

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

LOUDOUN COUNTY PUBLIC SCHOOLS

FOR

DOMINION HIGH SCHOOL

(VWP GENERAL PERMIT NO. WP4-01-0645)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code ' ' 62.1-44.15(8a) and 10.1-1185 between the State Water Control Board and the Loudoun County Public Schools regarding the Dominion High School construction site resolving certain violations of the State Water Control 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 ' ' 62.1-44.7 and 10.1-1184.

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. "County" means the Loudoun County Public Schools.
7. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.

SECTION C: Finding of Facts and Conclusions of Law

1. The County is constructing the Dominion High School Complex on an 87-acre parcel of land located at Seneca Ridge in Loudoun County. On April 9, 2001, the County submitted a Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia requesting authorization for the discharge of fill material into 1.95 acres of waters of the United States at the construction site. On May 25, 2001, DEQ NVRO requested additional information from the County regarding the Joint Permit Application.
2. Pursuant to a citizen complaint, DEQ NVRO staff conducted a site investigation on August 7, 2001. The investigation revealed that the County had filled part of an intermittent streambed. The County had designated filling the streambed as a potential impact to waters of the United States in the Joint Permit Application, but at the time the impact occurred, the Board had not issued the County a VWP General Permit authorizing the impact.
3. The Board has evidence to indicate that the County has violated Va. Code § 62.1-44.5, Virginia Water Protection Permit Regulation 9 VAC 25-210-50 and 25-210-80.A.5. On August 10, 2001, DEQ NVRO issued the County Notice of Violation ("NOV") No. 01-08-NVRO-001 for alleged unauthorized impacts to waters of the United States.
4. On September 21, 2001, consultants for the County provided DEQ NVRO documentation demonstrating that the County had restored the streambed to its original condition. On December 14, 2001, the Board issued the County Virginia Water Protection (VWP) General Permit Authorization No. WP4-01-0645 for the Dominion High School Complex.

5. On March 1, 2002, County representatives met with DEQ NVRO staff to discuss the alleged unauthorized impact cited in the NOV. At that meeting, the County representatives proposed that the County provide a comprehensive training seminar for County Construction Department personnel regarding compliance with federal and state wetlands regulatory programs. Appendix A of this Order requires that the County provide the wetlands training seminar by September 1, 2002.

SECTION D: Agreement and Order

Accordingly the Board, by virtue of the authority granted it in Va. Code ' 62.1-44.15(8a), orders the County, and the County agrees, to comply with the terms of Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the County, for good cause shown by the County, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves those violations identified specifically herein, including those matters addressed in the NOV issued to the County by DEQ on August 10, 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, the County admits the jurisdictional allegations but not the factual findings, and conclusions of law contained herein.
4. The County 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 County 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.

5. Failure by the County 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.
6. 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.
7. The County shall be responsible for its 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 County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County shall notify the DEQ Regional Director of NVRO 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 County 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.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and the County. Notwithstanding the foregoing, the County agrees to be bound by any

compliance date which precedes the effective date of this Order.

10. 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 the County. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By its signature below, the County 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

Loudoun County Public Schools voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of

_____, 2002, by _____, who is
(name)

_____ for the Loudoun County Public Schools.
(title)

Notary Public

My commission expires: _____.

**APPENDIX A
SCHEDULE OF COMPLIANCE**

Loudoun County Public Schools shall:

1. By September 1, 2002, provide a comprehensive training seminar for all personnel within the Loudoun County Public Schools' Construction Department who are likely to be faced with wetlands issues within the next five years. The seminar shall be conducted by a wetlands professional and shall cover the federal and state wetlands regulatory programs, including types of wetlands and waters of the United States and the Commonwealth, federal and state jurisdiction over wetlands, federal and state permits and permitting procedures, avoidance and mitigation, and enforcement. The seminar shall be no less than three hours in length and shall include a written agenda that has been reviewed and approved by DEQ NVRO. Participants shall be provided with written outlines of the presentations and copies of pertinent state and federal regulations and DEQ material; and

2. Within 10 days of completing the seminar, provide DEQ NVRO with a copy of the seminar agenda, presentation outlines, and a list of attendees.

