152 linear feet of stream impacts from sediment.
9. On April 18, 2006, DEQ staff inspected the site and observed unauthorized fill resulting from sediment runoff in a UT to Strawhorn Creek, adjacent to Lot # 15; and the conversion by the lot owner of a preserved upland buffer area to a lawn at Lot # 14. Lot # 14 is located adjacent to a preserved wetland area.
10. On April 27, 2006, a NOV was issued for the above violations.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders The Hanover Group, and The Hanover Group voluntarily agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders The Hanover Group, and The Hanover Group voluntarily agrees to pay a civil charge of **\$22,200** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note the Federal Identification Number for The Hanover Group. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of The Hanover Group, for good cause shown by The Hanover Group, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. 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 as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.

3. For purposes of this Order and subsequent actions with respect to this Order, The Hanover Group admits the jurisdictional allegations, but does not admit the factual findings, and conclusions of law contained herein.
4. The Hanover Group 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. The Hanover Group 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 The Hanover Group 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 Hanover Group 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. The Hanover Group shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Hanover Group 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.

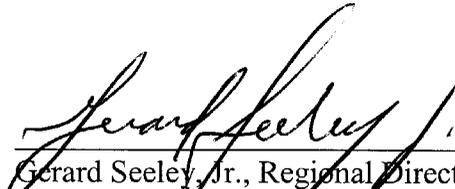
Failure to so notify the Regional Director by mailing or delivering via courier, e-mail or facsimile written notice within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, 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 Hanover Group. Notwithstanding the foregoing, The Hanover Group 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 Hanover Group 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
 - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to The Hanover Group.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve The Hanover Group 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, The Hanover Group voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of December 20, 2006.



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

The Hanover Group voluntarily agrees to the issuance of this Order.

By: Henry A. Shield
Date: 8/28/06

Commonwealth of Virginia
City/County of Hanover

The foregoing document was signed and acknowledged before me this 28th day of August, 2006, by Henry A. Shield, who is
(name)
Managing Member of The Hanover Group, on behalf of The Hanover Group.
(title)

[Signature]
Notary Public

My commission expires: My Commission Expires November 30, 2007

APPENDIX A

The Hanover Group shall:

1. By **November 1, 2006**, submit an **approvable** plan and schedule to remove the fill from the UT to Strawhorn Creek, adjacent to Lot # 15; to remove the fill from the 1,172 linear feet from the UT to Totopotomoy Creek and to restore the approximate 1,460 square feet of preserved upland buffer on Lot # 14 at Prolonge Lane.
2. Implement and comply with the above described plan and schedule as approved.
3. Pursuant to this Order, submit all documentation required by Appendix A to:

Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060