COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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www.deq.virginia.gov

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION

CONSENT SPECIAL ORDER

ISSUED TO

LIBERTY UNIVERSITY, INC.
FOR
LIBERTY EAST III
VWP PERMIT No. WP1-06-2848

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §10.1-1185, and §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Liberty University, Inc. for the purpose of resolving certain alleged violations of environmental 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. "BRRO" means the Blue Ridge Regional Office of the DEQ, located in Lynchburg, Virginia
2. "Board" means the State Water Control Board, a permanent citizen 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.
5. "Order" means this document, also known as a Consent Special Order.
6. "Permit" means VWP General Permit Registration Number WP1-06-2848, which was issued on January 10, 2007.
7. "Permittee" or "University" means Liberty University, Inc., an educational institution licensed to do business in the Commonwealth.
8. "Project" means Liberty East III.
9. "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.
10. "USACE" means the United States Army Corps of Engineers.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VWPP" or "VWP" means the Virginia Water Protection Permit Program, which addresses protection of streams and wetlands in the Commonwealth, and is authorized under Va. Code § 62.1-44.15:20.10.
13. "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. Liberty University, Inc., a person pursuant to 9 VAC 25-210-10, proposed the construction of "Liberty East III". The Joint Permit Application (JPA) for the Project received on December 4, 2006, described the relocation of 281 linear feet of an intermittent stream on the Project site to an underground storm sewer. The JPA referenced a field study conducted

on the construction site by Department staff in which an area was noted that contained "plants of interest". This was specifically listed on the JPA as a non-impact area. The Department authorized the University to proceed with construction of the Project under VWP General Permit No.WP1 on January 10, 2007, through the issuance of registration number WP1-06-2848. The authorization allowed permanent or temporary impacts to 281 linear feet of intermittent stream bed, based on information supplied by the University in its application for registration under the Permit.

2. A site inspection conducted on March 28, 2007 by SCRO staff, and a subsequent records review, revealed the following:
   - the non-impact area containing "plants of interest" had been filled (0.01 acres);
   - an additional 65 linear feet of the intermittent stream bed had been impacted by channelization and installation of rip-rap during construction activities.

3. A follow-up site inspection was conducted by Department staff in conjunction with a representative from the U.S. Army Corps of Engineers (USACE) on April 5, 2007. During the course of the inspection, the USACE representative made the observation that a headwaters Wetland area may have previously existed within the limits of project construction. This area was previously identified as a non-impact area with "plants of interest".

4. State Water Control Law, at § 62.1-44.15:20, states "A. Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to:

   1. Excavate in a wetland;

   2. On or after October 1, 2001, conduct the following in a wetland:

   a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;

b. Filling or dumping;

c. Permanent flooding or impounding; or

d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or

3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board;

5. 9 VAC 25-210-50, states "Except in compliance with a VWP permit, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical, or biological properties of surface waters, excavate in wetlands, or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions".

6. The Department issued Notice of Violation No. W2007-06-L-0002 on June 6, 2007, to the University for the unauthorized stream and Wetland impacts.

7. Department staff met with University officials at the BRRO - Lynchburg on June 14, 2007; and at the University with their environmental counsel and consultants on January 29, 2008 to resolve these issues.

8. The University submitted a mitigation plan with the second VWP General Permit application for the Project, which covered the same area, but included all impact areas and outlined required compensatory preservation mitigation required to offset the impacts. The mitigation and stream buffer enhancements were completed in 2008.

9. By impacting an additional 65 linear feet of intermittent stream and impacting 0.01 acres of palustrine forested Wetland beyond the authorization of a VWP Permit, the University altered the physical and biological integrity of State Waters in violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code § 62.1-44.15(8a) and (8d), the Board orders the University, and the University consents to pay a civil charge of **$8,850** within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Liberty University, Inc.'s Federal Identification Number and shall identify that payment is being made pursuant to this Order. Payment shall be made by check or money order payable to the "Treasurer of Virginia", delivered to:

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

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the University, for good cause shown by the University, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically cited herein. 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 as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate

enforcement actions by other federal, state, or local regulatory authorities, whether or not arising out of the same or similar facts.

3. For purposes of this Order and subsequent actions with respect to this Order only, the University admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

4. The University 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 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.

5. Failure by the University to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. 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. Nothing herein shall affect appropriate enforcement action by any other federal, state, or local regulatory authority.

6. 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. Nothing herein shall waive the initiation of appropriate enforcement action or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.

7. The University 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 other such occurrence. The University shall demonstrate that such circumstances resulting in noncompliance were beyond the control of the University and not due to a lack of good faith or diligence. The University 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 notify the Regional Director verbally within 24 hours and in writing within five (5) days of learning of any condition listed above, which the University 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.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns jointly and severally.

9. Any plans, reports, schedules, or specifications attached hereto or submitted by the University and approved by the Department pursuant to this Order are incorporated into this Order. Any noncompliance with such approved documents shall be considered a violation of this Order.

10. This Order shall become effective upon execution by the Director, or his designee, and Liberty University, Inc.

11. This Order shall continue in effect until the Director, his designee, or the Board terminates this Order in his or its sole discretion upon 30 days written notice to the University. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve the University from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

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

And it is so ORDERED this _____day of _____, 2009.

_____

Steven A. Dietrich, P.E.
Regional Director
Blue Ridge Regional Office
Department of Environmental Quality

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Permittee consents to the issuance of this Order.

Liberty University, Inc.

Date: APRIL 22, 2009

By: [signature]

Title: PRESIDENT

State of Virginia

City/County of Lynchburg

The foregoing instrument was acknowledged before me, Kelli C. Tripp, Notary Public, this 22nd day of April, 2009, by Jerry L. Falwell, Jr. who is personally known to me. Jerry L. Falwell, Jr. voluntarily acknowledged this instrument as President of Liberty University, Inc., on behalf of the corporation.

Kelli C. Tripp
Notary Public

343742
Registration No.

My commission expires: 10/31/12

Notary seal: (sharp, legible, photographically reproducible)

KELLI C. TRIPP
NOTARY PUBLIC
REG. #343742
MY COMMISSION EXPIRES 10/31/12
COMMONWEALTH OF VIRGINIA