

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

WITH THE

CITY OF HAMPTON

SECTION A: Purpose

This is a special order by consent issued under the authority of Sections 62.1-44.15(8a) and (8d) of the Code of Virginia between the State Water Control Board and the City of Hampton to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings 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 Code §§ 62.1-44.7 and 10.1-1184.
3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Tidewater Regional Office of DEQ.
6. "Order" means this document, also known as a consent special order.
7. "Regulations" means 9 VAC 25-31-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
8. "General Permit Regulation" means 9 VAC 25-180-10, *et seq.*, the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of

- Storm Water from Construction Activities.
9. "Hampton" means the City of Hampton, Virginia.
 10. "Permit" means the General Permit for Discharges of Storm Water From Construction Activities.

SECTION C: Findings of Facts and Conclusions of Law

1. Sections 62.1-44.5 of the Code and 9 VAC 25-31-50 of the Regulations prohibit discharges to State waters except in accordance with a Virginia Pollutant Discharge Elimination System permit. Section 9 VAC 25-31-120 of the regulations requires a stormwater VPDES permit for discharges from construction sites. Section 9 VAC 25-180-50 of the General Permit regulations contains the requirements for obtaining coverage under the General Permit for Storm Water Discharges from Construction Activities. 9 VAC 25-180-70 of the General Permit regulation, and part II of the Permit require the development and implementation of storm water pollution prevention plans ("SWPPPs") at regulated construction sites.
2. The Hampton Redevelopment and Housing Authority, an agency of Hampton, is developing the Crowne Pointe Subdivision, a 27 acre single family home subdivision in the Merrimac Shores neighborhood of Hampton (the "Project"). Storm water discharges from this project discharge into the Merrimac Shores Marina, an inlet of the James River.
3. On June 22, 1999 Hampton filed for coverage under the Permit for construction activities for Phase 1 of the Project (11.3 acres). In April, 2002 construction of Phase 2 of the Project began prior to Hampton filing for coverage for this phase of construction.
4. On May 14, 2002 DEQ staff inspected the Project and notified Hampton that the construction activities for Phase II were not covered by the Permit. DEQ documented that no stormwater pollution prevention plans had been developed for the Project.
5. DEQ received a completed registration statement for Phase 2 of the Project on October 21, 2002.
6. DEQ staff documented the following instances of failure, by Hampton, to develop and implement a SWPPP for Phase 1.
 - June 7, 2002: trucks carrying dirt onto road; debris in BMP pond; silt fence not maintained
 - June 24, 02: no drop inlet protection; silt fencing not maintained; gravel and fencing pulled away from drains; construction entrance not cleaned.
 - July 3, 2003: silt fencing not maintained; lack of soil stabilization on yards.
 - August 5, 2002: mud in streets; silt fencing not maintained; drop inlet protection pulled away.
 - August 28, 2002: lack of silt fences; ineffective drop inlet protection.
7. On August 28, 2002, DEQ documented sediment laden stormwater being pumped from a drop inlet from Phase II of the Project into the receiving stream.
8. On December 18, 2002, Hampton submitted a SWPPP for Phase II of the Project.

9. The violations listed above were cited in Notice of Violation No. W2002-08-T-0001, issued to Hampton on August 27, 2002 and Notice of Violation No. W2002-10-T-003 issued on October 20, 2002.

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 Hampton, and Hampton agrees to perform the actions described in Appendix A of this Order and to pay a civil charge of \$10,000 in settlement of the violations cited in this Order.

1. \$1,000 of this civil charge shall be paid within 30 days of the effective date of this Order. The payment shall note that it is being made pursuant to this Order and shall include Hampton's federal identification number. Payment shall be made by check payable to the "Treasurer of Virginia" and delivered to:

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

2. \$9,000 of this civil charge shall be satisfied upon completion by Hampton of a Supplemental Environmental Project (ASEP) pursuant to Virginia Code § 10.1-1186.2 and as described in Appendix B of this Order.

In the event that the SEP is not performed as described in Appendix B, upon notification by DEQ, Hampton shall pay the amount specified in Paragraph 2 above within 30 days of such notification according to the procedures specified in Paragraph 1 above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Hampton, for good cause shown by Hampton, 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 Notices of Violation issued to Hampton by DEQ cited above. 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 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, Hampton admits

the jurisdictional allegations, factual findings, and conclusions of law contained herein.

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

And it is so ORDERED this day of _____, 2003

 Robert G. Burnley, Director
 Department of Environmental Quality

The terms of this Order are voluntarily accepted by Hampton.

By: _____
 George E. Wallace, City Manager

Date: _____

Commonwealth of Virginia
 City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of _____, 2003 by George E. Wallace, City Manager, on behalf of the City of Hampton.

 Notary Public

My commission expires: _____.

APPENDIX A
CITY OF HAMPTON

Hampton. shall:

1. Mail all submittals and reports required by this Appendix A to:
Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462
2. Obtain coverage under the General Permit for Storm Water Discharges for Construction Activities prior to initiating any construction activities at regulated construction sites.
3. Comply with all provisions of the Permit, the SWPPP required by the Permit, and any approved erosion and sediment control plan while construction activities are performed on Phase 2 of the Project.
4. Submit to DEQ the notice of termination for Phase 2 of the Project in accordance with the requirements of the Permit upon completion of construction.
5. Notify DEQ of any stormwater discharges that may cause or be reasonably expected to cause or contribute to a violation of Virginia Water Quality Standards. Such notification shall be provided by telephone, (757 518-2077), as quickly as possible upon discovery, however, in no case later than 24 hours after discovery. A written notification shall be submitted to DEQ within five working days. The written notification shall include the following information: date, time and estimated duration of the discharge; estimate of the volume of the discharge, cause of the discharge; response and disposal activities; and corrective actions undertaken.

APPENDIX B

CITY OF HAMPTON – SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. The supplemental environmental project (ASEP \cong) to be performed by Hampton is the modification of the stormwater management facility located in the Crowne Pointe subdivision to provide stormwater quality improvement as well as the discharge quantity control for which it was originally designed. The project will include all necessary engineering and construction to:
 - Modify the outlet structure to add engineered detention time to water entering the basin. These modifications will be designed and constructed to obtain the maximum settlement time for stormwater entering the basin prior to discharge in the receiving waters. These modifications may include raising the elevation of the outlet structure, relocating the outlet as required to optimize detention time or other engineered modifications as may be necessary to achieve this purpose.
Additional modifications to the shape, size and features of the facility may be constructed as required by the design to facilitate the modified purpose of the facility.
2. The SEP shall be completed by February 1, 2004.
3. Hampton certifies that it has not commenced performance of the SEP prior to the identification of the violations cited in this Consent Order and the approval of the SEP by DEQ.
4. The net cost of the SEP to Hampton shall be not be less than \$9,000. In the event that the final cost of the SEP is less than this amount, Hampton shall pay the remainder of the amount to the Commonwealth of Virginia, unless otherwise agreed to by DEQ. Net costs shall mean the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.
5. Hampton acknowledges that it is solely responsible for completion of the SEP. Any delegation of funds, tasks, or otherwise by Hampton to a third party, shall not relieve Hampton of its responsibility to complete the SEP as contained in this Order.
6. Hampton shall obtain all State and Federal permits required for the completion of the SEP.
7. Hampton shall provide DEQ with written verification of completion of the SEP by providing a statement of completion by March 1, 2004.
8. Hampton shall submit verification to DEQ in the form of invoices of the final overall cost of the SEP by April 1, 2004.
9. In the event that Hampton publicizes the SEP or the results of the SEP, Hampton shall state in a

prominent manner the project is part of a settlement for an enforcement action.

10. DEQ has the sole discretion to determine whether the SEP has been completed in a satisfactory manner.