COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
www.deq.virginia.gov

L. Preston Bryant, Jr
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

ORDER BY CONSENT

ISSUED TO

NVP, INC.

FOR

EWELL'S MILL PROJECT
(VWP General Permit WP4-06-0857)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§62.1-44.15 (8a and 8d) and 10.1-1185, between the State Water Control Board and NVP, Inc. regarding Ewell's Mill, for the purpose of resolving certain violations of the State Water Control Law and Regulations.

SECTION B: Definitions

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

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

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §62.1-44.7 and §10.1-1184.

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.

5. "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.

6. "Order" means this document, also known as a Consent Special Order.

7. "Ewell's Mill" means a single-family residential housing project located in the Prince William County, Virginia.

8. "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

9. "NVP" means NVP, Inc. located at 10482 Colonel Court, Manassas, Virginia 22401.

10. "NRO" means the Northern Regional Office of the DEQ, located in Woodbridge, Virginia.

11. "VWP" means Virginia Water Protection.

12. "VWPP" means Virginia Water Protection Permit Program.

13. "Permit" means Virginia Water Protection General Permit Authorization Number WP4-06-0857.

14. "Person" means one or more individuals, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

15. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution.

16. "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" for the terms and purposes of this chapter.

17. "Project" means the Ewell's Mill Project that consists of the construction of single-family homes with associated infrastructure on an approximately 97 acre parcel.

18. "Rip rap" means a layer of nonerodible material such as stone or chunks of concrete.

19. "Surface water" means all state waters that are not ground waters as defined in § 62.1-255 of the Code of Virginia.

20. "VAC" means Virginia Administrative Code.

21. "PFO" means Palustrine Forested Wetland

SECTION C: Findings of Facts and Conclusions of Law

1. NVP, Inc., a person pursuant to 9 VAC 25-210-50, was issued the Permit authorizing certain activities in surface waters for the Project.

2. The Project site is located on Spriggs Road (Rt. 643) approximately one mile north of its intersection with Dumfries Road (Rt. 234) in Prince William County, Virginia. The Permit was authorized on December 14, 2006, for the total impact of 0.234 acre of surface waters, consisting of the permanent impact of 0.04 acre palustrine forested (PFO) wetlands and 0.19 acre (1,172 linear feet) of intermittent stream channel, and the temporary impact of 0.004 acre (37 linear feet) of intermittent stream channel. Members of DEQ staff conducted an inspection of the Project site on March 13, 2008, and conducted a compliance review of the file on May 28, 2008.

3. A NOV was issued to NVP, Inc. by DEQ (NOV No. 2008-05-NRO-001) on June 2, 2008, citing alleged violations of the Permit including the following:

    a. Temporary impacts to 20 linear feet of perennial stream, resulting from the installation of a sanitary sewer utility line in Powell's Creek, a discharge of a pollutant, and 31 linear feet of intermittent stream channel associated with the discharge of rip rap in the stream channel, also a pollutant.
    b. Permanent impacts to 294 linear feet of intermittent stream channel associated with grading and fill and relocation of the stream channel on-

site for the use as drainage for the stormwater retention pond. A review of DEQ files revealed that a planned change request was not received, and that these impacts were not authorized.

c. Heavy machinery was used to complete work within Powell's Creek.

4. Powell's Creek and the intermittent stream channel are surface waters of the Commonwealth.

5. Upon review of DEQ files, no request for approval of the use of heavy machinery in a stream channel was received. The impacts to Powell's Creek and the intermittent stream channel were not authorized by the Permit.

6. A meeting was held with NVP's consultant, Burgess & Niple, Inc., and DEQ on June 24, 2008 to discuss the NOV and compliance issues.

7. At the meeting on June 24, 2008, two separate preliminary stream channel relocation plans of the relocated stream channel were presented.

8. A proposed final relocation plan was submitted to DEQ for review on November 10, 2008 and Burgess & Niple, Inc., on behalf of NVP, has been in coordination with DEQ staff to finalize a sufficient relocation plan. A second proposed final relocation design was submitted by Burgess & Niple, Inc. on February 19, 2009 and was approved on June 26, 2009.

9. NVP, Inc. conducted unauthorized fill activity which caused the discharge of a pollutant to surface waters of the Commonwealth resulting in temporary impacts to 51 feet of surface waters, permanent impact to 294 feet of surface waters, and the use of heavy machinery in those same waters in violation of the Permit, Va. Code §62.1-44.15:20 and 9 VAC 25-210-50.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of its authority granted in Va. Code §62.1-44.15 (8a) and (8d), orders NVP, Inc., and NVP, Inc. voluntarily agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders NVP, Inc., and NVP, Inc. voluntarily agrees to pay a civil charge of $25,000 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
Department of Environmental Quality
Post Office Box 1104
Richmond, VA 23218

Either on a transmittal letter or as a notation on the check, NVP, Inc. shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for NVP, Inc.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of NVP, Inc. for good cause shown by NVP, Inc. or on its own motion after notice and opportunity to be heard.

2. This Order addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or 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 as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this 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, NVP, Inc. admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. NVP, Inc. 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. NVP, Inc. declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to 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 NVP, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive or bar 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. NVP, Inc. 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. NVP, Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NVP, Inc. 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 this Order. Such notice shall set forth:

a. the reasons for the delay or noncompliance;

b. the projected duration of 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 listed above, which NVP, Inc. intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of 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 NVP, Inc. Not withstanding the foregoing, NVP, Inc. agrees to be bound by any compliance date that proceeds the effective date of this Order.

11. This Order shall continue in effect until:

a. NVP, Inc. 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 NVP, Inc..

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NVP, Inc. 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, NVP, Inc. voluntarily agrees to the issuance of this Order.

13. The undersigned representative of NVP, Inc. 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 NVP, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NVP, Inc..

And it is so ORDERED this_____ day of _____, 2009.

_____
Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

NVP, Inc. voluntarily agrees to the issuance of this Order.

By: _____

Date: 8/19/2009

Commonwealth of Virginia
City/County of Prince William Co.

The foregoing document was signed and acknowledged before me this 19 day of August, 2009, by Harry S. Ghadban (name) who is President (title) of/for the NVP, Inc.

Notary Public

Sandra J. Wilt
Registration No. 305846

My commission expires: August 31, 2009

Notary seal

OFFICIAL SEAL
SANDRA J. WILT
NOTARY PUBLIC-VIRGINIA
REGISTRATION # 305846
PRINCE WILLIAM COUNTY
My Commission Exp. August 31, 2009

APPENDIX A

The NVP, Inc. shall:

1. No later than September 1, 2009, NVP, Inc. shall commence the stream relocation work in accordance with the DEQ approved stream relocation plan detailing the relocation of 294 linear feet of impacted stream channel.

2. Stream relocation monitoring shall be conducted, and stream relocation monitoring reports submitted to DEQ for review. The first stream relocation monitoring event shall be conducted within 30 days of completion of the stream channel relocation and every 90 days thereafter. The stream relocation monitoring reports shall be submitted to DEQ within 30 days of each monitoring event. The monitoring and submittals of monitoring reports are required under the parameters for successful relocation, as set forth in the Item 1.

Documents to be submitted to the Department, other than the civil charge payment described in Section D of this Order, shall be sent to:

VWP Manager
Department of Environmental Quality
13901 Crown Court
Woodbridge, VA 22193