

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
THE TOWN OF ROCKY MOUNT
AND
THE COUNTY OF FRANKLIN
FOR
TRINITY PACKAGING SITE
VIRGINIA WATER PROTECTION PERMIT NO. 02-1076**

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 the Town of Rocky Mount and the County of Franklin, Virginia, 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. “The Town” means the Town of Rocky Mount, Virginia.

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7. "The County" means the County of Franklin, Virginia.
8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means Virginia Water Protection Permit No. 02-1076, issued by the Board to the Town of Rocky Mount and Franklin County on September 3, 2002.
10. "Regulation" means the Virginia Water Protection Permit Program Regulation, 9 VAC 25-210-10 *et seq.*
11. "Trinity site" means the Trinity Packaging construction site in the Town of Rocky Mount.
12. "B. A. Moore site" means the B. A. Moore property at 370 Industrial Avenue in the Town of Rocky Mount.
13. "Respondents" means the Town of Rocky Mount, Virginia and the County of Franklin, Virginia, collectively.

SECTION C: Findings of Fact and Conclusions of Law

1. The Board issued Virginia Water Protection Permit No. 02-1076 to Respondents on September 3, 2002 for the Trinity Packaging Site.

2. Part I.B.10 of that Permit requires that

Erosion and sediment controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to surface waters. These controls shall remain in place until the area stabilizes.

3. Part I.D.7 of the Permit requires that

Final Plans and Specifications for activities authorized by this permit, including stream channel relocation, culvert installation, erosion and sediment control, and stormwater management, shall be submitted for DEQ approval prior to the beginning of each construction component. Construction shall be performed in accordance with the approved Plans and Specifications.

4. Code § 62.1-44.5.A states that

Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for

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domestic or industrial consumption, or for recreation, or for other uses; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that caused significant alteration or degradation of existing wetland acreage or functions.

5. 9 VAC 25-210-50.A states that

Except in compliance with a VWP Permit, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical, or biological properties of state waters, excavate in wetlands, or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that caused significant alteration or degradation of existing wetland acreage or functions.

6. 9 VAC 25-210-90 requires the permittee to comply with all conditions of its VWP Permit.

7. Department staff performed inspections of the Trinity site on March 12 and April 4, 2003. Based on the inspection results, the Department issued Notice of Violation (“NOV”) No. W2003-04-W-0003 to the Town on April 10, 2003. The NOV alleged the following violations of the Permit and/or the Regulation:

- a. Permit Part I.B.10 requires installation and maintenance of erosion and sediment (“E&S”) controls. Inspection results indicated that certain required E&S controls had not been installed and maintained. Alleged violations of Part I.B.10 of the Permit were previously cited in Warning Letters dated October 1, 2002 and October 17, 2002. In many cases, corrective measures were recommended up to three times during project construction before action was taken, including references to the need to install and maintain silt fence, check dams, outlet protection, vegetative plantings, site dewatering structures, stormwater conveyance channels, and temporary stream crossing structures. Lack of silt fence installation and maintenance resulted in marginal environmental impact as documented in site inspection memoranda. A sediment trap was to be installed per the approved E&S plan. Failure to install the trap in accordance with the approved E&S plan was noted in site inspection memoranda dated September 26, 2002, October 17, 2002, November 7, 2002, November 15, 2002, November 20, 2002, November 25, 2002, and November 26, 2002. Warning Letters dated October 1, 2002 and October 17, 2002, also referenced the need to install the sediment trap per approved plans.
- b. The permittee was asked to document locations of excess soil disposal areas prior to beginning construction, and no such areas were designated. Unauthorized soil disposal activities were discovered after construction began, and in accordance with Part I.D.7

of the permit, submittal of a complete erosion and sediment control plan was required. An E&S control plan was received by DEQ on November 21, 2002 and was found deficient on November 25, 2002. DEQ notified the Town of the deficiencies in a site inspection memorandum dated November 25, 2002. A request for a complete E&S Control Plan was reiterated in site inspection memoranda dated December 9, 2002, December 18, 2002, January 31, 2003, and March 14, 2003, and by a Warning Letter dated February 18, 2003. A revised E&S control plan was submitted on April 2, 2003 and was deemed incomplete on April 8, 2003. DEQ notified the Town of the deficiencies in site inspection memorandum dated April 8, 2003. E&S control plan revisions were submitted on April 24, April 25, and April 29, 2003. The E&S plan was approved on April 29, 2003. Throughout this period, DEQ and Town representatives had several on-site discussions regarding this issue. Some interim measures discussed during these meetings were installed.

- c. Code § 62.1-44.5.A and 9 VAC 25-210-50.A prohibits filling of wetlands except in compliance with a VWP Permit. Inspection results indicated that dredged material from the Trinity site was deposited into wetlands located at the Moore site. The Permit does not authorize disposal of dredged material at the Moore site.
 - d. Permit Part I.D.7 requires construction to be performed in accordance with approved Plans and Specifications. Inspection results indicate that: 1) areas outside the limits of channel grading shown in the approved plan were cleared of vegetation and graded; 2) certain channel slopes exceeded the approved 2:1 grades (these slopes have subsequently been stabilized); 3) trees and shrubs had not been installed as required by the approved plan. DEQ notified the Town of the deficiencies in site inspection memoranda dated September 26, 2002, October 17, 2002, March 14, 2003, April 8, 2003, May 9, 2003, a letter dated April 9, 2003, and a Warning Letter dated October 17, 2002. Revised channel stabilization plans were submitted by permittees on April 21, 2003, but the permittees have not installed plantings. Permittees requested that they be allowed to revise the planting plan by letter received June 2, 2003. DEQ acknowledged the request on June 10, 2003, noting that plan re-submittal should be as soon as possible because plating schedules previously submitted by permittees have not been met.
8. Permit Part I.D.9 requires submittal of construction monitoring reports within 30 days of each monitoring event. Permit Part I.C.1 requires monthly monitoring. Respondents submitted many of the monthly monitoring reports late. Alleged violations for failing to submit September, October, November, and December, 2002, monthly monitoring reports were previously cited in a Warning Letter dated February 18, 2003. The permittees were previously advised of monthly monitoring requirements by a letter dated September 30, 2002, and site inspection memoranda dated November 15, 2002, and January 10, 2003. The September, October, November, and December, 2002, monitoring reports were received on February 19, 2002.

9. Part I.D.13 of the Permit requires the Town and County to record conservation easements for mitigation sites within 120 days of final mitigation plan approval. The final mitigation plan was approved by the Department on September 30, 2002. As of July 22, 2003, Respondent had not submitted plats or proof of recordation as required by Part I.D.13 of the permit.

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 Respondents, and Respondents agree, to perform the actions described below and in Appendix A of this Order. In addition, the Board orders Respondents, and Respondents voluntarily agree to pay a civil charge of \$7,500 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Of this amount, \$1,000 is allocated to recovery of economic benefit of noncompliance. 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 Respondents' Federal Identification Numbers 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 Respondents, for good cause shown by Respondents, 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, Respondents admit the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Respondents declare that they have 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 waive 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

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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 Respondents 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. Respondents 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. Respondents shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Respondents 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 the Town 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 Respondents. Notwithstanding the foregoing, Respondents agree to be bound by any compliance date that precedes the effective date of this Order.
10. This Order shall terminate upon receipt by DEQ of the funds specified in Section D herein.
11. By the signature of an authorized official below, the Town and the County each voluntarily agree to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 200__.

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Robert G. Burnley, Director
Department of Environmental Quality

The Town voluntarily agrees to the issuance of this Order.

By: _____
Commonwealth of Virginia

City/County of _____
The foregoing document was signed and acknowledged before me this _____ day of
_____, 200__, by _____, who is _____ of the
Town of Rocky Mount, Virginia.

Notary Public

My commission expires: _____

The County voluntarily agrees to the issuance of this Order.

By: _____
Commonwealth of Virginia

City/County of _____
The foregoing document was signed and acknowledged before me this _____ day of
_____, 200__, by _____, who is _____ of the
County of Franklin, Virginia.

Notary Public

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My commission expires: _____

**APPENDIX A
SCHEDULE OF COMPLIANCE**

1. Not later than February 1, 2004, Respondents shall complete installation of vegetative stabilization measures at the Trinity Packaging site and any plantings remaining to be installed at the Waid Park mitigation site
2. Respondents shall implement the B.A. Moore erosion and sediment control plan in accordance with plans and schedules approved by DEQ.
3. Respondents shall submit all future monitoring reports in accordance with the schedules specified in the Permit at Parts I.D.9, I.D.11, I.D.15, and I.D.16.
4. Respondents shall record easements required by Part I.D.13 of the Permit at the Waid Park mitigation site within 30 days of receiving approval from the U.S. Army Corps of Engineers. Respondents shall submit to DEQ copies of such easements, as recorded, within 10 days of recordation.
5. Respondents shall comply with all other requirements of the permit. Failure to comply with the requirements of the permit shall be deemed a violation of the terms of this Order and will result in enforcement action.
6. In the event that Respondents find that circumstances described in Section E.7 of this Order prevent implementation of approved plans, including compliance schedules contained in approved plans, or compliance with requirements of permit or the order, they shall immediately notify DEQ prior to specified compliance dates that compliance schedules will not be met, the reason the compliance schedule will not be meet, and a new proposed compliance date. The new compliance date shall not exceed the previously approved compliance date by more than 30 days.
7. Respondents shall submit all future correspondence regarding the compliance with the permit and this order directly to DEQ, and all such submittals shall be signed by signatories of Respondents. Submittals of plans, reports, or other compliance documentation required by the permit and this order by parties other than Respondents will be deemed incomplete.