



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

Colony Construction, Inc.

For

**Site Location 37.5184 -77.7849 in Powhatan County
VAR 10L238: Unpermitted Land Disturbance Activity**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Colony Construction, Inc. ("Colony Construction"), regarding a site located at located at 37.5184 -77.7849 off of Anderson Hwy in Powhatan County, Virginia ("Site" or "Urbine Parcel"), 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. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters."
2. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.

3. "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.
4. "Colony Construction, Inc." or "Colony Construction" is a corporate entity authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Colony Construction is a "person" within the meaning of Va. Code § 62.1-44.3.
5. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Discharge of a Pollutant" means: a) any addition of any pollutant or combination of pollutants to surface waters from any point source; or b) any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 *et seq.*
10. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics, including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "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.
13. "Property" or "Site" means the tract of land located at 37.5184 -77.7849 off of Anderson Hwy in Powhatan County, Virginia, from which discharges of stormwater associated with construction activity occur.
14. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
15. "Registration Statement" means a registration statement for coverage under the 2014 Permit.

16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
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.
18. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways, and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
19. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
20. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VESCP" or "Virginia Erosion and Sediment Control Program" means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement where authorized.
24. "VESCP authority" means an authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 62.1-44.15.2-5102.

25. “Virginia Stormwater Management Act” means Article 2.3 (§ 62.1-44.15:24 *et seq.*) of Chapter 3.1 of Title 62.1 of the Va. Code.
26. “VPDES” means Virginia Pollutant Discharge Elimination System.
27. “VSMP” means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
28. “VSMP authority” means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
29. “VSMP Regulations” means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Colony Construction is the operator of the Site located at 37.5184 -77.7849 off of Anderson Hwy in Powhatan County, Virginia, from which stormwater associated with construction activity was discharged.
2. DEQ is the VSMP authority for the Property. Powhatan County is the VESCP authority for the Site.
3. Land disturbing activities at the Site were first observed during a DEQ compliance inspection on May 14, 2019.
4. The receiving water is an un-named tributary in Dutoy Creek of the James River Basin (Middle). During the 2016 Water Quality Assessment 305(b)/303(d) Integrated Report, the tributary was not assessed for any designated use and is a Category 3A waterbody. The site is located within the study area for the James River and its associated tributaries and is subject to the City of Richmond Bacterial Total Maximum Daily Load (“TMDL”), approved by the U.S. Environmental Protection Agency (“EPA”) on November 4, 2010 and the Virginia State Water Control Board (“SWCB”) on June 29, 2012. It is also located in the Chesapeake Bay Watershed. The Chesapeake Bay TMDL was approved

by EPA on December 29, 2010. The TMDL allocates loads for total nitrogen, total phosphorus, and total suspended solids to protect dissolved oxygen and submerged aquatic value criteria in the Chesapeake Bay and its tidal tributaries. The stream is a Tier 1 water due to its intermittent nature. It is designated as a Public Water Supply in the Virginia Water Quality Standards.

5. On May 14, 2019, Department staff conducted an inspection of the Site. DEQ staff observed land-disturbing activities equaling more than one acre of land disturbance (a 12.04 - acre area was observed on a 12.40 acre parcel subject to disturbance) at the Site. Colony Construction did not obtain approval from the VSMP authority to begin land disturbance and did not received coverage under the 2014 VPDES general permit for discharges of stormwater from construction activities. No other certificate or permit was issued for the discharge of stormwater from construction activities at the Site.

Pursuant to Va. Code § 62.1-44.15:34(A), “A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance.”

Va. Code §§ 62.1-44.15:24 and -44.15:34 define “land-disturbing activity” means, “a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation.”

6. During the May 14, 2019 inspection, a SWPPP was not developed and was not available on-site. On August 14, 2019, DEQ received a stormwater management plan for review, which has not been approved. An ESC plan had not been approved by the VESCP authority.

9 VAC 25-870-54(A) states “A stormwater pollution prevention plan (SWPPP) shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of this section.”

9 VAC 25-870-54(B) states, “an erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

Pursuant to 9 VAC 25-870-54(C), "a stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority."

9 VAC 25-870-54(D) states, “A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

9 VAC 25-870-54(G) states, “The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.”

7. On July 2, 2019, the Department issued NOV No. 2019-05-PRO-203 to Colony Construction citing it for the unpermitted land disturbing activities observed during the May 14, 2019 inspection.
8. Department staff discussed the violations with representatives of Colony Construction on July 15, 2019, at which time Colony Construction reported that land disturbing activities stopped, and that they were in the process of obtaining permit coverage and completing a SWPPP.
9. Based on the results of the May 14, 2019 inspection, and the July 15, 2019 meeting, the Board concludes that Colony Construction violated Va. Code § 62.1-44.15:34 and 9 VAC 25-870-54(A) thru (D), (G), as described above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Colony Construction and Colony Construction agrees to:

1. Pay a civil charge of **\$6,500** 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

If the Department is required to refer collection of moneys due under this Order to the Department of Law, Colony Construction 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 Colony Construction for good cause shown 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. 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, Colony Construction admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Colony Construction 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. Colony Construction 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 Colony Construction 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. Colony Construction 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. Colony Construction shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Colony Construction 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 Colony Construction. Nevertheless, Colony Construction 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 Colony Construction has completed all of the requirements of the Order;
 - b. Colony Construction 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 Colony Construction.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Colony Construction 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 Colony Construction certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Colony Construction to this document. Any

documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of Colony Construction.

13. 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.

14. By its signature below, Colony Construction voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10th day of January, ~~2019~~²⁰²⁰.



(FOR)

James J. Golden, Regional Director
Virginia Department of Environmental Quality
Piedmont Regional Office

------(Remainder of Page Intentionally Blank)-----

