COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

Doug Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION – ORDER BY CONSENT
ISSUED TO
COURTNEY DEVELOPMENT, INC.
FOR
VWP PERMIT NO. 01-0081

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Courtney Development, Inc., 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. "Courtney Development" means Courtney Development, Inc., a company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Courtney Development is a "person" within the meaning of Va. Code § 62.1-44.3.

3. "Crossridge" means the 336 acre Crossridge mixed commercial and residential community development in Henrico County, on Route 33, 1 mile south of the intersection with Interstate 295. The community contains single dwelling homes, condominiums, apartments, and shops. "The Carriages" is a section of Crossridge that contains homes.

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

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

6. "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.

7. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by replacement of any pollutant 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. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

10. "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.

11. "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.

12. "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.

13. "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.

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

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

16. "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.

17. "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.

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

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

20. "VAC" means the Virginia Administrative Code.

21. "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. On November 19, 2001, DEQ issued VWP Permit No. 01-0081 (the Permit) to Courtney Development, Inc. for the discharge of fill material to wetlands and state waters to construct in phases, a mixed commercial/residential community called Crossridge. The Permit was modified on April 13, 2005 to authorize additional impacts for the last phase of construction of Crossridge. The Permit expires on November 18, 2016.

2. On July 14, 2009, DEQ received a report of sediment in a creek, a tributary to Meredith Branch, which runs through the Crossridge development, in a section called The Carriages.

3. On the afternoon of July 14, 2009, DEQ staff investigated the report and observed sediment in an unnamed tributary (UT) to Meredith Branch that runs parallel to Hoskins Drive, located in a section of Crossridge designated The Carriages. DEQ staff observed that the property located between Hoskins Drive and the UT to Meredith Branch was under construction. Staff observed and photographed trails of sediment that flowed from the areas under construction along Hoskins Drive to the UT. During the site inspection, DEQ staff observed that 9 to 14 inches of sediment had been discharged to approximately 800 linear feet of the UT that flowed through a preserved mitigation area.

4. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit the discharge of any pollutant into surface waters without a Permit issued by the Director. Courtney Development does not have a Permit for the above activities.

5. On November 2, 2009, DEQ issued NOV No. W2009-11-P-0001 to Courtney Development for the violations of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.

6. On December 8, 2009, DEQ staff met with representatives of Courtney Development to discuss the violations. At the meeting, it was agreed that Courtney Development would participate in a site visit with DEQ staff to flag the UT areas that required sediment removal; and submit a corrective action plan and schedule for review and approval to remove the sediment from the UT. It was also agreed that DEQ staff would make a follow-up inspection of the site upon notification that the sediment removal had been completed.

7. On January 15, 2010, DEQ received a corrective action plan and schedule to remove the sediment from the UT. DEQ approved the plan and schedule on January 22, 2010. The removal plan was implemented the week of March 29, 2010 and was completed by April 16, 2010.

8. On May 5, 2010, DEQ staff inspected the site and verified that the violations described in paragraph C3 above, have been corrected.

9. Based on the results of the July 14, 2009 inspection and the December 8, 2009 meeting, the Board concludes that Courtney Development has violated Part II.Q of the Permit, Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.A, as described in paragraphs C3 through C5, above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders Courtney Development, and Courtney Development agrees to:

1. Pay a civil charge of $9,555 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

Courtney Development 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).

SECTION E: Administrative Provisions

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

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

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Courtney Development 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 Courtney Development 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 Courtney Development 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 Courtney Development to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Courtney Development.

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, Courtney Development voluntarily agrees to the issuance of this Order.

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

_____

Michael P. Murphy, Regional Director
Department of Environmental Quality

Courtney Development, Inc. voluntarily agrees to the issuance of this Order.

Date: 7/27/10 By: _____ (Person), PRESIDENT (Title)

Commonwealth of Virginia
City/County of Henrico

The foregoing document was signed and acknowledged before me this 27th day of July, 2010, by Robert M. Atack (name), who is President (title) of Courtney Development, Inc., on behalf of the Company.

Lisa W Hicks
Notary Public

246192
Registration No.

My commission expires: September 30, 2011

Notary seal:

LISA W. HICKS
COMMONWEALTH OF VIRGINIA
Expires 09-30-11
ID# 246192
NOTARY PUBLIC