



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

West Central Regional Office
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Robert G. Burnley
Director

Steven A. Dietrich
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO W. H. M. CORPORATION

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and 8(d), between the State Water Control Board and W. H. M. Corporation 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. "WHM" means W. H. M. Corporation, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the small construction activity land disturbance by WHM in the Bridgewater Bay Development located in Bedford County Virginia.

8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means VAR 102818, which was signed by the WCRO Permit Manager September 10, 2003, and expires June 30, 2004.

SECTION C: Findings of Fact and Conclusions of Law

1. WHM owns a Facility in the Bridgewater Bay Development that is off Route 122 and 1 mile north of Halesford Bridge in Bedford County Virginia. This Facility is the subject of the Permit, which allows storm water discharges associated with small construction activity.
2. Beginning in May 2003, WHM allowed Realty Services, Inc. to disturb a total of 5 acres at the Facility without registering the Facility for coverage under the Permit in violation of 9 VAC 25-180-60 of the Board's Stormwater Construction General Permit Regulation, 9 VAC 25-31-120.B of the Board's VPDES Regulation and §62.1-44.5 of the Va. Code.
3. An unpermitted discharge was observed at the Facility by DEQ staff on May 8, 2003. Discharges not in compliance with a permit or certificate issued by the Board are a violation of Va. Code § 62.1-44.5 and 9 VAC 25-31-50 of the Board's VPDES Regulation.
4. DEQ noted the apparent violations referenced in paragraph 2 above in a Notice of Violation issued by DEQ August 20, 2003.
5. Realty Services, Inc. registered the Facility for coverage under the general permit on August 23, 2003. The citation in the August 20, 2003, Notice of Violation numbered WL-03-05-WCRO-006 has been corrected with the registration.

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 WHM, and WHM agrees, to pay a civil charge of \$2,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment check must include the Federal Identification Number and a notation that it is tendered for payment of a civil charge pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of WHM, for good cause shown by WHM, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to WHM by DEQ on August 20, 2003. 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, WHM admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. WHM 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. WHM 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 WHM 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. WHM 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. WHM shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. WHM 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 WHM. Notwithstanding the foregoing, WHM agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until payment is received by **Receipts Control, Department of Environmental Quality, Post Office Box 10150, Richmond, Virginia 23240**. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve WHM 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, W. H. M. Corporation voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 6-18, 2004.


for Robert G Burnley, Director
Department of Environmental Quality

WHM voluntarily agrees to the issuance of this Order.

By:

Date:

H. Wayne Yeatts, V. Pres

1-26-04

Commonwealth of Virginia

City/County of Franklin

The foregoing document was signed and acknowledged before me this 26 day of

January, 2004, by H. Wayne Yeatts, who is
(names)

Vice President of WHM on behalf of the Corporation.
(title)

Marsha J. Jursin
Notary Public

My commission expires: August 31, 2004