



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
PIEDMONT REGIONAL OFFICE

L. Preston Bryant, Jr.  
Secretary of Natural Resources

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David K. Paylor  
Director

Gerard Seeley, Jr.  
Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO WAL-MART STORES EAST, LP

### **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 Wal-Mart Stores East, LP, 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. "Facility" means the Wal-Mart Supercenter #4350, located in Kilmarnock, Virginia.
6. "NOV" means Notice of Violation.

7. "Order" means this document, also known as a Consent Special Order.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "Regulation" means the Virginia Water Protection Permit Regulation, 9 VAC 25-210-10 *et seq*
10. "Wal-Mart" means Wal-Mart Stores East, LP, a limited partnership registered in the Commonwealth of Virginia, and its general partners.

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

1. On October 30, 2007, DEQ staff conducted an inspection of Wal-Mart Supercenter #4350, located in the Town of Kilmarnock. The inspection was in response to a report that the on-site stormwater management ("SWM") pond failed and downstream wetlands and a portion of an unnamed tributary were impacted as a result.
2. DEQ staff observed that the SWM pond failure resulted in deposition of up to 36 inches of sediment over portions of approximately 0.8 acre of a downstream scrub-shrub wetland and had relocated approximately 80 linear feet of stream channel.
3. Wal-Mart Stores East, LP is the "Owner" of the Facility as that term is defined in Va. Code §62.1-44.3.
4. Va. Code § 62.1-44.15:20.A and 9 VAC 25-210-50.A of the Regulation prohibit the fill of a wetland or the alteration of physical, chemical or biological properties of State waters, unless conducted in compliance with a Virginia Water Protection ("VWP") permit. DEQ did not issue a VWP permit for any disturbance to State waters, including wetlands, associated with the construction of the Facility.
5. A Notice of Violation ("NOV") was issued to Wal-Mart on November 2, 2007, and a meeting was held on November 28, 2007 to discuss the allegations in the NOV. Wal-Mart representatives presented a conceptual corrective action plan for the damage to wetlands and streams.

### **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 Wal-Mart, and Wal-Mart agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Wal-Mart, and Wal-Mart voluntarily agrees, to pay a civil charge of \$6,370 within 30 days of the effective date of the Order in settlement of the violations

cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for Wal-Mart. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Wal-Mart, for good cause shown by Wal-Mart, 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 Notice of Violation issued to Wal-Mart by DEQ on November 2, 2007. This Order shall not preclude the Board or the Director from taking any action otherwise authorized by law and not precluded by *res judicata* or *collateral estoppel*, 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 Property as may be authorized by law; or (3) taking subsequent action to enforce 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, Wal-Mart consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order but neither admits nor denies the Findings of Fact or Conclusions of Law stated therein.
4. Wal-Mart 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.
5. Failure by Wal-Mart 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. Wal-Mart 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. Wal-Mart shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Wal-Mart 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 Wal-Mart 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 Wal-Mart. Notwithstanding the foregoing, Wal-Mart agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall terminate upon payment by Wal-Mart of the penalty imposed in Subsection D and upon the Director's determination that Wal-Mart has satisfactorily performed the actions described in Appendix A. The Order may also be terminated by mutual consent of Wal-Mart and the Director. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve

Wal-Mart 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, Wal-Mart Stores East, LP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of July 31, 2008.

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

Wal-Mart Stores East, LP voluntarily agrees to the issuance of this Order.

By: [Signature] VP, Construction  
Wal-Mart Stores East, LP

Date: 27 FEB 08

STATE OF ARKANSAS  
~~Commonwealth of Virginia~~  
City/County of BENTON

The foregoing document was signed and acknowledged before me this 27<sup>th</sup> day of February, 2008, by Petruck Hamilton who is  
(name)

VP Construction of Wal-Mart Stores East, LP, on behalf of Wal-Mart.  
(title)

[Signature]  
Notary Public

My commission expires:  
" NOTARY SEAL "  
Debbie L. Cawood, Notary Public  
Benton County, State of Arkansas  
My Commission Expires 11/30/2009

Approved as to legal terms only  
by Wesley Jackson  
WAL-MART LEGAL DEPT.  
Date: 2/25/08

**APPENDIX A  
WAL-MART STORES EAST, LP.**

1. Wal-Mart shall implement the corrective action plan ("CAP") entitled "Wetland Restoration Plan", dated November 27, 2007 and revised December 11, 2007, in accordance with the schedule therein. Any changes to the approved CAP or schedule shall not be implemented without advance notice to and approval by DEQ.
2. No later than **February 1, 2008**, Wal-Mart Stores East, LP shall submit a Restoration Monitoring Plan ("Monitoring Plan") to DEQ. The Monitoring Plan shall propose monitoring and success criteria to ensure that the wetland restoration is complete and the new stream channel is stable. Wal-Mart shall incorporate additional items to or modifications of the plan upon request by DEQ. Upon DEQ approval, Wal-Mart shall implement the Plan in accordance with the schedule therein. Any changes to the approved Plan or schedule shall not be implemented without advance notice to and approval by DEQ.
3. Wal-Mart Stores East, LP shall monitor the restored wetlands and new stream channel in accordance with the approved Monitoring Plan. Monitoring reports shall be prepared in accordance with the approved Plan and shall be submitted no later than December 31<sup>st</sup> of each year.
  - a. If the restored wetland or new stream areas fail to meet the success criteria specified in the approved Monitoring Plan, as determined by DEQ or Wal-Mart, at any time during the monitoring period, or if visual observations conclude that the site is not progressing towards the overall restoration goals, the reasons for this failure shall be identified by Wal-Mart. In addition, an alternative CAP and associated monitoring plan shall be submitted to DEQ for review and approval with that year's monitoring report or within 90 days of the determination that success criteria are not being met, whichever occurs first. The DEQ-approved alternative CAP shall be implemented by the permittee in accordance with the approved schedule.
  - b. If the restored wetland or stream areas fail to meet all success criteria by the end of the last monitoring year and Wal-Mart's or DEQ's analysis indicates that corrective action cannot sufficiently address the reasons for such failure, Wal-Mart shall submit to DEQ for review and approval, within 90 days of such determination, an alternate mitigation plan and schedule for the unsuccessfully restored wetlands and/or stream. The proposed mitigation plan shall conform to the applicable provisions of

provisions of Va. Code § 62.1-44.15:21 and 9 VAC 25-210-116 and shall be implemented upon DEQ's approval. If the purchase of mitigation bank credits or contribution to an in-lieu fee fund is proposed, the proof of purchase or contribution shall be submitted to DEQ within 60 days of DEQ's approval of the alternate mitigation plan approval.

4. Unless otherwise indicated, all submittal requirements of Appendix A of this Order shall be directed to:

Allison C. Dunaway  
VA DEQ – Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060  
Fax: (804) 527-5086  
Email: [acdunaway@deq.virginia.gov](mailto:acdunaway@deq.virginia.gov)