



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

WEST CENTRAL REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Steven A. Dietrich  
Regional Director

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
SPECIAL ORDER BY CONSENT  
ISSUED TO  
RADFORD & COMPANY  
FOR THE MASON'S CREST  
SUBDIVISION**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d) by the Board to Radford & Company for the purpose of resolving certain violations of environmental law and/or 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 § 1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Radford" means Radford & Company, a Virginia company.
7. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
8. "Regulation" means the Virginia Water Protection Permit Program Regulation, 9 VAC 25-210-10 *et seq.*

*An Agency of the Natural Resources Secretariat*

**SECTION C: Findings of Fact and Conclusions of Law**

1. Mason's Crest, a subdivision project owned and developed by Radford & Company ("Radford"), received coverage under Virginia Water Protection Permit WP4-04-2589 ("the VWP Permit") on May 17, 2005, issued to Radford. Previously, the subdivision was covered under the VPDES General Permit for Discharges of Stormwater from Construction Activities (VAR104056).
2. An inspection was conducted on June 20, 2005. The purpose of the inspection was to verify compliance by Radford with the requirements of the VWP Permit. This inspection focused on identifying potential impacts to state waters and insuring that impacts to state waters were being avoided and minimized by Radford to the maximum extent practicable. The proper installation of erosion and sediment controls and proper installation of temporary and permanent stream crossings were inspected to determine compliance with the requirements of the VWP Permit. The project was re-inspected on June 23, 2005 to evaluate progress of an in-stream road crossing installation.
3. Based upon the two inspections, the following three items of alleged non-compliance with the VWP Permit were noted:
  - 1) Radford failed to countersink the permanent culverts at the site as required by the VWP Permit.
  - 2) Radford did not install road crossings in the dry as required by the VWP Permit.
  - 3) Radford did not design, install, and maintain the erosion and sediment controls in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, contrary to the VWP Permit requirement to that effect. As a result, sediment was discharged improperly into stream and wetlands.
4. Radford failed to submit the first monthly construction monitoring photographs by the required due date per the VWP Permit. Impacts to state waters began on May 23, 2005 and the first report was due by June 10, 2005. As of the June 23, 2005 inspection, no reports had been received by DEQ.
5. On July 13, 2005, the Department issued a Notice of Violation to Radford for the three alleged violations listed in paragraph 3 and the one alleged violation in paragraph 4.
6. On July 26, 2005, the Department received a response letter to the Notice of Violation from Radford. The letter addressed the alleged violations in the Notice of Violation and the following information was provided:
  - In regards to alleged violation number one, Radford removed the permanent culvert shortly after the July 20, 2005 inspection and re-installed the culvert appropriately. On July 18, 2005, U.S. Army Corps of Engineer's staff viewed pictures of the re-installed culvert and determined that the culvert had been installed correctly. This

action appears to achieve compliance with the requirements of the VWP Permit.

- In regards to alleged violation number two, Radford installed an effective cofferdam on July 16, 2005. This cofferdam will remain in place until all work has been completed in the area. Additional cofferdams will be utilized in future installations of road crossings.
  - In regards to alleged violation number three, Radford has retained the services of Environmental Services & Consulting (ES&C) since June 30, 2005 to conduct inspections in accordance with E&S requirements. During the site visit, the entire property is examined and problem areas are identified and solutions discussed with the Project Superintendent. As of July 18, 2005, Environmental Erosion Control (EEC) has been implementing the recommended solutions to secure erosion and sediment control along with the grading contractor.
  - In regards to alleged violation number four, Radford began submitting the required construction monitoring reports in July 2005.
7. On August 10, 2005, DEQ compliance staff, accompanied by Radford personnel, ESC personnel, Roanoke County staff, and DCR staff conducted a re-inspection of the site. The purpose of the inspection was to assess progress at the site in controlling and maintaining erosion and sediment control. Based on the inspection, it appeared that the project had not returned to compliance with the requirements of the VWP Permit.
  8. As a result of the inspection, Radford voluntarily ceased operations at the site on August 11, 2005 until erosion and sediment control measures could be brought up to appropriate standards.
  9. On August 31, 2005, DEQ compliance staff, accompanied by additional company and governmental staff, conducted another inspection of the project. DEQ compliance staff determined that the site appeared to have returned to compliance with the requirements of the VWP Permit as concerns implementation of erosion and sediment controls. As a result of the inspection and the accompanying inspection report dated September 19, 2005, DEQ enforcement staff has determined that Radford has corrected and addressed the alleged violations in the Notice of Violation.

#### **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 Radford, and Radford voluntarily agrees, to pay a civil charge of Four Thousand Five Hundred Dollars (\$4,500.00) within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia". Payment shall be sent to:

Receipts Control

Department of Environmental Quality  
Post Office Box 10150  
Richmond, VA 23240

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

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Radford, for good cause shown by Radford, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the facility as may be authorized by law; or (c) taking subsequent action to enforce this 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, Radford admits the jurisdictional allegations contained herein.
4. Radford 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, Va. Code § 62.1-44.2 *et seq.* and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and agrees to waive any objection to, or appeal from, the entry of this Order. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or judicial review of, any action taken by the Board to enforce this Order.
5. Failure by Radford 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. Radford 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. Radford shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Radford shall notify the WCRO 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 this 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 WCRO Regional Director within twenty-four hours of learning of any condition above, which Radford 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.

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 Radford. Notwithstanding the foregoing, Radford agrees to be bound by any compliance date that precedes the effective date of this Order.
10. Any plans, reports, schedules or specifications attached hereto or submitted by Radford and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall continue in effect until: a) Radford 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 this Order, b) the Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Radford, whichever occurs earlier. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Radford from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. The undersigned representative of Radford certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Radford to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Radford.

13. By the signature of an authorized official below, Radford voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2<sup>nd</sup> day of JUNE, 2006.

*FOR* Steven A. Dietrich  
David K. Paylor, Director  
Department of Environmental Quality

Radford voluntarily agrees to the issuance of this Order.

By David F. Radford  
David F. Radford, President

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 27<sup>th</sup> day of February, 2006, by David F. Radford, who is President of Radford & Company.

James Pagano  
Notary Public

My commission expires: 3/31/07

