



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
SCI VIRGINIA FUNERAL SERVICES, INC.  
FOR  
KING DAVID MEMORIAL CEMETERY  
VIRGINIA WATER PROTECTION (VWP)  
PRE-CONSTRUCTION NOTIFICATION NO. 11-0165**

**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 SCI Virginia Funeral Services, Inc., regarding the King David Memorial Cemetery, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

**SECTION B: Definitions**

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

1. "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.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the

contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
6. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
7. "NWP 32" means a Nationwide Permit that serves as the Commonwealth's Water Quality Certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344, used for completed enforcement actions, provided that the impact does not exceed 2 acres of wetlands or 1500 linear feet of streambed and only past unauthorized impacts are addressed.
8. "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.
9. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued by authority of the Board under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
10. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
11. "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: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) 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; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
12. "Property" or "Parcel" means King David Memorial Cemetery, a cemetery located at the west side of Hollywood Road (Route 701) at its intersection with Wood Mist Lane in Falls Church, Fairfax County, Virginia, Virginia owned by SCI Virginia Funeral Services, Inc.

13. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
14. "SCI" means SCI Virginia Funeral Services, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. SCI Virginia Funeral Services, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.14:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
16. "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 and 9 VAC 25-210-10.
17. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
18. "USACE" means the United States Army Corps of Engineers.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. SCI owns the Property located in Fairfax County, Virginia.
2. On December 2, 2010, at a pre-application meeting and via letter, dated December 10, 2010, DEQ was notified by Wetland Studies and Solutions, Inc. (WSSI), on behalf of SCI that grading for the installation of a stormwater pipe and clearing of a forested buffer had resulted in unauthorized impacts to surface waters on the Property.
3. On January, 6, 2011, DEQ received a copy of a NWP 32 Authorization Request dated January 5, 2011, from SCI to USACE. The NWP 32 Request detailed that the project resulted in a significant alteration of 0.11 acre of surface waters consisting of the permanent impact to 449 linear feet (0.05 acre) of unnamed tributaries to Holmes' Run, and temporary impact to 0.06 acre of palustrine forested wetlands (PFO) as a result of the

discharge of pollutants. Each impact occurred without obtaining coverage under a Permit.

4. Holmes' Run is listed in the 2008 305(b)/303(d) Water Quality Assessment Integrated Report as impaired for Benthic-Macroinvertebrates.
5. Pursuant to Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters without a Permit issued by the Director.
6. On February 10, 2011, DEQ issued a NOV (W2011-01-N-001) to SCI for the violation of Va. Code § 62.1-44.5 and 9 VAC 25-210-50.
7. On February 22, 2011, WSSI provided DEQ with a NOV response letter explaining the background of the case and requesting a meeting with DEQ.
8. On March 16, 2011, a representative of SCI, SCI's legal counsel, and its consultants, WSSI, met with DEQ Staff to discuss the violations referenced in the NOV, the compensation and restoration for the unauthorized impacts, the Fairfax County permit process for the required restoration of the impacts, and the NWP 32 Request.
9. On March 25, 2011, WSSI provided DEQ with additional information regarding the timeline for when the violations occurred and the responses from SCI.
10. Based on the NWP 32 Request, the NOV response, and the March 16, 2011 meeting, the Board concludes that SCI has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50, as described in paragraph C(2) through C(5) above.
11. In order for SCI to return to compliance, DEQ staff and SCI 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 SCI Virginia Funeral Services, Inc., and SCI Virginia Funeral Services, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$17,500.00 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

SCI Virginia Funeral Services, 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).

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of SCI Virginia Funeral Services, Inc. for good cause shown by SCI Virginia Funeral Services, 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, SCI Virginia Funeral Services, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. SCI Virginia Funeral Services, 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. SCI Virginia Funeral Services, Inc. declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and he 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 SCI Virginia Funeral Services, 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. SCI Virginia Funeral Services, 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 occurrence. SCI Virginia Funeral Services, Inc. shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on its part. SCI Virginia Funeral Services, 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 SCI Virginia Funeral Services, Inc. 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 SCI Virginia Funeral Services, Inc.. Nevertheless, SCI Virginia Funeral Services, 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 SCI Virginia Funeral Services, Inc. has completed all of the requirements of the Order;
  - b. SCI Virginia Funeral Services, 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 SCI Virginia Funeral Services, Inc..

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve SCI Virginia Funeral Services, 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 SCI Virginia Funeral Services, 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 SCI Virginia Funeral Services, 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 SCI Virginia Funeral Services, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of SCI Virginia Funeral Services, 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, SCI Virginia Funeral Services, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 4<sup>th</sup> day of August, 2011.

  
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Thomas A. Faha, NRO Regional Director  
Department of Environmental Quality

SCI Virginia Funeral Services, Inc. voluntarily agrees to the issuance of this Order.

Date: 5/31/11 By: CB, Vice President  
(Person) (Title)  
SCI Virginia Funeral Services, Inc.

~~Commonwealth of Virginia~~ STATE OF TEXAS  
City/County of HARRIS

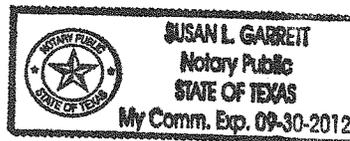
The foregoing document was signed and acknowledged before me this 31<sup>st</sup> day of May, 2011, by CURTIS G. BRIGGS who is VICE PRESIDENT of SCI Virginia Funeral Services, Inc. on behalf of the corporation.

Susan L. Garrett  
Notary Public

Registration No.

My commission expires: 09/30/2012

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

SCI Virginia Funeral Services, Inc., owner of the King David Memorial Cemetery shall:

1. Within 30 days of the execution of this Order, submit proof of the purchase of 383 stream condition units (SCUs) from the Northern Virginia Stream Restoration Bank to compensate for the functional loss of 180 linear feet of unnamed tributaries to Holmes' Run.
2. Within 30 days of the execution of this Order, submit an approvable Corrective Action Plan (CAP) for the restoration of state waters on the Property that have been impacted without a Permit that meets the requirements of 9 VAC 25-210-116. The CAP must be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters in accordance with 9 VAC 25-210-116. SCI shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.
3. The CAP shall include the following:
  - Full restoration of 217 linear feet and enhancement of 306 linear feet of unnamed tributaries to Holmes' Run through reforestation to compensate for the functional loss of 269 linear stream channel, and
  - Full restoration of the temporary impacts to the 0.06 acre of palustrine forested wetlands, and
  - Monitoring reports for the restoration work.
4. Upon DEQ approval of the CAP, SCI shall begin implementation of the Corrective Action Plan in accordance with the schedule contained therein. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. SCI shall complete the CAP in accordance with its terms.
  - If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then SCI shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, SCI shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by SCI in accordance with the schedule set forth in the alternative CAP.
  - If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then SCI shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action

required in the Final CAP or, as applicable, any previously submitted alternate CAP. SCI shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. SCI shall purchase mitigation back credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.

5. Unless otherwise specified in this Order, SCI Virginia Funeral Services, Inc. shall submit all requirements of Appendix A of this Order to:

Department of Environmental Quality  
Northern Regional Office  
Attn: Enforcement  
13901 Crown Court  
Woodbridge, VA 22193