COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
BLUE RIDGE REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Steven A. Dietrich
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WEST CROSSING LLC
FOR
FARMINGTON SUBDIVISION
Permit No. WP4-07-1964

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 West Crossing LLC, regarding the Farmington Subdivision, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and/or 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. "BRRO-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

3. "DCR" means the Department of Conservation and Recreation, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-100.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "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.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

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" means Virginia Water Protection Permit No. WP4-07-1964, which was issued by the Board to West Crossing as a general permit on December 7, 2007.

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 the tract of land at Farmington Subdivision, Phase II at Perrowville Road in Bedford County, Virginia, owned by West Crossing.

13. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*

14. "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.

15. "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.

16. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.

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

18. "VAC" means the Virginia Administrative Code.

19. "Virginia Water Protection Permit" or "VWP" means an individual or general permit issued 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.

20. "West Crossing" means West Crossing LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. West Crossing is a "person" within the meaning of Va. Code § 62.1-44.3.

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. West Crossing owns the Property. The Property is being developed by West Crossing as a residential subdivision.

2. On December 7, 2007, DEQ issued VWP General Permit No. WP4-07-1964 authorizing specified impacts under Va. Code § 62.1-44.15:20 to state waters at the Property. State waters at the Property include Stream A and its tributaries.

3. On February 19, 2008, Department staff inspected the Property for compliance with the requirements of the State Water Control Law and the Regulations. The DEQ inspector observed that there was an unpermitted discharge of sediment, a pollutant, into Stream A in two sections and Wetland F (as defined in the Permit). The upper section discharge was 223 linear feet long, two to six feet wide, and at a depth of between three and twelve inches. The lower section of discharge was by the outlet of a sediment trap installed

below the swimming pool parking lot adjacent to Stream A. This discharge was 38 linear feet, one to two feet wide, and at a depth of between one and sixteen inches. The cumulative impact in Stream A was 261 linear feet. Wetland F closest to the stream had some sediment deposited in an area of approximately 0.003 acres. All of the above discharges appeared to have been the result of failure of erosion and sediment controls.

4. On March 26, 2008, DEQ issued NOV No. NOV-08-02-WCRO-003 for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.

5. In response to NOV No. 08-02-WCRO-003, West Crossing met on site on April 7, 2008 with DEQ and DCR staff and agreed to remediate the violations alleged in the NOV by removing the silt from the stream by hand and reseeding the stream banks with an approved seed mix. This work was completed and documented to DEQ in a Construction Monitoring Report for the month of April 2008, which was submitted to DEQ on May 8, 2008.

6. On July 24, 2009, Department staff completed an inspection of the Property for compliance with the requirements of the State Water Control Law and the Regulations. The DEQ inspector observed: a) new unpermitted cumulative sediment impacts to Stream A of 1,220 linear feet, b) new unpermitted cumulative sediment impacts to Stream C of 600 linear feet, and c) new unpermitted cumulative sediment impacts to Stream E of 290 linear feet. Each of these impacts appeared to have been the result of failure of erosion and sediment controls. West Crossing staff indicated that erosion of the natural stream banks from high water turbulence, particularly along Stream A, appears to have added to these impacts.

7. On August 4, 2009, DEQ issued NOV No. 09-08-BRRO-R-006 to West Crossing for the unauthorized sediment discharges observed during the June 12 and July 24, 2009 inspections.

8. On September 9, 2009, West Crossing submitted a letter of response to NOV No. 09-08-BRRO-R-006 citing their response to the allegations of that NOV. This letter informs DEQ of a third party, Irish Enterprises, LLC, which has construction activity underway on adjacent property that West Crossing believes is contributing to the impacts cited in the NOV.

9. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit filling of surface waters without a Permit issued by the Director. West Crossing does not have a Permit for the impacts specified in Paragraphs C(3) and C(6), above. The above activities were not authorized by VWP General Permit No. WP4-07-1964.

10. The unpermitted discharges of sediment, a pollutant, described above to Stream A, Stream C, Stream E, and Wetland F violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.

11. Based on the results of the February 19, 2008 and July 24, 2009 inspections, the Board concludes that West Crossing has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50., and the Permit, as described in paragraphs C(3) and C(6), above.

12. As of October 13, 2009, West Crossing had completed correction of the violations specified above by restoring the sections of Stream A and its tributaries that had been impacted by unpermitted sediment discharges, as described in paragraphs C(3) and C(6) above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders West Crossing, and West Crossing agrees, to pay a civil charge of $11,500.00 in settlement of the violations cited in this Order. West Crossing shall pay $2,875.00 of this civil charge within 30 days of the effective date of the Order. Payment of the remaining $8,625.00 of this civil charge shall be made in three installments of $2,875.00 each, due on the following schedule:

Installment Number	Amount Due	Due Date
1	$2,875.00	April 15, 2010
2	$2,875.00	July 15, 2010
3	$2,875.00	October 15, 2010

Each 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

West Crossing shall include its Federal Employer Identification Number (FEIN) with each 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 West Crossing for good cause shown by West Crossing, 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, West Crossing admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. West Crossing 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. West Crossing declares it has received fair and due process under the Administrative Process Act 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 modify, rewrite, amend, or enforce this Order.

6. Failure by West Crossing 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. West Crossing 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. West Crossing shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. West Crossing 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 the West Crossing 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 West Crossing. Nevertheless, West Crossing 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. West Crossing 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' written notice to West Crossing.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve West Crossing 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 West Crossing 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 West Crossing 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 West Crossing to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of West Crossing.

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, West Crossing voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15th day of DECEMBER, 2009.

Steven A. Dietrich

Steven A. Dietrich, Regional Director
Department of Environmental Quality

West Crossing LLC voluntarily agrees to the issuance of this Order.

Date: 10/21/09 By: Greg H. Lester, Managing Member

Mr. Greg Lester (Title)
West Crossing LLC

Commonwealth of Virginia

City/County of LYNCHBURG

The foregoing document was signed and acknowledged before me this 21st day of OCTOBER, 2009, by GREG H. LESTER who is MANAGING MEMBER of West Crossing LLC, on behalf of the company.

Jennifer K Stuart

Notary Public

326491

Registration No.

My commission expires: 1/31/2011

Notary seal: