

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

A SPECIAL ORDER BY CONSENT ISSUED TO

**D. O. Allen Homes Incorporated
Heritage @ Wyndhurst
Permit Number VAR470792**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and D. O. Allen Homes Incorporated 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 meanings 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 citizen 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. “Order” means this document, also known as a Consent Special Order.

6. “SCRO” means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
7. “Site” means the construction activities of D. O. Allen Homes Incorporated located at 200 Paulette Circle in Lynchburg, Virginia.
8. “Owner” means D. O. Allen Homes Incorporated which owns and controls the Site.
9. “VPDES” means the Virginia Pollution Discharge Elimination System.
10. “Permit” means VPDES Permit number VAR470792 issued to D. O. Allen Homes Incorporated for the construction activities at the Site on May 2, 2002, with an effective date of June 30, 1999, and expiration date of June 30, 2004.

SECTION C: Findings of Facts and Conclusions of Law

1. The Owner is engaged in construction activities on 27 acres at the Site in Lynchburg, Virginia. The Site is the subject of VPDES Permit number VAR470792, which allows the Owner to discharge storm water into an unnamed tributary of Tomahawk Creek in the James River Basin in strict compliance with the terms, limitations, and requirements delineated in the Permit.
2. On March 27, 2002, the Owner was issued a Warning Letter, number WL-02-03-SCRO-013, for conducting construction activities without a VPDES General Storm Water Construction Permit.
3. On April 17, 2002, the Owner submitted an application for a permit that included a Storm Water Pollution Prevention Plan (“SWPPP”), the Site construction schedule, and the permit fee. The DEQ issued the Permit on May 2, 2002.
4. On May 17, 2002, the Owner was issued a Notice of Violation (“NOV”), number W2002-05-L-0002, as a result of a Site inspection conducted by the DEQ that found the following:
 - a. Failure to retain the SWPPP on Site in accordance with Part II B 2 of the Permit.

- b. Failure to maintain erosion and sedimentation controls in accordance with Part II of the Permit and the SWPPP.
 - c. Failure to conduct Site inspections in accordance with Part II of the Permit and the SWPPP.
 - d. Sediment and debris deposited in the unnamed tributary and Tomahawk Creek.
5. On subsequent inspections of the Site conducted on June 6, 2002, September 3, 2002, and September 26, 2002 the DEQ found the following:
 - a. Failure to maintain erosion and sedimentation controls in accordance with Part II of the Permit and the SWPPP.
 - b. Failure to conduct Site inspections in accordance with Part II of the Permit and the SWPPP.
 - c. Sediment deposited in the unnamed tributary and Tomahawk Creek.
6. Tomahawk Creek is a tributary to Blackwater Creek in the James River Basin. Blackwater Creek is reported on the 2002 303(d) Total Maximum Daily Load Priority List, as required by the Clean Water Act 33 U.S.C. § 1313(d), to the Environmental Protection Agency (“EPA”) as impaired for the exceedance of sediment.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15(8a) and (8d), orders the Owner, and the Owner agrees, to perform the actions contained in Appendix A of this Order. In addition, the Board orders the Owner, and the Owner consents, to pay a civil charge of \$5,600.00 in settlement of the violations cited in this Order. The 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 10150
Richmond, Virginia 23240

The payment shall include the Owner's Federal Identification Number and shall state that it is being tendered in payment of the civil charge assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Owner, for good cause shown by the Owner, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves the matters specifically discussed herein. 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 Site as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order.
3. For purposes of this Order and subsequent actions with respect to this Order, the Owner admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Owner 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. The Owner declares that 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 waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to 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 the Owner 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. The Owner 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. The Owner must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Owner 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 listed above, which the Owner 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 the Owner. Notwithstanding the foregoing, the Owner 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 Owner petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that the Owner has satisfied

all requirements of the Order is a "case decision" within the meaning of the Virginia Administrative Process Act; or

- b. The Director or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to the Owner.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve the Owner 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, the Owner consents to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2003

Robert G. Burnley, Director
Department of Environmental Quality

D. O. Allen Homes Incorporated consents to the issuance of this Order.

Date: _____ By: _____
Steve Lampmann, President, D.O. Allen Homes, Inc.

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of _____, 2003, by _____, President of D. O. Allen Homes Incorporated.

Notary Public

My commission expires: _____.

Appendix A

The Owner shall:

1. Within 90 days of the issuance of this Order remove to the maximum extent practicable the sediment deposited in the unnamed tributary and the sediment deposited at the confluence of the unnamed tributary and Tomahawk Creek.
2. Maintain substantial compliance with the Permit. For the purposes of this Order, “substantial compliance” means:
 - a. Retaining sediment on Site to the maximum extent practicable;
 - b. Conducting inspections and performing maintenance of erosion and sediment control measures in accordance with the SWPPP and Part II of the Permit; and
 - c. Documenting the inspections in accordance with the SWPPP and Part II of the Permit.
3. Compliance with item number 2 of Appendix A shall be determined by unannounced Site inspections within 1 year of the issuance of this Order.
4. Unless otherwise specified in the Order, or the Permit, all correspondence related to the Order shall be sent to:

Harry F. Waggoner
Virginia Department of Environmental Quality
7705 Timberlake Road
Lynchburg, Virginia 24502

