



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

**West Central Regional Office**  
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Robert G. Burnley  
Director

Steven A. Dietrich  
Regional Director

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO BLACKSTOCK, INC. VAR104640

#### SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and 8(d), between the State Water Control Board and Blackstock, Inc. 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. "Blackstock" means Blackstock, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
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 small construction activity land disturbance by Blackstock in the Summerplace Subdivision located off Starkey Road (Route 904) in Roanoke County Virginia.
6. "Order" means this document, also known as a Consent Special Order.

7. "Permit" means VAR4, the General VPDES Permit for Discharges of Storm Water From Construction Activities, which became effective July 1, 2004 and which expires February 9, 2005.
8. "Va. Code" means the Code of Virginia (1950), as amended.
9. "VPDES" means the Virginia Pollutant Discharge Elimination System.
10. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

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

1. Blackstock owns the Facility. Stormwater discharges from the Facility are subject to the Permit, which allows storm water discharges associated with small construction activity. All stormwater discharges from this Facility go to an unnamed tributary leading to Back Creek.
2. During April of 1998, Blackstock began disturbing a total of 10 acres at the Facility without registering the Facility for coverage under the Permit in violation of 9 VAC 25-180-60 of the Board's VPDES General Permit Regulation for Discharges of Storm Water From Construction Activities, 9 VAC 25-31-120.B of the Board's VPDES Regulation and §62.1-44.5 of the Va. Code.
3. DEQ noted the apparent violations referenced in paragraph 2 above in a Notice of Violation, NOV #2004-W-0214, issued to Blackstock on October 13, 2004.
4. Blackstock registered the Facility for coverage under the General Permit effective December 15, 2004. The violations noted in the October 13, 2004, Notice of Violation have been corrected with the registration.

### **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 Blackstock, and Blackstock agrees, to pay a civil charge of \$1,500 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 payable to the "Treasurer of Virginia", delivered to:

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

The payment check must include the Federal Identification Number for Blackstock and a notation that it is tendered for payment of a civil charge pursuant to this Order.

## SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Blackstock, for good cause shown by Blackstock, 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 Blackstock by DEQ on October 13, 2004. 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; or (3) taking subsequent action to enforce the 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, Blackstock admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Blackstock 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. Blackstock 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 Blackstock 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. Blackstock 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. Blackstock shall

show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Blackstock 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 Blackstock 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 Blackstock. Notwithstanding the foregoing, Blackstock agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until terminated by either the Board or the Director, in his or its sole discretion upon 30 days written notice to Blackstock. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Blackstock 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, Blackstock voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of MARCH 16, 2005.

Steven A. Dietrich  
FOR Robert G Burnley, Director  
Department of Environmental Quality

Blackstock voluntarily agrees to the issuance of this Order.

By: Jason C Blackstock V.C.  
Date: 1-19-05

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 19<sup>th</sup> day of January, 2005, by Jason C. Blackstock, who is  
(names)

V.P. of Blackstock on behalf of the Corporation.  
(title)

Mary S. Monroe  
Notary Public

My commission expires: June 30, 2007