



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

Thomas L. Henderson
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

A SPECIAL ORDER BY CONSENT ISSUED TO

**Yates Construction Company, Inc
Campus East on Liberty Mountain**

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 Yates Construction Company, Inc. for the purpose of resolving certain violations of State Water Control Law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings 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 citizen 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.

An Agency of the Natural Resources Secretariat

5. "Order" means this document, also known as a Consent Special Order.
6. "Yates" means Yates Construction Company, Inc. who is the operator of the Site, and is a company certified to business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Site" means the construction activities of Yates located in the City of Lynchburg known as Campus East on Liberty Mountain.
8. "SCRO" means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
9. "VWPP" means the Virginia Water Protection Permit.
10. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Facts and Conclusions of Law

1. Yates is engaged in construction activities on approximately 23 acres at the Site, which began in March 2003.
2. Based on inspections conducted by DEQ on May 20 and June 19, 2003, DEQ issued Notice of Violation ("NOV") number NOV-03-07-SCRO-001 on July 9, 2003, which alleged the following:
 - a. Unpermitted filling and modification of an unnamed tributary to Flat Creek. The DEQ estimates approximately 450 linear feet of stream bed has been impacted to include the placement of upland fill in the stream channel; and
 - b. Unpermitted impact to adjacent wetlands of Flat Creek.
3. DEQ subsequently ascertained that the unnamed tributary confluenced with Burton Creek in the James River Basin.
4. On October 30, 2003, DEQ and Yates entered into a Letter of Agreement ("LOA") in order to determine the extent of the unpermitted stream and wetland impacts.
5. Yates failed to comply with the terms of the LOA, which was due in part to the failure of their consultants to complete the delineation of the Site.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15(8a) and (8d), orders Yates, and Yates consents, to perform the actions contained in Appendix A of this Order. In addition, the Board orders Yates, and Yates consents, to pay a civil charge of \$4,200.00 in settlement of the violations cited herein. The payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", and delivered to:

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

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

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Yates, for good cause shown by Yates, 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 Site as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect enforcement actions by other state, local, or federal regulatory authorities, 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, Yates admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Yates 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. Yates 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 waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to 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 Yates 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.
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. Yates 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 other occurrence. Yates shall demonstrate that such circumstances resulting in noncompliance were beyond the control of the Yates and not due to a lack of good faith or diligence. Yates 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 listed above, which Yates intends 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 the Director, or his designee, and Yates.
11. This Order shall continue in effect until:
- a. Yates petitions the Regional Director to terminate the Order after Yates has completed all requirements of the Order; or
 - b. The Director or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Yates.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Yates 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, Yates consents to the issuance of this Order.

And it is so ORDERED this 27th day of December, 2004


Robert G. Burnley, Director
Department of Environmental Quality

Yates consents to the issuance of this Order.

Date: 7/7/04 By: 
Bret Arnold, Project Manager, Yates Construction Company, Inc.

Commonwealth of Virginia
City/County of DANVILLE

The foregoing document was signed and acknowledged before me this 7 day

of July, 2004, by Bret Arnold, Project Manager, Yates Construction Company, Inc., on behalf of said company.

Ed Bower
Notary Public

My commission expires: 7/31/05.

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Appendix A

Yates shall:

1. Within 30 days of the issuance of this Order, Yates shall complete a wetland delineation of the entire Campus East Site. The delineation must be performed in accordance with the United States Army Corps of Engineers ("Corps") Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report.
2. Within 5 working days of completing item number 1 of this Appendix, Yates shall request a wetland confirmation from the Corps.
3. If, Based on the delineation, DEQ determines that stream and/or wetland mitigation is required then Yates shall, within 30 days of receiving DEQ's determination, pay the in-lieu fee to the Virginia Wetlands Restoration Trust Fund. Yates may also propose satisfactory compensatory stream and/or wetland mitigation for the unpermitted stream and/or wetland impacts.
4. If compensatory stream and/or wetland mitigation is proposed in accordance with item number 3 of this Appendix, then Yates shall submit a conceptual mitigation plan within 60 days of receiving DEQ's determination.
5. Upon approval of the mitigation plan by DEQ it shall be incorporated by reference into this Order, and become an enforceable part of this Order.
6. Yates shall complete the mitigation in accordance with the approved plan.
7. Unless otherwise specified in the Order, all correspondence related to this Order shall be sent to:

Harry F. Waggoner
Virginia Department of Environmental Quality
7705 Timberlake Road
Lynchburg, Virginia 24502