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Secretary of Natural Resources

COMMONWEALTH of VIRGINIA

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Samuel Aman
FOR
Unpermitted Activity

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 Samuel Aman, regarding the property located at 1086 Spruce Run Road in Giles County (Parcel ID 60-24) for the purpose of resolving certain violations of State Water Control Law and the applicable 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. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock. 9 VAC 25-210-10.

7. "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.

8. "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.

9. "Impacts" means results caused by human-induced activities conducted in surface waters, as specified in Va. Code § 62.1-44.15.5 (D).

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

11. "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.

12. "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.

13. "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.

14. "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.

15. "Property" or "Parcel" means the tract of land at 1086 Spruce Run Road, in Giles County, Newport, Virginia.

16. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke and Lynchburg, Virginia.

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

18. Responsible Party" means Mr. Samuel Aman (Aman), a current resident of Giles County, Virginia, and owner of property located at 1086 Spruce Run Road, Newport, Virginia [Giles county Tax Map ID Number 60-24). Samuel Aman is a "person" within the meaning of Va. Code [§ 10.1-1300/§ 10.1-1400/§ 62.1-44.3].

19. "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.

20. "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 62.1-44.14:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.

21. "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.

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

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

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

25. "VAC" means the Virginia Administrative Code.

26. "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.

27. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. On March 25, 2008, DEQ staff conducted a Site inspection and observed that stream channel grading activities were occurring on property located at 1086 Spruce Run Road, Newport, Virginia (Giles County Tax Map ID Number 60-24).

2. DEQ staff observed Mr. Samuel Aman (Aman) conducting construction activities, and channel grading in Spruce Run, a perennial stream, which also resulted in impacts to an adjacent wetland. Aman stated to DEQ staff that his intentions were to create more pasture for his daughter's horses.

3. A review of DEQ records indicated that no Permit applications had been filed for this Site and that no Army Corps of Engineers (USACE) permit had been issued for the work being conducted.

4. Based upon the information gathered during the March 25, 2008, inspection it was estimated that as much as 800 linear feet of unauthorized stream impact has occurred due to stream excavation. Unauthorized wetland impacts have also occurred at the Site. The unauthorized activities include wetland excavation and filling, but these impacts could not be fully quantified due to the extent of land-disturbing activities that have occurred at the Site. It is evident however, that portions of the wetland have been filled with earthen material to depths ranging from inches to several feet.

5. On March 25, 2008, DEQ observed two large diameter steel tanks that had the ends removed. These tanks had been placed in Spruce Run to serve as a stream crossing. Installation of these tanks resulted in approximately 60-70 linear feet of stream impact. A third steel tank was installed upstream in Spruce Run on the Northeast side of the property. Installation of this third tank crossing resulted in approximately 8 linear feet of unauthorized stream impact.

6. Earthen materials and the steel tanks are considered fill material and a pollutant because they replace portions of surface water with dry land or change the bottom elevation of the surface water. 9 VAC 25-210-10.

7. The discharge of this fill material significantly altered and degraded existing wetlands acreage and functions as well as impacting the physical, chemical and biological properties of state waters making them detrimental to animal and aquatic life.

8. Except in compliance with a Virginia Water Protection (VWP) permit, no person shall dredge, fill or discharge any pollutant in to or adjacent to surface waters or otherwise alter the physical, chemical and biological properties of state waters making them detrimental to animal and aquatic life. 9 VAC 25-210-50.

9. Aman is identified as the Responsible Party and is a person within the meaning pursuant to Virginia Code [§ 10.1-1300/§ 10.1-1400/§ 62.1-44.3].

10. No Permit applications have been filed for this Site and no Permit has been issued for this Site by DEQ or the USACE. Virginia Water Protection (VWP) program regulations and requirement would not have allowed a Permit to be issued for the work conducted at the Site.

11. On April 25, 2008, DEQ issued a Notice of Violation (NOV) to Aman for activities that resulted in significantly altering and degrading existing wetlands acreage and functions as well as activities that resulted in the alteration of the physical, chemical and biological properties of state waters making them detrimental to animal and aquatic life in violation of Virginia Code §62.1-44.15:20 and VWP regulation 9 VAC 25-210-50.

12. On April 30, 2008, during a re-inspection, DEQ staff observed that one of the three installed tanks had been removed. DEQ staff also observed evidence that Aman had continued with the site grading activity. Advice was provided to Aman from DEQ staff on March 25th to not proceed with any other filling activities in order to avoid causing further unauthorized impacts by placing excavated materials from the stream into previously un-impacted wetland areas. Unauthorized filling activities has resulted in a substantial adverse effect on the regulatory program and impacted procedural processes that would have avoided the environmental impacts.

13. Based on the results of staff inspections conducting on March 25 and April 30, 2008, and discussions held with Aman, the Board concludes that Aman is in violation of Virginia Code § 62.1-44.15:20 and regulation 9 VAC 25-210-50 by operating without a VWP permit; Unlawful discharge into state waters; Filling/discharging of pollutant and otherwise altering the physical properties of state waters; Altering the physical properties of state waters causing detrimental conditions to animal or aquatic life, or to the uses of such waters for other uses; Conducting of the following activities in wetlands: Excavated in a wetland; Performed activities in wetland to cause draining that significantly altered or degraded existing wetland acreage or functions; Filling or dumping or new activities that caused significant alteration or degradation of existing wetland acreage and functions.

14. In order for Aman to complete a return to compliance, DEQ staff and Aman 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 Samuel Aman, and Samuel Aman agrees to:

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

2. To pay a civil charge of $48,750 in settlement of the violations cited in this Order, to be paid as follows

   a. Aman shall pay $12,187.50 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

      Receipts Control
      Department of Environmental Quality
      Post Office Box 1104
      Richmond, Virginia 23218

      Aman 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)

   b. Aman shall satisfy $36,562.50 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.

   c. The net project costs of the SEP to Aman shall not be less than the amount set forth in Paragraph D.2.b. If it is, Aman shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

   d. By signing this Order Aman certifies that he has not commenced performance of the SEP.

   e. Aman acknowledges that he is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Aman to a third party, shall not relieve Aman of his responsibility to complete the SEP as described in this Order.

f. In the event it publicizes the SEP or the SEP results, Aman shall state in a prominent manner note that the project is part of a settlement of an enforcement action.

g. The Department has the sole discretion to:

   i. Authorize any alternate, equivalent SEP proposed by Aman; and

   ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

h. Should the Department determine that Aman has not completed the SEP, or alternate SEP, in a satisfactory manner; the Department shall so notify Aman in writing. Within 30 days of being notified, Aman shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Aman for good cause shown by Aman, or on his 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, Aman admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Aman 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. Aman declares he 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 Aman 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. Aman 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. Aman shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on its part. Aman 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 Aman 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 Aman. Nevertheless, Aman 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. Aman 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

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Aman.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Aman from his 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 Aman 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, Samuel Aman certifies that he is a responsible party authorized to enter into the terms and conditions of this Order and to execute and be legally bound to this document. Any documents to be submitted pursuant to this Order shall also be submitted on behalf of and with the acknowledgement of the responsible party.

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, Samuel Aman voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Robert J. Weld, Regional Director
Department of Environmental Quality

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Mr. Samuel Aman voluntarily agrees to the issuance of this Order.

Date: 7-15-10 By: Samuel Aman
(Responsible Person)
Samuel Aman

Commonwealth of Virginia
City/County of Glen

The foregoing document was signed and acknowledged before me this 15TH day of July, 2010, by Samuel Aman.

Lisa J. Green
Notary Public

287414
Registration No.

My commission expires: 11/30/2012

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Samuel Aman shall immediately cease any and all unauthorized impacts to state waters and shall not resume such impacts unless authorization from DEQ is granted via a Permit.

2. No later than **July 31, 2010**, Aman shall provide a wetland delineation of the Property. The delineation shall be performed in accordance with the United States Army Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report, together with any applicable regional supplements. A wetland confirmation from the USACE shall be requested and the USACE confirmation results provided to DEQ.

3. No later than **August 15, 2010**, Aman shall submit an approvable Corrective Action Plan (CAP) for the restoration of state waters on the Property that have been impacted without a Permit that meets the requirements of 9 VAC 25-210-116. The CAP must be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters in accordance with 9 VAC 25-210-116. Aman shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days. An approvable CAP shall address both wetland and stream restorations and contain information on the following:

   - Schedule of stream channel reconstruction and wetlands restoration (stream channel reconstruction shall be conducted during dry weather and low flow stream conditions).
   - Reference data,
   - Drawings and plans (plan views, plan cross sections, erosion and sedimentation control etc.),
   - Specifications and design information for the proposed restorative measures (i.e.: the shaping of the stream banks, design flows, in-stream structures, etc.),
   - Monitoring plan (monitoring goals, monitoring designs, methodologies),
   - Success criteria,
   - Reporting schedule,

   Wetland restoration evaluations and/or proposals in the CAP, in addition to the information already listed, must at a minimum include the following:

   - Removal of the installed "lateral pipes" in the wetlands that are connected to and discharge into the channel,
   - Discussion of structures and features considered necessary for the successful restoration of the wetlands,

- Locations of photographic stations and monitoring wells, sampling points, and if applicable, reference wetlands. (Photographs shall include a photo station number, orientation, date and time of the photograph, name of the person taking the photograph, and a brief description of the photograph subject).

Stream restoration evaluations and/or proposals in the CAP, in addition to the information already listed, must at a minimum include the following:

- Geomorphologic measurements and reference reach information,
- Livestock access limiting measures,
- Future stream crossing locations and stream crossing feature specifications,

4. Upon DEQ approval of the CAP, Aman shall begin implementation of the Corrective Action Plan in accordance with the schedule contained therein. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. Aman shall complete the CAP in accordance with its terms.

   a. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then Aman shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, Aman shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by Aman in accordance with the schedule set forth in the alternative CAP.

   b. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then Aman shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. Aman shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Aman shall purchase mitigation back credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.

5. Unless otherwise specified in this Order, Aman shall submit all requirements of Appendix A of this Order to:

Mr. Jay Roberts
VWP Program Specialist
DEQ-Blue Ridge Regional Office
3019 Peters Creek Rd., Roanoke, Va 24019

APPENDIX B

SUPPLEMENTAL ENVIRONMENTAL PROJECT

In accordance with Va. Code § 10.1-1186.2, Aman shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix.

The SEP to be performed by Aman is a public health and environmental restoration project that includes the removal of non-hazardous, solid waste materials that have been abandoned and discarded at five (5) unpermitted sites within the New River watershed in Giles County. The SEP clean up sites are identified as follows:

New Zion Site: a road side dump and residential trash located adjacent to Sinking Creek. Estimated clean up is cost is $3,605.80. An estimated volume of 6 tons of solid waste will be transported for disposal at the New River Resource Authority landfill.

Quarry Site: an old quarry with dumping of primarily residential waste. Estimated clean up cost is $3,353.30. An estimated volume of waste of 5 tons will be transported for disposal at the New River Resource Authority landfill.

Dry Branch Road Site: a road side dump of primarily residential waste located adjacent to Dry Branch. Estimated clean up is $12,898.20. An estimated volume of 10 tons of solid waste will be transported for disposal at to New River Resource Authority landfill.

Stony Creek Site: a road side dump of primarily residential waste located adjacent to Stony Creek. Estimated clean up is $7,376.60. An estimated volume of 10 tons of solid waste will be transported for disposal at to New River Resource Authority landfill.

Morning Breeze Site: a road side dump of primarily residential waste located adjacent to Morning Breeze Creek. Estimated clean up is $9,379.90. An estimated volume of 7 tons of solid waste will be transported for disposal at to New River Resource Authority landfill.

1. Actions to be taken include the utilization of heavy equipment to collect, load, and transport the solid waste to the New River Resource Authority for proper disposal in the DEQ permitted regional landfill. The result of this activity will eliminate five (5) illegal dump sites, reduce public exposure to unwanted trash dumps, eliminate trash vector problems, and discourage future dumping at these locations through community awareness of the removal activities.

2. Any required Site access agreements are to be secured by Aman in coordination with the Giles County Administrator prior to commencing waste removal.

3. The SEP shall be completed by **November 10, 2010.** Successful completion of the SEP will be evaluated on the basis of before and after photographic documentation of waste removal for

each SEP Site, landfill scale house records for transported waste volume, and inspection of each SEP Site. Cost estimates for each SEP Site are based on the Usual and Customer Rate structure established by DEQ in Guidance Document # 07-2002 and as itemized by Mr. Aman in the "Aman S.E.P. Proposed Project Presentation submitted June 8, 2010", and waste disposal tipping charges at the New River Resources Authority's permitted solid waste management landfill.

4. Aman shall submit a monthly progress report on the SEP activity beginning the 10th of the month following the effective date of this Order, and each subsequent month up to **November 10, 2010**.

5. Aman shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified by a responsible Giles County official. Aman shall submit the final report and certification to the Department no later than **December 10, 2010**.

6. If the SEP has not or cannot be completed as described in the Order, Aman shall notify DEQ in writing no later than **November 10, 2010**. Such notification shall include:

a. an alternate SEP proposal, or
b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.

7. Aman hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.

8. Aman shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of [a certified statement itemizing costs, invoices and proof of payment, or similar documentation] **within 30-days of the project completion** date, **but no later than December 10, 2010**.

9. The SEP documents to be submitted to the Department shall be sent to:

Mr. Robert Weld
Regional Director
DEQ-Blue Ridge Regional Office
3019 Peters Creek Rd.
Roanoke, Va 24019