COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

L. Preston Bryant, Jr
Secretary of Natural Resources

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David K. Paylor
Director

Steven A. Dietrich
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
Vaughn & Jackson L. L. C.

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 Vaughn & Jackson L. L. C. 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. "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.

4. "Order" means this document, also known as a Consent Special Order, including Appendix A to this document.

5. "Site" means the property know as Old Mill Plantation located off Route 221 in South Roanoke County and identified on tax maps as Parcel Id: 095.01-02-29.01-0000.

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

7. "V&J" means Vaughn & Jackson L. L. C. a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

8. "VWP" means the Virginia Water Protection.

9. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. V&J was authorized by VWP Permit General Number WP4-03-0894 (the Permit), issued on August 3, 2004, to impact specific stream areas on the project site subject to complying with conditions of the VWP general permit authorization.

2. DEQ received two citizen complaints and an internal referral on October 19, 2005, regarding sediment in Back Creek near Back Creek Elementary School. Both citizen complaints concerned direct deposition of sediment laden water into Back Creek. A DEQ employee reported and observed Back Creek was turbid for several miles. This Inspector indicated the source of sediment laden water was the construction site immediately upstream of Back Creek Elementary School, the Old Mill Plantation site.

3. On October 19, 2005, DEQ observed turbidity in Back Creek below where Cotton Hill Road crosses Back Creek. The water was highly turbid and a milky brown in color. DEQ observed the Old Mill Plantation site and determined the construction site was the source of the turbidy, color, and sediment.

4. DEQ inspected the Old Mill Plantation site on October 20, 2005. Brent Wills, EEC (V&J consultant), and Thom Leedom, U.S. Army Corps of Engineers, were present at the inspection. Jack St. Clair, Inc., a piping contractor, was in the process of converting a temporary sediment trap into a stormwater management basin. Representatives of the contractor, Jack St. Clair, Inc., said that they had been directed by Terry St. Clair, owner of the Company, to dewater the sediment basin. The Company contractor also pumped the water out of the trap and to the Creek without any treatment. The presence and placement of the dewater pipe and pump was confirmed by Morgan Yates, Construction Inspector, Roanoke County. Roanoke County issued a "Notice to Comply" in response to the unpermitted dewatering activity. Employees of Jack St. Clair, Inc. were advised by DEQ staff to ensure appropriate dewatering facilities were installed prior to initiating any dewatering activities on the Old Mill Plantation site in the future.

5. On October 20, 2005, DEQ staff noted that the outer side berm of the sediment trap was experiencing significant rill erosion and that V&J was not taking appropriate measures needed to ensure an effectively maintained structure as required by the Permit. Staff also noted that the VWP general permit requires that a conservation easement be developed and recorded to protect compensation areas proposed to mitigate the stream impacts associated with the project and that this had not been done.

6. On October 31, 2005, Mr. David Vaughn, V&J, in a phone conversation with DEQ staff, indicated that he was going to direct the contractor not to undertake any dewatering discharges in the future without ensuring appropriate erosion and sedimentation controls were in place prior to beginning the discharge. However, subsequent unauthorized discharge events nonetheless occurred.

7. In accordance with Part II.A.3, compensation areas are to be surveyed or platted within 120 days of final compensation plan approval, and recorded within 60 days of survey or plat approval. According to DEQ files, the plat or survey was due on December 2, 2004. The plat/survey was not submitted until March 16, 2005, and was not deemed acceptable for recordation until September 22, 2005. DEQ had to issue two Warning Letters dated March 21, 2005, and June 24, 2005, to V&J before getting an acceptable response. Proof of recordation was finally received in WCRO on November 14, 2005. Recordation of the compensation areas should have occurred back in February of 2004.

8. On November 8, 2005, DEQ issued Notice of Violation (NOV) No. W2005-11-W-003 for "Unauthorized discharge to state waters" and for "Failure to implement erosion and sedimentation controls designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, as required by Part I.C.5 of the VWP General Permit WP4-03-0894." The discharge was not in compliance with a certificate or permit issued by the Board in violation of Virginia Code § 62.1-44.5.A, State Regulation 9 VAC 25-210-50, and VWP General Permit WP4-03-0894.

9. On February 28, 2006, DEQ West Central Regional Office staff conducted a compliance inspection of V&J's Old Mill Plantation and made the following observations. V&J failed to implement erosion and sedimentation controls designed in accordance with the Virginia Erosion and Sediment Control Handbook (VESCH), Third Edition, 1992, as required by the Permit. Some of the failures appear to have resulted in sediment impact to wetlands adjacent to the construction site.

10. On February 28, 2006, DEQ staff observed an unauthorized dewatering discharge that was not being adequately filtered. V&J had previously been requested to implement appropriate dewatering practices by site inspection memorandum dated November 7, 2005, transmitted under cover of NOV No. W2005-11-W-0003 for an unauthorized dewatering discharge, among other forms of written correspondence. A dewatering practice was proposed in a corrective action plan (CAP) submittal dated January 30, 2006, but the practice was not being implemented at the time of the inspection on February 28, 2006.

11. On February 28, 2006, it was observed that non-compliance issues from the December 2, 2005, inspection had not been corrected.

12. DEQ VWP staff requested V&J to take immediate corrective action to stabilize the 2:1 slope below Magnolia Drive. Some sections of the slope were unstable, actively eroding,

and in need of immediate attention. The sediment was reaching adjacent wetland areas due to the absence of effective ESC controls.

13. V&J failed to install road crossings in the dry as required by the Permit. Part I.D.3 states, "Installation of road crossing(s) shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other similar structures." Based upon the inspection, work had commenced prior to installation of an adequate "in the dry" practice. It is noted that DEQ made numerous written and verbal requests for this information prior to the work being initiated. The submittal was not made until after the work began.

14. On March 8, 2006, DEQ issued Notice of Violation (NOV) No. 06-03-WCRO-001 for "Unauthorized discharge to state waters", The discharge was not in compliance with a certificate or permit issued by the Board in violation of Virginia Code § 62.1-44.5.A, State Regulation 9 VAC 25-210-50, and VWP General Permit WP4-03-0894., "Failure to install road crossings in the dry as required by the Permit Part I.D.3", and for "Failure to implement erosion and sedimentation controls designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, as required by Part I.C.5 of the VWP General Permit WP4-03-0894."

15. Inspections of the Old Mill Plantation site occurred on August 23, 2006, and on August 30, 2006. DEQ observed upland erosion and sediment control issues during the inspection on the 23rd in noncompliance with the CAP and an unauthorized discharge was witnessed on the 30th.

16. On September 29, 2006, DEQ issued NOV No. W2006-09-W-0003 for "Unauthorized discharge to state waters". The discharge was not in compliance with a certificate or permit issued by the Board in violation of Virginia Code § 62.1-44.5.A, State Regulation 9 VAC 25-210-50, and VWP General Permit WP4-03-0894.

17. V&J has failed to meet the requirements of Virginia Code § 62.1-44.5.A, State Regulation 9 VAC 25-210-50, the VWP General Permit WP4-03-0894: Parts I.C.5, Part I.C.6, Part I.C.17 and Part I. D.3., and the signed Order by Vaughn dated April 15, 2006.

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 V&J, and V&J agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders and V&J agrees to pay a civil charge of $47,250 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
P. O. BOX 1104
DEPARTMENT OF ENVIRONMENTAL QUALITY
RICHMOND, VIRGINIA 23218

The payment check must include 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 V&J, for good cause shown by V&J, 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 Violations issued to V&J by DEQ on November 8, 2005 and March 8, 2006. 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 Wetland 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, V&J admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. V&J 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. V&J 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 V&J 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. V&J 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. V&J shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. V&J 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 V&J 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 both the Director or his designee and V&J. Notwithstanding the foregoing, V&J agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until terminated by either the Board or the Director, in his or its sole discretion upon 30 days written notice to V&J. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve V&J 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, V&J voluntarily agrees to the issuance of this Order.

And it is so ORDERED 12-15, 2006.

Steven A. Dietrich

Steven A. Dietrich, Regional Director
Department of Environmental Quality

Vaughn & Jackson L.L.C. voluntarily agrees to the issuance of this Order.

Date: 10-25-06 By: _____

Title: Member

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 25th day of October, 2006, by David Vaughn (name), who is Member (title) of V&J, on behalf of the Corporation.

Cathy D. Kibler
Notary Public

My commission expires: 8/31/09.

Date: _____ By: _____

Title: _____

Appendix A

In addition to the foregoing, the Board orders, and Vaughn & Jackson L.L.C. (V&J) agrees to implement, the following terms and conditions of this Appendix:

1. V&J shall continue to implement the approved Corrective Action Plan (CAP) previously submitted on April 28, 2006, the terms of which remain enforceable under this Order. That CAP contains plans and specifications and provides corrective actions required to address the issues of noncompliance found in the November 2005 and March 2006 Notice of Violations (NOVs) as well as other noted erosion and sediment control deficiencies on the site.

2. By **November 15, 2006**, V&J shall submit an addendum to the April 28th CAP to address the October 2006 NOV and the following bullet items. Upon approval of the addendum by DEQ the addendum shall become incorporated into and enforceable under this Order. Thereafter, references to the CAP will include the addendum.

   - Implement/install additional measures/structures to come into full compliance with Part I.C.5 of the VWP permit issued for the project. DEQ/WCRO will utilize the Virginia Erosion and Sediment Control Handbook, Third Addition, 1992, to assess and determine the acceptability of such measures/structures under the CAP.
   - Update site specific practices language in the April 28th CAP submittal regarding dewatering, to include additional measures that have been implemented since August 30, 2006, to eliminate unauthorized discharges.

3. V&J shall inspect and maintain all control measures/structures installed on the Old Mill Plantation, Phase I, project site designed to keep and/or reduce sediment from entering State waters until project completion.

4. V&J shall install and maintain control measures/structures necessary to keep and/or reduce sediment from entering State waters prior to continuing any additional site grading activities other than those grading activities directly related to the installation and maintenance of measures/structures already in place.

5. All submissions and/or reports shall be made to:
   a. Steven Wright
   b. VA DEQ Enforcement
   c. West Central Regional Office
   d. 3019 Peters Creek Road
   e. Roanoke, VA 24019