



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Northern Virginia Regional Office
13901 Crown Court
Woodbridge, VA 22193-1453
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STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

MENDLESON DEVELOPMENT, L.L.C.

FOR

LINKS AT LAKE ANNA

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 Mendleson Development, L.L.C. regarding Links at Lake Anna, 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. "Order" means this document, also known as a Consent Special Order.

6. "Mendleson" means Mendleson Development, L.L.C., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "ECS" means Engineering Consulting Services, Limited.
8. "WEG" means Williamsburg Environmental Group, Incorporated.
9. "NVRO" means the Northern Virginia Regional Office of the Department.

SECTION C: Findings of Facts and Conclusions of Law

1. Mendleson Development is a property developer located in Spotsylvania, Virginia and owns a property known as the Links at Lake Anna (a.k.a. Mendleson Property) in Louisa County, Virginia. The currently undeveloped property is planned to be developed into a residential area and golf course.
2. On October 12, 2004, DEQ conducted a site inspection of the Links at Lake Anna. Representatives from Mendleson were present during the inspection. DEQ observed that approximately 1,000 linear feet of Contrary Creek (a perennial tributary to Lake Anna) had been dredged to approximately 90 feet wide and 6 feet deep. The dredged material was side-cast into Contrary Creek and shaped into a berm that extended the length of the dredged area. The stream channel had been diverted from the original stream channel to the area that had been dredged (adjacent to the shoreline). DEQ staff explained that the activity requires authorization from the Virginia Water Protection (VWP) Program and requested that a completed Joint Permit Application (JPA) be submitted.
3. DEQ e-mailed a JPA to Mr. Nehrboss on October 15, 2004 and received the completed JPA on October 25, 2004. The JPA indicated that Phase I of the Contrary Creek dredging project was completed on October 1, 2004, which included the dredging of 1,250 linear feet stream channel and side-casting 17,000 cubic yards of material back into Contrary Creek. Also, the JPA requested authorization to complete Phases 2 and 3 of the Contrary Creek dredging project.
4. On September 7, 2005, DEQ sent NOV No. W2005-09-N-001 to Mendleson Development citing an alleged violation for the unauthorized dredge and fill of surface waters.
5. A meeting was held at DEQ to discuss the case on September 28, 2005, that included Mendleson, Larner Investments (probable buyer of the Links at Lake Anna), and WEG (consultant to Mendleson). Meeting participants were agreeable to a Consent Order.
6. In response to the September 28 meeting and the NOV, WEG sent a letter to DEQ dated October 4, 2005 and e-mailed on October 5, 2005. The letter agreed with DEQ's description of the activities at the Links at Lake Anna, and noted that prior to

the commencement of any activities relevant to the NOVs, Mendleson received concurrence for the proposed work from Dominion Virginia Power. The letter admitted that Mendleson did not seek to obtain a permit from DEQ.

7. At a January 4, 2006 meeting with DEQ, Mendleson Development, WEG, and Lerner Investments, berm stabilization was determined as the ecologically preferable remedial action, as it will have the least amount of additional environmental impact to Contrary Creek and Lake Anna.

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 Mendleson, and Mendleson voluntarily agrees that:

1. Mendleson shall perform the actions described in Appendix A to this Order to remedy the violations described above and achieve compliance with the State Water Control Law and Regulations; and
2. Mendleson shall pay a civil charge of \$35,000 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 10150
Richmond, Virginia 23240

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

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mendleson, for good cause shown by Mendleson, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves those violations specifically identified herein, including the matter addressed in the NOV issued to Mendleson by DEQ on September 7, 2005. 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, Mendleson admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mendleson 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. Mendleson 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 Mendleson 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. Mendleson shall be responsible for failing 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. Mendleson must show that such circumstances resulting in noncompliance were beyond their control and not due to a lack of good faith or diligence on their part. Mendleson shall notify the NVRO 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 Mendleson 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. Any plans, reports, schedules, permits, letters, or specifications attached hereto or submitted by Mendleson 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.
11. This Order shall become effective upon execution by both the Director or his designee and Mendleson. Notwithstanding the foregoing, Mendleson agrees to be bound by any compliance date that proceeds the effective date of this Order.
12. This Order shall continue in effect until the Director or the Board terminates this Order in his or its sole discretion upon 30 days' written notice to Mendleson. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mendleson from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. By its signature below, Mendleson Development, L.L.C. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17th day of MARCH, 2006.



David K. Paylor, Director
Department of Environmental Quality

Mendleson Development, L.L.C. voluntarily agrees to the issuance of this Order.

By: Alan Mendleson III

Date: 3/10/06

Commonwealth of Virginia
City/County of Prince William

The foregoing document was signed and acknowledged before me this 10th day of

MARCH, 2006, by ALAN N. MENDLESON, 3RD who is
(name)

President of/for Mendleson Development, L.L.C.
(title)

Guta Pausane
Notary Public

My commission expires: My Commission Expires July 31, 2008

APPENDIX A
SCHEDULE OF COMPLIANCE

Mendleson Development, L.L.C. shall:

1. Within 60 days of the effective date of this Order, submit to DEQ a berm stabilization plan and schedule. The plan shall include, at minimum, steps to be taken to stabilize the berm, a monitoring plan, a material management plan for upland disposal of any soils removed as part of the stabilization, and a start and completion date for each step. Methods and materials for stabilization shall be in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of stabilization activities. Upon its approval by DEQ, this plan and schedule shall become a part of and enforceable under the terms of this Order.