COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO TASCON GROUP, INC.

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185, 62.1-44.15(8a) and (8d) between the State Water Control Board and Tascon Group, Inc., for the purpose of resolving certain violations of State Water Control 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. "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 §§ 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. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a 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.

6. "Tascon" means Tascon Group, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "NOV" means Notice of Violation.

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

9. "Permit" means Virginia Water Protection Permit number 05-1526, issued to Tascon on June 20, 2006.

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

11. "Harvest Glen" or "Site" means the Harvest Glen residential development, located in the northwest quadrant of the intersection of Lucks Lane and Courthouse Road in Chesterfield County, Virginia.

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

13. "VWP permit" means Virginia Water Protection Permit.

SECTION C: Findings of Fact and Conclusions of Law

1. Tascon is a person pursuant to 9 VAC 25-210-10, which defines a "person" as one or more individuals, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

2. On June 20, 2006, DEQ issued Tascon VWP permit number 05-1526. The Permit authorized impacts to 0.88 acres of forested wetlands and 1.57 acres of open water associated with Harvest Glen. The wetland and open water impact areas were surface waters of the Commonwealth.

3. Part I.J.1 of the Permit required Tascon to purchase 1.76 acres of mitigation bank wetland credits from the James River Mitigation Landbank in Goochland County, Virginia as mitigation for unavoidable impacts to wetlands. The purchase was required to occur prior to initiating impacts to surface waters at the Site.

4. Construction, including clearing, grading and filling, in permitted surface water impact areas of Harvest Glen commenced in September 2006.

5. A file review conducted on September 10, 2008 indicated that Tascon had failed to purchase the mitigation bank credits required by Part I.J.1 of the Permit.

6. Va. Code §62.1-44.15:20 and 9 VAC 25-210-50 state that no person shall fill wetlands or surface waters, or cause significant alteration or degradation of existing wetland acreage or functions, or otherwise alter the physical, chemical or biological properties of surface waters to make them detrimental to animal or aquatic life, unless such activities are conducted in compliance with a VWP permit.

7. NOV number 08-04-PRO-701 was issued to Tascon on January 20, 2009 for failure to comply with the conditions of the Permit.

8. Tascon submitted documentation to DEQ on February 5, 2009, indicating it would purchase the required bank credits from James River Mitigation Landbank no later than June 30, 2009. Tascon indicated that the violation was the result of an administrative oversight. Tascon is in compliance with its other VWP Permits for other, unrelated projects.

9. Tascon's failure to comply with certain conditions of the Permit, as described in Item 5 above, is a violation of Va. Code §62.1-44.15:20(A) and 9 VAC 25-210-90(A), which require such compliance.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d) and §62.1-44.34:20, orders Tascon, and Tascon voluntarily agrees to perform the actions described in Appendix A of this Order. In addition, Tascon voluntarily agrees to pay a civil charge of **$23,790** 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

   Either on a transmittal letter or as a notation on the check, Tascon shall include its Federal Taxpayer Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Tascon, for good cause shown by the Tascon, 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 Notices of Violation issued to Tascon by DEQ on January 20, 2009. 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 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, Tascon admits the jurisdictional allegations, but neither admits nor denies the factual findings and conclusions of law contained herein.

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

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

And it is so ORDERED this ____ day of _____, 2009.

_____
Richard F. Weeks, Regional Director
Department of Environmental Quality

Tascon Group, Inc. voluntarily agrees to the issuance of this Order.

By: _____
Steven P. Settlage
President

Date: April 2, 2009

Commonwealth of Virginia

City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 6th day of April, 2009, by Steven P. Settlage, who is President of Tascon Group, Inc., on behalf of Tascon Group, Inc.

SHIRLEY R LAVIN
NOTARY PUBLIC
REG. #
MY COMMISSION EXPIRES 1/31/2010
COMMONWEALTH OF VIRGINIA

Shirley R. Lavin
Notary Public

My commission expires: 1/31/10 Reg # 145610.

APPENDIX A

1. No later than **June 30, 2009**, Tascon shall submit documentation of the purchase 1.76 acres of wetland credits from the James River Mitigation Landbank in Goochland County, Virginia to DEQ. With advance approval by DEQ, Tascon may purchase the required credits from an alternative mitigation bank in the same or an adjacent hydrologic unit code as the Site, pursuant to Va. Code § 62.1-44.15:23.

2. All requirements of Appendix A of this Order shall be submitted to:

   Allison C. Dunaway
   Enforcement Manager
   VA DEQ – PRO
   4949-A Cox Road
   Glen Allen, VA 23060
   Phone: (804) 527-5086
   Fax: (804) 527-5106
   Email: acdunaway@deq.virginia.gov