

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
RUDOLPH, INC.
KINGSLAND GLEN SUBDIVISION**

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 Rudolph, 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. “Rudolph, Inc.” means Rudolph, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Subdivision” means the construction of an approximately 113 acre residential development called Kingsland Glen Subdivision located along State Route 638/Cogbill Road in Chesterfield County, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Rudolph, Inc. is in the process of constructing a 113-acre residential subdivision known as Kingsland Glen. Section 1 of the subdivision received a Nationwide Permit #26 (NW26) from the Army Corps of Engineers in the year 2000 to address impacts to 0.27 acres of forested wetlands.
2. By letter dated November 18, 2002, Rudolph, Inc. submitted a Joint Permit Application (JPA) to the Department. The JPA was submitted in order to complete construction of the subdivision and to address unauthorized impacts to wetlands that occurred during construction of the subdivision during the years of 2001 and 2002. (The unauthorized impacts that occurred during the years of 2001 and 2002 were not covered under the NW26.)
3. The JPA addresses future additional permanent and temporary impacts to state waters, including wetlands, in order to complete the subdivision and it addresses unauthorized permanent impacts of 0.162 acres and temporary impacts of 0.124 acres to state waters, including wetlands, that occurred during construction of the subdivision in the years 2001 and 2002.
4. In order to compensate for proposed and unauthorized impacts to state waters, including wetlands, addressed in the JPA, Rudolph, Inc. proposes to buy credits at an appropriate wetland mitigation bank.
5. By letter dated December 9, 2002, the Department deemed the JPA to be incomplete. The JPA is still currently deemed incomplete and cannot be completed until the Army Corps of Engineers makes a final confirmation of impacts to wetlands.
6. DEQ issued a Notice of Violation (NOV) to the Rudolph, Inc. on February 10, 2003, citing the failure to obtain a VWP Permit for unauthorized impacts to wetlands.

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 Rudolph, Inc., and Rudolph, Inc. voluntarily agrees, to perform the actions described in Appendix A of this Order; and to pay a civil charge of **\$6,000.00** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment

shall note the Federal Identification Number for Rudolph, Inc. 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 Rudolph, Inc., for good cause shown by Rudolph, Inc., 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, Rudolph, Inc. admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Rudolph, Inc. 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. Rudolph, Inc. 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 Rudolph, Inc. 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. Rudolph, Inc. 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. Rudolph, Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rudolph, Inc. 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 Rudolph, Inc. Notwithstanding the foregoing, Rudolph, Inc. 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 Rudolph, Inc. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rudolph, Inc. 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, Rudolph, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2004.

Robert G. Burnley, Director
Department of Environmental Quality

Rudolph, Inc. 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
_____, 2004, by _____, who is
(name)
_____ of Rudolph, Inc., on behalf of Rudolph, Inc.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

Rudolph, Inc. shall:

1. **Within 30 days** of the Army Corps of Engineers determination of wetland impacts for the Kingsland Glen Subdivision project, submit to DEQ the completed JPA.
2. **By no later than October 1, 2004**, submit to DEQ-PRO, documentation that the Army Corps of Engineers has debited the purchase of 0.324 acre of mitigation credits from the Mitigation Bank ledger at an approved wetland mitigation bank, for the unauthorized impacts to 0.162 acre of forested wetlands that occurred during the years of 2001 and 2002.