



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
E&A Call, Inc.
FOR
Manchester Subdivision, Lot 23
Unpermitted Activity**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and E&A Call, Inc., regarding the Manchester Subdivision, Lot 23, property, 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "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.

5. "E&A Call, Inc." means the responsible party: E&A Call, Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. E&A Call, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.
6. "Fill material" means any pollutant that replaces portions of surface water with dry land or that raises the bottom elevation of a surface water for any purpose.
7. "Impacts" means results caused by those activities specified in § 62.1-44.15:20 A of the Code of Virginia.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "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.
10. "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.
11. "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.
12. "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.
13. "Property" or "Parcel" means the tract of land at 502 Manchester Road, in Bumpass, Virginia, currently (as of March 2017) owned by trustees Mark Collins and Gregg Baldwin, previously owned by Aspen Dale Investment Company, Inc. (President according to SCC: Ethan Call), referred to as Lot 23 during initial construction.

14. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, 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 62.1-44.15:23) 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. "USACE" means the United States Army Corps of Engineers.
20. "UT" means unnamed tributary (to a larger, named, body of water).
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "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. Aspen Dale Investment Company, Inc. previously owned the Property until March 2017, when the property ownership was transferred to trustees. E&A Call, Inc. conducted real estate development on the Property.
2. On April 5, 2012, E&A Call, Inc. was issued a Consent Order to resolve unauthorized VWP impacts at this subdivision. This order required the compensatory mitigation purchase of 0.28 wetland credits and 57 stream credits; the removal and restoration of a certain taken impact; and off-site preservation and recordation of 2,970 linear feet of stream channel with 25.5 acres of riparian buffer. No civil penalty was assessed, due to a determination of E&A Call, Inc.'s inability to pay.

3. On June 7, 2018, DEQ received a complaint via USACE from the owners of the Property regarding an eroding driveway culvert.
4. On June 22, 2018, Department staff inspected the Property for compliance with the requirements of the State Water Control Law and the Regulations. The DEQ inspector observed that a discharge of fill material occurred from the construction of a driveway and culvert in surface waters, which was later determined to be an unauthorized impact of approximately 35 linear feet (lf) of stream. The driveway culvert consisted of earthen fill and a pipe (a pollutant); initial analysis showed no outlet protection, outlet erosion due to scour, no countersinking, and streamflow overtopping the driveway.
5. In documented email communications from February of 2011 leading to the execution of a 2012 Consent Order for E&A Call, Inc., additional stream crossings at Lot 23 were specifically identified as unpermitted, and that future stream/wetland impacts at the Property would require an authorization by VWP/SPGP permits.
6. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 states that no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters without a Permit issued by the Director. E&A Call, Inc. does not have a Permit for the above activities
7. On August 28, 2018, DEQ issued NOV No. 1808-000857 to E&A Call, Inc. for the observations made in paragraph C(4) in violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
8. On August 3, 2018, DEQ received an NOV response email from E&A Call, Inc.'s legal representative. Impacts taken were described to have occurred as a result of E&A Call, Inc.'s 2016 repair work for an eroding driveway culvert, and a misunderstanding of permitting thresholds.
9. According to professional engineering analysis of the culvert submitted to DEQ, approximately eight (8) additional feet of stream impact (in addition to the impacted 35 lf) must be taken to effectively remediate and reconstruct the culvert to the VWP permitted standards.
10. Based on the results of June 22, 2018, inspection, the August 3, 2018, response from E&A Call, Inc., and documented email conversations from 2011, the Board concludes that E&A Call, Inc. has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 as described in paragraphs C1 – C9 above.
11. In order for E&A Call, Inc. to return to compliance, DEQ staff and representatives of E&A Call, Inc. have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders E&A Call, Inc., and E&A Call, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$10,000** 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, 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

E&A Call, Inc. 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, E&A Call, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of E&A Call, Inc. for good cause shown by E&A Call, Inc., 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 and in NOV No. 1808-000857 dated August 28, 2018. 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 only, E&A Call, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. E&A Call, 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. E&A Call, Inc. 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 E&A Call, 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 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. E&A Call, 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. E&A Call, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. E&A Call, Inc. 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 the parties intend 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 and any 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 E&A Call, Inc. Nevertheless, E&A Call, Inc. 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. The Director or his designee terminates the Order after E&A Call, Inc. has completed all of the requirements of the Order;
 - b. E&A Call, 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
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to E&A Call, Inc.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve E&A Call, Inc. 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 E&A Call, Inc. 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 E&A Call, 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 E&A Call, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of E&A Call, Inc.
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, E&A Call, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 12th day of August, 2019.



Thomas Faha, Regional Director
Department of Environmental Quality

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E&A Call, Inc. voluntarily agrees to the issuance of this Order.

Date: 6-17-19 By: [Signature], PRESIDENT
(Person) (Title)
E&A Call, Inc.

Commonwealth of Virginia
City/County of Hanover

The foregoing document was signed and acknowledged before me this 17th day of
June, 20 19, by Ethan A. Call who is
President of E&A Call, Inc., on behalf of the corporation.

[Signature]
Notary Public

141874
Registration No.

My commission expires: 9-30-20

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. E&A Call, Inc. shall immediately cease impacts to state waters and shall not resume such impacts unless authorization from DEQ is granted in the approval of a Corrective Action Plan (CAP) or via a Permit.
2. Not later than 30 days from the execution of this Order, E&A Call, Inc. shall complete and provide an Erosion and Sediment Control (ESC) plan for the removal and replacement of the culvert and placement of outlet protection stone, including detail drawings, notes, and supporting calculations. This ESC plan should detail methods to ensure “work in-the-dry conditions” are met. Details and plan notes shall identify adherence to construction conditions identified in 9VAC25-690-100(Part I)(B).
3. Not later than 30 days after the execution of this Order, E&A Call, Inc. shall submit an approvable CAP for the resolution of any culvert pipe construction or engineering deficiencies as identified by DEQ. E&A Call, Inc. shall respond to any DEQ notice of deficiency regarding the CAP within 14 calendar days.
4. Upon DEQ approval of the CAP and ESC plans, E&A Call, Inc. shall begin implementation of the CAP and ESC Plans in accordance with the schedules contained therein. Any changes to the approved CAP, ESC Plan or schedules shall not be initiated without advance notice to and approval by DEQ. E&A Call, Inc. shall complete the CAP and ESC plan in accordance with its terms.
 - a. If the performance criteria specified in the CAP are not achieved at the end of the applicable monitoring period, then E&A Call, Inc. shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, E&A Call, Inc. shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ’s letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by E&A Call, Inc. in accordance with the schedule set forth in the alternative CAP.
5. Within 30 days of completion of CAP, E&A Call, Inc. shall complete an as-built survey verification of CAP implementation, to include stream elevations five (5) feet upstream and downstream of the impact area, stream elevations at culvert inverts upstream and downstream, diameter of pipe, material of pipe, and total impacts to surface waters. The as-built survey measurements and other as-built details shall be certified by a VA licensed surveyor, be signed and sealed.
6. Not later than 30 days after the execution of this Order, E&A Call, Inc. shall submit proof of purchase of stream mitigation credits at a 1:1 replacement to loss ratio for all stream impacts required to implement the CAP. Credits shall be from a DEQ-approved mitigation bank or in-lieu fee fund that is authorized and approved by DEQ to sell credits

in the area in which the impacts occurred and has credits available (as released by DEQ) to achieve no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116.

7. Unless otherwise specified in this Order, E&A Call, Inc. shall submit all requirements of Appendix A of this Order to:

**Virginia Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193**