



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2009

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Maria R. Nold
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
S.B. Ballard Construction Company
FOR
Broad Creek Elementary School
Unpermitted**

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 S.B. Ballard Construction Company, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

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

1. "Ballard" means S.B. Ballard Construction Company, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Ballard is a "person" within the meaning of Va. Code § 62.1-44.3.
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, as described in Va. Code § 10.1-1185.
5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

6. "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.
7. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
8. "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.
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. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
10. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
11. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "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. The City of Norfolk ("the City") owns the Broad Creek Elementary School property ("Property") located at 2700 E. Princess Anne Road in Norfolk, Virginia. Ballard is the contractor hired by the City to develop the Property.
2. On May 13, 2015, the City submitted a Joint Permit Application to impact wetlands at the Property.
3. On June 3, 2015, the Army Corps of Engineers ("USACE") notified DEQ that Ballard had commenced construction activities at the Property.
4. On August 12, 2015, DEQ staff conducted an inspection of the Property and file review, and made the following observations:
 - 0.20 acres of non-tidal forested wetlands on the northwestern portion of the Property had been filled;

- 0.10 acres of non-tidal emergent wetlands on the southern portion of the Property had been filled.
 - A review of DEQ files indicated that a permit to fill wetlands at the Property had not been issued.
5. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit the excavation, filling or dumping, or new activities to cause draining or that otherwise significantly alters or degrades existing wetland acreage and function except in compliance with a permit. Ballard does not have a Permit for the above activities.
 6. On September 9, 2015, DEQ issued a NOV for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 at the Property.
 7. On October 19, 2015, Department staff met with representatives of Ballard and the City to discuss the NOV.
 8. Based on the results of the October 19, 2015 meeting, the Board concludes that Ballard has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 of the Regulations, as described in paragraphs C(4) and C(5), above.
 9. In order for Ballard to return to compliance, DEQ staff and representatives of Ballard 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 Ballard, and Ballard agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$13,650.00 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

Ballard 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, Ballard 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 Ballard for good cause shown by Ballard, 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 the NOV dated February 3, 2015. 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, Ballard admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Ballard 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. Ballard 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 Ballard 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. Ballard 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. Ballard shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Ballard 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 Ballard. Nevertheless, Ballard 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 Ballard has completed all of the requirements of the Order;
 - b. Ballard 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 Ballard.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Ballard 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 Ballard 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 Ballard 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 Ballard to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Ballard.

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, Ballard voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 19 day of May, 2016.



Maria R. Nold, Regional Director
Department of Environmental Quality

S.B. Ballard Construction Company voluntarily agrees to the issuance of this Order.

Date: 3/24/2016 By: [Signature], Pres
(Person) (Title)
S.B. Ballard Construction Company

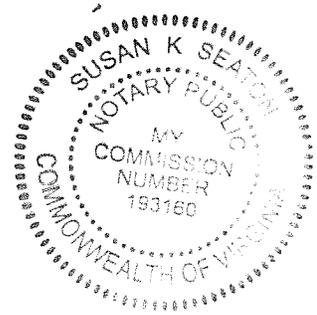
Commonwealth of Virginia
City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 24th day of March,
2016, by Stephen B. Ballard who is
President of S.B. Ballard Construction Company, on behalf of the company.

[Signature]
Notary Public
193160
Registration No.

My commission expires: 2/29/2020

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Ballard shall:

1. Not later than May 1, 2016, Ballard shall submit proof of purchase of 0.5 wetland credits from a DEQ-approved mitigation bank 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 existing wetland acreage and no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116.
2. Unless otherwise specified in this Order, Ballard shall submit all requirements of Appendix A of this Order to:

Regional Director
VA DEQ – Tidewater Regional Office
5636 Southern Blvd
Virginia Beach, Virginia 23462