



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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Robert G. Burnley
Director

Gerard Seeley, Jr.
Piedmont Regional Director

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
DUVAL ENTERPRISES INC.
OAKLAKE BUSINESS CENTER**

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 DuVal Development, 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. "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. "Order" means this document, also known as a Consent Special Order.
6. "DuVal" means DuVal Development Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Facility" means the Oaklake Business Center off Genito Road in Chesterfield County, Virginia.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "VPDES Regulations" means 9VAC 25-31-10 *et seq.* – Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
10. "VPDES General Permit Regulations" means 9VAC 25-180-10 *et seq.* – General Virginia Pollutant Discharge Elimination System Permit Regulation for discharges of Storm Water from Construction Activities.
11. "VWP Regulations" means 9 VAC 25-210-10 *et seq.* – Virginia Water Protection (VWP) Permit Program Regulation.
12. "VPDES Permit" means General VPDES Permit No. VAR 10 as stated in 9VAC 25-180-70.
13. "ACOE" means Army Corps of Engineers.

SECTION C: Findings of Fact and Conclusions of Law

1. On December 19 and 30 2003, the Department inspected the Oak Lake Business Center owned by DuVal. Department staff observed a permanent road crossing and three light industrial sites under construction at the Facility with significant erosion problems. Each of the construction sites were contributing to a discharge from the Facility and its settling pond causing siltation in Falling Creek and its tributaries. It was determined that the road crossing and sites under construction did not have the required stormwater construction permits. The unauthorized discharges observed by DEQ on December 30, 2003, are a violation of § 62.1-44.5 A. of the Code of Virginia and § 9 VAC 25-31-50 A. of the VPDES Regulations which state: "Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
2. The inspection conducted on December 30, 2003, also noted an unpermitted permanent road crossing over a stream. Section 62.1-44.15:5 A. of the Code and § 9 VAC 25-210-50 of the VWP Regulations states that is unlawful to excavate in a wetland except in compliance with an individual or general Virginia Water Protection Permit. Also, after October 1, 2001, it is unlawful without a permit to cause draining that significantly alters or degrades existing wetland acreage or functions, filling or dumping, permanent flooding or impounding, or new activities that cause significant alteration or degradation of existing wetland acreage or functions.

3. The Department met with DuVal on March 2, 2004, to review the Facility plans and the stormwater permitting requirements related to the construction sites. Section 9VAC 25-180-60 of the VPDES General Permit Regulations requires operators of ongoing small construction activity projects to submit a registration statement for permit coverage by January 3, 2003. It was determined that four permits were required for activity at the Facility. One VWP Permit for the permanent road crossing construction and three VPDES Permits for the individual construction sites where land disturbance activity had taken place.
4. On March 12, 2004, DuVal submitted VPDES Permit applications for the remaining three construction sites.

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 DuVal, and DuVal agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders DuVal, and DuVal voluntarily agrees, to pay a civil charge of \$6,100 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 DuVal. 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 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of DuVal, for good cause shown by DuVal, 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 DuVal by DEQ on February 9, 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, DuVal admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. DuVal 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. DuVal 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 DuVal 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. DuVal 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. DuVal shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. DuVal 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 DuVal intends to assert will result in the impossibility of

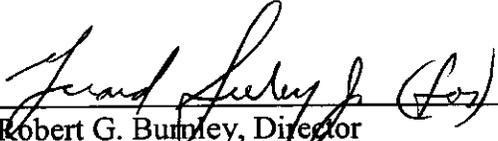
compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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 DuVal. Notwithstanding the foregoing, DuVal 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. DuVal 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 notice to DuVal.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve DuVal 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, DuVal voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of December 3, 2004.



Robert G. Burnley, Director
Department of Environmental Quality

DuVal voluntarily agrees to the issuance of this Order.

By: 

Date: October 8, 2004

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 8th day of October, 2004, by William B. DuVal, who is
(name)

President of DuVal, on behalf of the Corporation.
(title)

[Signature]
Notary Public

My commission expires: 7/31/06

APPENDIX A

DuVal shall:

1. Within seven days of the issuance of this Order submit to the Department a Joint Permit Application for wetland and stream impacts associated with the permanent road crossing at the Facility.
2. Within thirty days of the issuance of this Order come into compliance with the stormwater pollution prevention plans developed for each of the construction sites.

Pursuant to this Order communications regarding this Order, and its requirements shall be addressed as follows:

Frank Lupini
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060

DuVal shall confirm, in writing, completion of the Order requirements to the above address **within five (5) days of completion.**