

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT WITH Burke, LLC Permit No. VAR450694

SECTION A: Purpose

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Burke, LLC 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. “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 the 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 the 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. “Burke” means Burke, LLC, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Regulations” means 9 VAC 25-180-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges of Storm Water from Construction Activities.
9. “Permit” means VPDES Permit No. VAR450694.

SECTION C: Findings of Fact and Conclusions of Law

1. Burke owns a parcel of land located at 2001 Newman Road in York County (herein after referred to as the Burke Property). This site has been developed to include a single family home and pond.
2. On March 19, 2001, DEQ received a complaint regarding runoff entering a stream from a construction project adjacent to Banbury Cross Subdivision in York County, VA. On March 23, 2001, a site visit by DEQ Compliance staff revealed that the pond had been constructed but was not filled and construction of the single-family dwelling had commenced on the Burke Property. There were only minor sediment and erosion problems at the site, which have been corrected upon notice to Burke.
3. On April 4, 2001, Burke was contacted by DEQ regarding the need for a permit. DEQ stated the construction was initiated before applying for a permit to discharge storm water from construction activities. Burke stated that it was aware of the need for a permit and has several projects that have permits. On April 24, 2001, DEQ issued Burke Notice of Violation No. 01-04-TRO-004 for beginning construction activities before applying for a VPDES storm water general permit.
4. On April 26, 2001, DEQ received a registration statement for a VPDES storm water general permit associated with construction activity for construction associated on the Burke Property. The registration statement lists a total land area of 104 acres. Coverage under the Permit became effective May 15, 2001.
5. Section 9 VAC 25-180-60.A.1 of the Regulations states: “Deadlines for submitting Registration Statement – operators must submit a registration statement in accordance with requirements of this section at least two (2) days prior to the commencement of construction activities (i.e., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities).”

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 Burke, and Burke voluntarily agrees, to pay a civil charge of \$800 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include Burke’s Federal Identification Number. Payment shall be made by check, certified check, money order, or cashier’s check payable to the “Treasurer, Commonwealth of Virginia,” delivered to:

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

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Burke, for good cause shown by Burke, 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 Burke by DEQ on April 24, 2001. 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, Burke admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Burke 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. Burke 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 Burke 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. Burke 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. Burke shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Burke 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 the Burke 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. This Order shall become effective upon execution by both the Director or his designee and Burke. Notwithstanding the foregoing, Burke agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until Burke 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.
12. By its signature below, Burke voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

Burke voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of York, VA

The foregoing document was signed and acknowledged before me this _____ day of _____, 2002, by _____, who is

_____ of Burke, on behalf of the Company.

Notary Public

My commission expires: _____.