

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
SPECIAL ORDER BY CONSENT  
ISSUED TO  
RICHMOND INTERNATIONAL RACEWAY  
VWP PERMIT NO. 00-R0560**

**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 Richmond International Raceway, 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. “RIR” means Richmond International Raceway certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Facility” means the Richmond International Raceway Complex located at 600 East Laburnum Avenue, Henrico County, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “Permit” means Virginia Water Protection (VWP) Permit No. 00-R0560 issued to Richmond International Raceway.

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

1. RIR owns and operates the Facility in Henrico County. The Permit was issued to RIR on January 22, 2001 and will expire on January 22, 2003.
2. The Permit addresses the construction of a parking lot expansion at the Facility and allows for impacts to 0.17 acres of forested wetlands and 0.34 acres of State waters. The project includes placement of fill, a storm sewer and the grading of 7 acres for a gravel and grass parking lot. Compensatory mitigation required for the project is the preservation of 6.7 acres of wetlands on-site in conjunction with the purchase of 0.51 credits at James River Mitigation Technologies, L.L.C. Edna’s Mill Mitigation Bank or the Gray Cole’s Chickahominy Environmental Bank.
3. A review of the files in March 2002 and a phone conversation on March 26, 2002, with the project’s consulting firm, Timmons, revealed that certain documentation had not been submitted to DEQ as required by the Permit, in violation of Regulation 9 VAC 25-210-90 and 9 VAC 25-210-50 and State Water Control Law Sec. 62.1-44.5.
4. RIR submitted late the documentation that the US Army Corp of Engineers debited the required 0.51 credits from the James River Mitigation Bank or the Gray Cole’s Chickahominy Environmental Bank as required by Part I.18 of the Permit. The documentation was due prior to construction. However, DEQ did not receive the documentation until April 8, 2002 when construction was reported to have begun on March 5, 2001.
5. RIR submitted late the proof of recordation of the written protection of compensatory preservation mitigation areas in the chain of title to the property, as required by Part I.20 of the Permit. The documentation was received at DEQ on April 8, 2002. It was due prior to construction. Construction was reported to have begun on March 5, 2001.
6. RIR is required, in accordance with Part I.19 of the Permit, to submit to DEQ documentation that the US Army Corp of Engineers has confirmed the required 6.7 acres of wetland preservation on-site prior to construction. Construction was reported to have begun on March 5, 2001. DEQ received this documentation late on August 1, 2002.

7. RIR proceeded with construction activities prior to DEQ authorization. Construction activities were not authorized to proceed until DEQ had received documentation Required for Part I.18, I.19, and I.20 of the Permit, and in accordance with Regulation 9 VAC 25-210-90 (Conditions applicable to all permits Part A. Duty to Comply).
8. RIR failed to provide the required notification by certified letter 10 days prior start of construction in accordance with Part I.24 of the Permit.
9. DEQ issued a Notice Of Violation to RIR on June 17, 2002, citing Permit violations, as listed above, for late submittal and failure to submit required documentation and reports.

#### **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 RIR and RIR voluntarily agrees, to pay a civil charge of \$3,500.00 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 RIR. 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 RIR, for good cause shown by RIR, 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: (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; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.

3. For purposes of this Order and subsequent actions with respect to this Order, RIR admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. RIR 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. RIR 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 RIR 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. RIR 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. RIR shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. RIR 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 the parties intend 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 RIR. Notwithstanding the foregoing, RIR 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 RIR. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve RIR 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, RIR 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

RIR 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)  
\_\_\_\_\_ of RIR, on behalf of RIR.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.