



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN VIRGINIA REGIONAL OFFICE
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(703) 583-3800 Fax (703) 583-3801
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Jeffery A. Steers
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

MENDLESON DEVELOPMENT, L.L.C.

FOR

LINKS AT LAKE ANNA

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1184 and 62.1-44.15, between the State Water Control Board and Mendleson Development, L.L.C. regarding Links at Lake Anna, for the purpose of resolving certain violations of the State Water Control Law and Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings 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. "Mendleson" means Mendleson Development, L.L.C., a property developer located in Spotsylvania County, Virginia certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "NVRO" means the Northern Virginia Regional Office of the Department.

SECTION C: Findings of Facts and Conclusions of Law

1. Mendleson Development is a property developer located in Spotsylvania, Virginia and former owner of property known as The Links at Lake Anna ("The Links") in Louisa County, Virginia. The property is now owned by Larner Investments who has plans to develop the site into a residential area and golf course. Mendleson has retained the right to continue to access the property to complete actions required by the Consent Order referenced below and this one.
2. On October 12, 2004, DEQ conducted a site inspection of The Links and observed that Mendleson had dredged approximately 1,000 linear feet of Contrary Creek (a perennial tributary to Lake Anna) to approximately 90 feet wide and 6 feet deep. The dredged material was side-cast into Contrary Creek and shaped into a berm that extended the length of the dredged area. The stream channel had been diverted from the original stream channel to the area that had been dredged (adjacent to the shoreline). Mendleson failed to obtain DEQ authorization and permit as required by the Virginia Water Protection Program found at Va. Code §§ 62.1-44.15 and 62.1-44.15:5 and 9 VAC 25-210 *et seq.*
3. Mendleson Development and DEQ entered into a Consent Special Order on March 17, 2006 to resolve the alleged unauthorized dredging of Contrary Creek referred to in paragraph 2 above.
4. The March 2006 Order required Mendleson to submit a berm stabilization plan and schedule (the "plan"). DEQ approved the plan on May 29, 2006 and it became an enforceable provision of the March 2006 Order. The schedule in the approved plan required implementation within 30 from plan approval (i.e. June 29, 2006) and completion within 30 days from the implementation date (i.e. July 29, 2006) with monitoring beginning 30 days after plan completion (i.e. August 28, 2006). In addition, as agreed to in the approved plan, any excess material resulting from the grading of the site was to be spread on the adjacent property owned by Mr. John Null. This is significant since had the plan required the placement of the material onto Mendleson's property, DEQ would have required additional stabilization requirements.
5. Mendleson did not implement the approved plan until September 2006 and it was not completed until October 2006. A review of DEQ files indicated no communication was received from Mendleson between the date set forth in the March 2006 Order for the stabilization plan implementation and the actual date of implementation.

6. On October 23, 2006, DEQ staff observed activity on the berm of the southern shoreline of Contrary Creek. This activity included the leveling and grading of the area with large earth moving equipment. Upon further inquiry, the operators of the equipment advised DEQ that they were grading the slope of the berm to achieve a 3:1 slope as required by the plan approved under the March 2006 Order. They were also relocating some of the berm spoils across Contrary Creek to The Links property rather than the property owned by Mr. Null as required in the approved plan.
7. DEQ contacted Mendleson on November 3, 2006 to inquire about these observations. George Petre of Mendleson confirmed that the work required by the previous consent order was just being completed. Excess material was being placed on The Links property, rather than the Null property as required by the Order. As explanation for the delay, Mendleson submitted a faxed document stating that labor resources were not available in July 2006 and that work was postponed until September, 2006. Rain caused further delays until the last week in September, 2006. The work was completed in the last week of October, 2006.
8. DEQ and Mendleson representatives met and conducted a site visit of the property on November 17, 2006. After observing the condition of the site, DEQ found other items required under the approved plan that had not been completed to the proper specifications. These items have been incorporated into Appendix A of the Order.
9. A Notice of Violation (NOV) was sent to Mendleson on December 12, 2006 outlining the provisions of the March 17, 2006 Order that were allegedly violated including:
 - Section E.10 – Failing to comply with the approved berm stabilization schedule which was incorporated into the Order upon DEQ’s approval.
 - Section E.8 – Failing to notify the NVRO Regional Director when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order.
 - Incorporated Berm Stabilization Plan – Failing to comply with the plan by placing excess soils on Mendleson property rather than Mr. Null’s property.
10. Mendleson has already complied with all items listed in Appendix A of this Order.

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 Mendleson, and Mendleson agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Mendleson, and Mendleson voluntarily agrees, to pay a civil charge of \$8000.00 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 payment to the “Treasurer of Virginia”, 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, Mendleson shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for Mendleson.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mendleson, for good cause shown by Mendleson, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves those violations specifically identified herein, including the matter addressed in the NOV issued to Mendleson by DEQ on December 12, 2006. This Order shall not preclude the Board or 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. 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, Mendleson admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mendleson 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. Mendleson declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to 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 Mendleson to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive or bar 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.

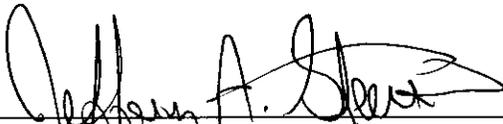
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mendleson shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Mendleson must show that such circumstances resulting in noncompliance were beyond their control and not due to a lack of good faith or diligence on their part. Mendleson shall notify the NVRO 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 this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of 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 listed above, which Mendleson intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of 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. Any plans, reports, schedules, permits, letters, or specifications attached hereto or submitted by Mendleson 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.
11. This Order shall become effective upon execution by both the Director or his designee and Mendleson. Notwithstanding the foregoing, Mendleson agrees to be bound by any compliance date that proceeds the effective date of this Order.
12. This Order shall continue in effect until the Director or the Board terminates this Order in his or its sole discretion upon 30 days' written notice to Mendleson. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mendleson from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

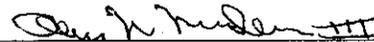
13. By its signature below, Mendleson Development, L.L.C. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of June, 2007.



Jeffery Steers, NYRO Regional Director
Department of Environmental Quality

Mendleson Development, L.L.C. voluntarily agrees to the issuance of this Order.

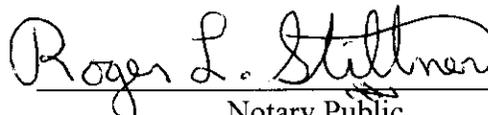
By: 

Date: 3/22/07

Commonwealth of Virginia
City/County of Prince William

The foregoing document was signed and acknowledged before me this 22nd day of
March, 2007, by Alan N. Mendleson III who is
(name)

President of/for Mendleson Development, L.L.C.
(title)



Notary Public

My commission expires: August 31, 2010

APPENDIX A
SCHEDULE OF COMPLIANCE

In addition to the foregoing, the Virginia State Water Control Board orders Mendleson to undertake, and Mendleson agrees to implement, the following terms and conditions of this appendix:

1. Mendleson shall reseed the berm on Tuesday, November 21, 2006. Mendleson will inspect the berm within 7 calendar days of any heavy rainstorm and will reseed the berm if the rain caused the seed to wash away.
2. In the event that the water level of Contrary Creek drops below the silt fence and causes the fence to become destabilized and risk sediment entering into the creek, Mendleson shall repair said fence within 7 calendar days.
3. Mendleson shall stabilize the dredged material disposed of on The Links property by February 15, 2007 in order to prevent sediment from entering the adjacent wetland.
4. Mendleson shall repair the access road to construction access specifications by February 28, 2007 in order to prevent sediment from entering the adjacent wetland system during and after rainfall events.
5. Mendleson shall monitor the berm weekly from October 27, 2006 through April 27, 2007 and report this information to DEQ monthly. These reports shall be due by the 10th of each month following the documented monitoring events. The first report shall be due on December 10, 2006.
6. Mendleson shall continue to monitor the berm monthly from April 27, 2007 until October 27, 2007. These reports shall be due by the 10th of each month following the documented monitoring event. The final monitoring report shall be due on November 10, 2007 and shall contain a review of the site's progress toward reaching the goals and a recommendation, with justification, on whether the site requires corrective action, additional monitoring, and/or release from monitoring.
7. All monitoring events shall be documented in writing summarizing the site conditions and include photographs taken at photo stations specified in the approved stabilization plan. All reports shall include the identity of the person who took the photographs and made the observations. All observations and photographs included in the report shall be dated.
8. Mendleson shall update the Berm Stabilization Plan to reflect those requirements listed in Appendix A of the Order.
9. The updated Berm Stabilization Plan shall be due by March 1, 2007