ORIGINAL SIGNED ORDER

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE
4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MR. ROBERT W. HARRIS- DBA WHISKEY CREEK LAWN AND TREE SERVICE
NO PERMIT

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 Mr. Robert W. Harris dba Whiskey Creek Lawn and Tree Service, regarding the Site, for the purpose of resolving certain violations of the State Water Control Law.

SECTION B: Definitions

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

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

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, as described in Va. Code § 10.1-1185.

5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10

6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:

   a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

   b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

7. "WCLTS" means Mr. Robert W. Harris dba Whiskey Creek Lawn and Tree Service, currently a resident of Swoope in Augusta County, Virginia. Mr. Harris is a "person" within the meaning of Va. Code § 62.1-44.3.

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

9. "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.

10. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water… 9 VAC 25-31-10.

11. "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 (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) 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; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

12. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

13. "Site" means an area at the Lighthouse Church on Morris Mill Road in Swoope, VA that WCLTS rents to process tree trimmings into fire wood and store mulch/woodchips.

14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

15. "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.

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

17. "VAC" means the Virginia Administrative Code.

18. "VPDES" means the Virginia Pollutant Discharge Elimination System.

19. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: The Board's Findings of Facts and Conclusions of Law

1. Mr. Robert W. Harris owns and operates WCLTS which processes tree trimmings into firewood and was storing mulch/wood chips at the Site in Swoope, Virginia.

2. Buffalo Branch is located in the Shenandoah River subbasin and the Potomac River Basin. Buffalo Branch is listed as Tier 1 waters. Buffalo Branch is not listed in DEQ's 305 (b) report as impaired; it has not been assessed.

3. On November 16, 2013, DEQ received a pollution complaint from the Augusta County Sheriff's Office reporting the discharge of mulch/woodchips to Buffalo Branch. The Sheriff's Office indicated that only about two feet of an 8-10 feet stream channel was open to stream flow.

4. On November 17, 2013, DEQ staff conducted an investigation of the pollution complaint. DEQ staff met with Deputies of the Augusta County Sheriff's Office at the Site. DEQ staff observed that approximately ½ of the stream bed was covered by mulch/woodchips at the discharge location and that there was mulch/woodchips piled on both sides of the stream banks. DEQ staff also observed mulch/woodchips in the streambed to the point where posted property was encountered, a distance of approximately 200-300 meters. During the investigation, DEQ staff requested WCLTS remove the mulch/woodchips from the stream and stream bank

5. On November 18, 2013, DEQ staff continued the investigation of the mulch/woodchips in Buffalo Branch. DEQ staff performed in-stream measurement of temperature, pH, dissolved oxygen, and conductivity, as well as a cursory investigation of benthic macro-invertebrates. DEQ staff noted mulch/woodchips about 4-5 inches deep in an 8-10 inch deep pool immediately downstream of the discharge and that mulch/woodchips had floated downstream and accumulated on rocks.

6. On November 25, 2013, DEQ staff visited the Site. During the site visit, the WCLTS operator indicated that he had removed mulch/woodchips from the stream to the stream banks. DEQ staff noted that some mulch/wood chips had been removed from a section of the stream bed and placed on the stream banks. However, a considerable amount of the mulch/wood chips remained immediately on the stream bank and down into the stream bed.

7. On December 12, 2013, DEQ VRO issued Notice of Violation No. W2013-12-V-002 to WCLTS for an unauthorized discharge of mulch/wood chips (a pollutant) to state waters and the failure to report an unauthorized discharge.

8. On January 27, 2014, DEQ staff met with representatives of WCLTS to discuss the NOV and corrective actions needed to address the violations. During those discussions, WCLTS asserted that the mulch/wood chips were not dumped into the stream, but the stream bank collapsed where the mulch/wood chips was being stored and the mulch/wood chips fell into the stream. WCLTS asserted that it made some attempts to remove the mulch/wood chips from the stream bed.

9. On February 11, 2014, DEQ staff conducted a site visit at the Lighthouse Church Site. Staff observed a large pile of mulch/wood chips which had been removed from the stream bank and placed back from the stream bank. However, a significant quantity of mulch/wood chips remained on stream banks and down to the stream bed on both sides of the stream. It appeared high stream water had washed some quantity of mulch/wood chips downstream.

10. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."

11. Va. Code § 62.1-44.17 states that: "(1) Any owner who handles, stores, distributes or produces other wastes as defined in § 62.1-44.3, any owner who causes or permits same to be handled, stored, distributed or produced or any owner upon or in whose establishment other wastes are handled, stored, distributed or produced shall upon request of the Board install facilities approved by the Board or adopt such measures approved by the Board as are necessary to prevent the escape, flow or discharge into any state waters when the escape, flow or discharge of such other wastes into any state waters would cause pollution of such state waters".

12. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

13. The Department has issued no permits or certificates to WCLTS authorizing the discharge of pollutants.

14. Buffalo Branch is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

15. Based on the January 27, 2014 meeting, DEQ's inspections, and a file review, the Board concludes that WCLTS has violated Va. Code § 62.1-44.5 and § 62.1-44.17, by discharging waste to State waters without a permit, as described in Section C above.

16. In order for WCLTS to provide for compliance with the Regulation and Va. Code § 62.1-44.5, DEQ and representatives of WCLTS 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 WCLTS, and WCLTS agrees to:

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

2. Pay a civil charge of **$1,137** 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, 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

WCLTS 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, WCLTS 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 WCLTS for good cause shown by WCLTS, 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 Site; or (3) taking subsequent action to enforce the Order.

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

4. WCLTS 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. WCLTS declares it has received fair and due process under the Administrative Process Act 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 modify, rewrite, amend, or enforce this Order.

6. Failure by WCLTS 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. WCLTS 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 unforeseen occurrence beyond its control and not due to a lack of good faith or diligence on its part. WCLTS shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. WCLTS 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 WCLTS 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, 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 WCLTS. Nevertheless, WCLTS agrees 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 WCLTS has completed all of the requirements of the Order;

    b. WCLTS petitions the Director or his designee to terminate the Order after it 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 WCLTS.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve WCLTS from its 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 WCLTS 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. The undersigned representative of WCLTS certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind WCLTS to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of WCLTS.

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 its signature below, WCLTS voluntarily agrees to the issuance of this Order.

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

_____
Amy T. Owens, Regional Director
Department of Environmental Quality

Robert W. Harris voluntarily agrees to the issuance of this Order.

Date: 6-23-14 By: Robert W. Harris
Robert W. Harris

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 23rd day of June, 2014, by Robert W. Harris

Diana L Adams
Notary Public

#329867
Registration No.

My commission expires: 1/31/2015

Notary seal: DIANA L. ADAMS NOTARY PUBLIC REG. #329867 MY COMMISSION EXPIRES 1/31/2015 COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE
WHISKEY CREEK TREE SERVICE

1. **By July 1, 2014**, WCLTS shall remove the remaining mulch/wood chips from the stream bed and stream banks of Buffalo Branch. The mulch/wood chips removed from Buffalo Branch shall be stored at a sufficient distance from the stream banks to ensure it will not enter the stream.

2. **By July 10, 2014**, WCLTS shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance and any remedial actions taken to remedy noncompliance.

3. **DEQ Contact**

   Unless otherwise specified in this Order, Sandy's shall submit all requirements of Appendix A of this Order to:

   Steve Hetrick
   Enforcement Specialist Sr.
   VA DEQ –Valley Regional Office
   P.O. Box 3000
   Harrisonburg, VA 22801
   (540) 574-7833 Phone
   (540) 574-7878 Fax
   Steven.hetrick@deq.virginia.gov