COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Molly Joseph Ward
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David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ESSEX CONCRETE CORPORATION AND
OLD HALL, LLC
FOR
UNPERMITTED FILLING OF WETLANDS AT ESSEX CONCRETE CORPORATION, AYLETT SITE

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Essex Concrete Corporation and Old Hall, LLC, regarding Essex Concrete Corporation's, Aylett Site, King and Queen County, Virginia, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "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.

2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

5. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

6. "E&S" means erosion and sedimentation.

7. "Essex" means Essex Concrete Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Essex is a "person" within the meaning of Va. Code § 62.1-44.3.

8. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.

9. "Facility" means Essex Concrete Corporation's Aylett Plant located at 15700 Richmond Tappahannock Highway, St. Stephens Church, Virginia, which is a concrete, sand and gravel facility.

10. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.

11. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.

12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

13. "Old Hall" means Old Hall, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Old Hall is a "person" within the meaning of Va. Code § 62.1-44.3.

14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

15. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.

16. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.

17. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

18. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

19. "Property" or "Parcel" means the following tracts of land on which the Facility is located in King and Queen County, Virginia; Parcel 1 consisting of 297.5 acres and recorded in the King and Queen County Circuit Court Clerk's Office in Plat Book 2 page 217, Parcel 2 consisting of 217.25 acres and recorded in the King and Queen County Circuit Court Clerk's Office in Plat Book 12 page 3, and Parcel 3 consisting of 1 acre and recorded in the King and Queen County Circuit Court Clerk's Office in Deed Book 122 page 499.

20. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*

21. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.

22. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.

23. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.

24. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.

25. "SWMP" means storm water management pond.

26. "USACE" means the United States Army Corps of Engineers.

27. "Va. Code" means the Code of Virginia (1950), as amended.

28. "VAC" means the Virginia Administrative Code.

29. "VWP" means Virginia Water Protection.

30. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Old Hall owns the Property in King and Queen County, Virginia.

2. Essex owns and operates the Facility located on the Property.

3. On August 30, 2013, DEQ staff conducted an inspection at the Property in response to a report of turbid water discharging to the Mattaponi River. DEQ staff inspected the Property for compliance with the requirements of State Water Control Law and Regulations. The DEQ inspectors observed the following:

   a) A berm on the Property was breached and discharged a sediment slurry into an area of forested wetlands along the Mattaponi River. The extent of the filling of forested wetlands was 0.75 acres with sediment deposition depths ranging from 4 to 24 inches. The Facility did not have a permit to discharge to wetlands.

      §62.1-44.15:20 (A) states, "[e]xcept in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following 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 cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.

9 VAC 25-210-50 (A) states, "[e]xcept in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; 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; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

4. At the time of the August 30, 2013 inspection, the breach in the berm had been repaired without additional impact to wetlands.

5. On October 16, 2013, DEQ issued NOV No. 13-09-PRO-702 for the violations described in paragraph C (3) above.

6. On November 7, 2013, DEQ staff met with representatives of Essex and Old Hall to discuss the violations.

7. On January 2, 2014, Essex submitted a plan and plat, to remove the sediment from the impacted wetlands for DEQ review and approval.

8. On January 8, 2014, Essex submitted a final plat regarding removal of the sediment from the impacted wetlands.

9. Based on the results of the site inspection, the November 7, 2013, meeting, and the submittal of the plan and survey to remove the sediment from the impacted wetlands, the Board concludes that Essex and Old Hall have violated Va. Code § 62.1-44.15:20(A) and 9 VAC 25-210-50(A) as described above.

10. In order for Essex and Old Hall to return to compliance, DEQ staff and representatives of Essex and Old Hall have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Essex and Old Hall and Essex and Old Hall agree to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $13,812.99 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
May 1, 2014	$4604.33 or balance
June 1, 2014	$4604.33 or balance
July 1, 2014	$4604.33 or balance

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Essex and Old Hall. Within 15 days of receipt of such letter, Essex and Old Hall shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

4. 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 1104
   Richmond, Virginia 23218

5. Essex and Old Hall shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Essex and Old Hall shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Essex and Old Hall for good cause shown by Essex and Old Hall, or on its own motion pursuant to the

Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Essex and Old Hall admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Essex and Old Hall consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Essex and Old Hall declare they have received fair and due process under the Administrative Process Act and the State Water Control Law and they 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 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 modify, rewrite, amend, or enforce this Order.

6. Failure by Essex and Old Hall 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. Essex and Old Hall 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Essex and Old Hall shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on its part. Essex and Old Hall shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days 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 verbally within 24 hours and in writing within three business days, 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 and any 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 Essex and Old Hall. Nevertheless, Essex and Old Hall agree to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

a. The Director or his designee terminates the Order after Essex and Old Hall have completed all of the requirements of the Order;

b. Essex and Old Hall petition the Director or his designee to terminate the Order after they has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Essex and Old Hall.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Essex and Old Hall from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Essex and Old Hall and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. Any documents to be submitted pursuant to this Order shall be submitted by Essex and Old Hall or an authorized representative of Essex and Old Hall.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By their signature below, Essex and Old Hall voluntarily agree to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2014.

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

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Essex Concrete Corporation voluntarily agrees to the issuance of this Order.

Date: 2/27/2014 By: S Kent Cooke, V.P.
(Person) (Title)
Essex Concrete Corporation

Commonwealth of Virginia

~~City~~/County of Essex

The foregoing document was signed and acknowledged before me this 27th day of February, 2014, by S. Kent Cooke who is Vice President of Essex Concrete Corporation on behalf of the corporation.

Stacy H Pierson
Notary Public

309104
Registration No.

My commission expires: Feb. 28, 2017

Notary seal:

STACY H. PIERSON
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #309104
My Commission Expires 2/28/17

Old Hall, LLC voluntarily agrees to the issuance of this Order.

Date: 2-27-14 By: William W. Cooke, Managing Member
(Person) (Title)
Old Hall, LLC

Commonwealth of Virginia

~~City~~/County of Essex

The foregoing document was signed and acknowledged before me this 27th day of February, 2014, by William W. Cooke who is Managing Member of Old Hall, LLC on behalf of the company.

Stacy H Pierson
Notary Public

309104
Registration No.

My commission expires: Feb. 28, 2017

Notary seal:

STACY H. PIERSON
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #309104
My Commission Expires 2/28/17

APPENDIX A
SCHEDULE OF COMPLIANCE

Essex and Old Hall agree to the following:

1. Within 60 days of the effective date of this Order, Essex and Old Hall shall submit to DEQ for review and approval a corrective action plan ("CAP") detailing the methods and project goals for wetland restoration and monitoring of the wetlands labeled on the final plat entitled "Plat Showing Sediment Depths from Berm Failure on the Property Known as Aylett Sand and Gravel" ("Plat") submitted to DEQ by Essex and Old Hall on January 8, 2014 (attached as Appendix B). The CAP shall include a schedule for completion of the CAP. Once approved the CAP shall be implemented and completed no later than four months from the date the CAP is submitted to DEQ. Any changes to the approved CAP shall not be made or implemented without written advance notice to and approval by DEQ. If DEQ, in its sole discretion, determines it to be necessary, Essex and Old Hall shall perform any corrective actions to comply with the Order, including but not limited to, the requirements and goals as described in the approved CAP.

2. If after approval of the CAP, Essex and Old Hall believe additional time is reasonably necessary to complete the sediment removal as described in the CAP, Essex and Old Hall may make a written request to DEQ for additional time to complete the sediment removal, and if DEQ approves such request, the approval shall be incorporated into this order pursuant to paragraph E (12).

3. Essex and Old Hall shall notify DEQ in writing at least 10 days prior to the date that the work in CAP is to begin.

4. Unless otherwise specified in this Order, Essex and Old Hall shall submit all requirements of Appendix A of this Order to:

Gina Pisoni
Enforcement Specialist
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5156
804-527-5106 (fax)
Gina.Pisoni@deq.virginia.gov