



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Molly Joseph Ward  
Secretary of Natural Resources

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Director

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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
H AND W CONSTRUCTION CO., INC.  
FOR  
WOODSTOCK MEWS  
Unpermitted Facility**

### **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 H AND W Construction Co., Inc. regarding the Woodstock Mews site, for the purpose of resolving certain violations of the 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. "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.
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. "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.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
7. "H AND W" means H AND W Construction Co., Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. H AND W is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "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.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "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.
11. "Registration Statement" means a registration statement for coverage under the State Permit.
12. "Site" means the Woodstock Mews development located at Ox Road and Reservoir Road in Woodstock, Virginia, Shenandoah County, from which discharges of stormwater associated with construction activity occur.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
14. "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.
15. "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.

16. "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.
17. "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.
18. "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.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "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 § 15.2-5102 of the Code of Virginia. 9 VAC 25-870-10.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.
23. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
24. "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.
25. "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.

26. "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of State Permit coverage has been provided where applicable. Va. Code § 62.1-44.15:24.
27. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
28. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. H AND W is the Operator of the Site, located in Shenandoah County, Virginia, from which stormwater associated with construction activity is discharged.
2. DEQ is the VSMP authority for Shenandoah County.
3. Stormwater from construction activities at the Site is discharged to the North Fork of the Shenandoah River, which is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
4. The North Fork of the Shenandoah River is a tributary to the Potomac River which is subject to a Total Maximum Daily Load (TMDL) for nutrients and sediment.
5. The Town of Woodstock signed final plats for the project on May 4, 2006 and approved an Erosion and Sediment Control (ESC) plan for Woodstock Mews. Shenandoah County became the VESCP authority for the Town of Woodstock. The Woodstock Mews ESC plan was not transferred to the County.
6. H AND W submitted an application for coverage under the 2014 Permit, which was received by DEQ on August 25, 2015. However, DEQ did not issue 2014 Permit Coverage for the Site because H AND W did not submit an adequate Stormwater Management Plan, and has not paid the permit application fee.
7. On July 18, 2015 and August 19, 2016, during DEQ Site inspections, DEQ documented that land-disturbing activities greater than one acre had occurred at the Site in areas subject to stormwater runoff without 2014 Permit coverage or VSMP authority approval.

Virginia Code §62.1-44.15:34(A) states in part that: "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.”

8. On July 18, 2015 and August 19, 2016, during DEQ Site inspections, DEQ staff observed that (“ESC”) measures were not installed or maintained in accordance with the ESC plan and VSMP Regulations as follows:
  - a. On July 18, 2015 and August 19, 2016, soil stockpiles were not stabilized or protected with sediment trapping measures.
  - b. On July 18, 2015 and August 19, 2016, operational storm sewer inlets were unprotected or inadequately protected by unmaintained structures.
  - c. On July 18, 2015 and August 19, 2016, sediment trapping measures either had not been installed or had not been properly maintained in areas where upslope land disturbance had occurred. Perimeter controls were not installed.
  - d. On August 19, 2016, areas dormant longer than fourteen days were not stabilized and permanent vegetative cover was not established on denuded areas not otherwise permanently stabilized.

9 VAC 25-870-95(L) states: “Land disturbing activities shall comply with the Virginia Erosion and Sediment Control Law and attendant regulations.”

9 VAC 25-870-54(B) states in part: “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.”

9 VAC 25-840-40(1) of the Erosion and Sediment Control Regulations states: “Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days.”

9 VAC 25-840-40 (2) states: “During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures.

9 VAC 25-840-40 (3) states: “A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.”

9 VAC 25-840-40(4) states: “Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.”

9 VAC 25-840-40(10) states: "All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment."

9 VAC 25-840-60(A) of the Erosion and Sediment Control Regulations states: "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function."

9. On August 19, 2016, during a DEQ Site inspection, DEQ staff documented that the erosion and sediment control plan included in H AND W's SWPPP was not implemented and was not modified to account for changes in Site conditions. The current Virginia Erosion and Sediment Control Program authority for the Site is Shenandoah County and it does not have an approved ESC plan for the Site on file.

9 VAC 25-870-54(B) of the VSMP Regulations 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."

10. On July 18, 2015 and August 19, 2016, during DEQ Site inspections, DEQ staff documented evidence of concrete washout at the Site. Appropriate pollution prevention control measures were not in place.

9 VAC 25-870-56(A) states in part: "A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary."

9 VAC 25-870-56(B) states in part: "The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e): 1. Wastewater from washout of concrete, unless managed by an appropriate control."

11. On August 19, 2016, during a DEQ Site inspection, DEQ staff documented evidence of paint washout at the Site. Appropriate pollution prevention controls were not in place.

9 VAC 25-870-56(A) states in part: "A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary."

9 VAC 25-870-56(B) states in part: "The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e): 2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction material."

12. On July 18, 2015 and August 19, 2016, during DEQ Site inspections, DEQ staff documented that the SWPPP for the Site did not contain a Stormwater Management Plan. DEQ has not approved a stormwater management plan for the Site.

Virginia Code § 62.1-44.15:34(A) states in part: “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.”

9 VAC 25-870-54(C) states: “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.”

13. VRO issued a WL and a NOV for the violations noted above as follows: WL No.2015-07-VRO-005, issued July 31, 2015; and NOV No. 16-08-VRO-10, issued September 23, 2016.
14. H AND W responded to the Warning Letter by submitting an application for 2014 Permit coverage. As of January 18, 2017, H AND W has paid the permit application fee but the application has not been approved because an adequate stormwater management plan has not been submitted.
15. On September 27, 2016, H AND W responded to the NOV by email.
16. On October 12, 2016, Department staff met with representatives of H AND W to discuss the violations, including H AND W’s written response.
17. On November 7, 2016, and December 13, 2016, DEQ staff and representatives of H AND W discussed the technical criteria that apply to the Site. H AND W agreed to submit an appropriate Stormwater Management Plan to DEQ once the technical criteria are determined.
18. On December 13, 2016, H AND W submitted documentation that verifies that an ESC plan has been submitted to Shenandoah County, the VESCP Authority, for approval. On December 13, 2016, Shenandoah County indicated that the ESC plan needed to be revised before the County can complete its review.
19. On October 12, 2016, October 14, 2016 and November 26, 2016, H AND W submitted documentation that verifies that the violations described in paragraph C(8) and C(11) above, have been corrected.
20. Based on the results of the July 18, 2015 and August 19, 2016 inspections, the Board concludes that H AND W violated Va. Code § 62.1-44.15:34(A), 9 VAC 25-870-95(L), 9

VAC 25-870-54(B), 9 VAC 25-870-54(C), 9 VAC 25-870-56(A), 9 VAC 25-870-56(B), 9 VAC 25-840-40(1), 9 VAC 25-840-40(2), 9 VAC 25-840-40(3), 9 VAC 25-840-40(4), 9 VAC 25-840-40(10), and 9 VAC 25-840-60(A) by discharging stormwater from a construction activity as described in paragraphs C(7)-(12) of this Order.

21. In order for H AND W to complete its return to compliance, DEQ staff and H AND W 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, 62.1-44.15:25, and 62.1-44.15:48, the Board orders H AND W, and H AND W agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$18,000 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

H AND W shall include its Federal Employer Identification Number (FEIN) (54 - 0928137) 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 Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, H AND W 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 H AND W for good cause shown by H AND W, 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 Notice of Violation No. 16-08-VRO-010 dated September 23, 2016 and Warning Letter No. 2015-07-VRO-005 dated July 31, 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, H AND W admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. H AND W 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. H AND W 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 H AND W 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. H AND W 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. H AND W shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. H AND W 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

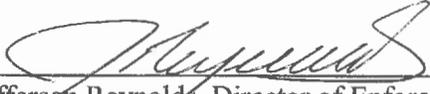
result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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 H AND W. Nevertheless, H AND W 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 H AND W has completed all of the requirements of the Order;
  - b. H AND W 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 H AND W.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve H AND W 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 H AND W 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 H AND W 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 H AND W to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of H AND W.
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, H AND W voluntarily agrees to the issuance of this Order.

And it is ORDERED this ~~22<sup>nd</sup>~~ day of ~~July~~ 11<sup>th</sup>, 2017.

  
Jefferson Reynolds, Director of Enforcement  
Department of Environmental Quality

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H AND W Construction Co., Inc. voluntarily agrees to the issuance of this Order.

Date: 1/19/17 By: [Signature] President  
(Person) (Title)  
H AND W Construction Co., Inc.

Commonwealth of Virginia  
City/County of Frederick

The foregoing document was signed and acknowledged before me this 19 day of January, 2017, by \_\_\_\_\_ who is \_\_\_\_\_ of H AND W Construction Co., Inc., on behalf of the company.

[Signature]  
Notary Public  
301024  
Registration No.

My commission expires: October 31, 2017

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. 2014 Permit Coverage**

- a. Immediately upon execution of this Order, H AND W shall cease all land-disturbing activities at the Site until 2014 Permit coverage has been obtained for discharges of stormwater from construction activities. However, this requirement shall not apply to land-disturbing activities necessary for corrective measures required by this Order or the Virginia Erosion and Sediment Control Law and Regulations.
- b. Within thirty days of the effective date of this Order, H AND W shall submit a complete application to DEQ for coverage under the 2014 Permit for discharge of stormwater from land-disturbing activities at the Site.

### **2. Stormwater Management Plan**

- a. Within thirty days of the effective date of this Order, H AND W shall prepare a stormwater management plan and submit the stormwater management plan to DEQ for its review and approval.
- b. H AND W shall respond to any DEQ comments regarding its stormwater management plan within 14 days from the date of the DEQ comments.
- c. Upon DEQ approval, H AND W shall immediately implement the approved stormwater management plan.

### **3. Erosion and Sediment Control Plan**

- a. Within thirty days of the effective date of this Order, H AND W shall submit to Shenandoah County, for its review and approval, a revised ESC Plan for the Site that addresses current conditions at the Site. The revised ESC Plan shall be consistent with the requirements of the Virginia Erosion and Sediment Control Law and Regulations, including the minimum standards set forth in 9 VAC 25-840-40.
- b. H AND W shall respond to any comments from DEQ and/or Shenandoah County regarding the revised ESC Plan within seven days from the date of the comments.
- c. Upon approval by both DEQ and Shenandoah County, H AND W shall immediately implement the approved revised ESC Plan.

**4. Pollution Prevention**

- a. Prior to resuming concrete washout activities on the Site, H AND W shall install a concrete washout station that directs concrete wash water into a leak-proof container or leak-proof settling basin. The container or basin shall be designed so that no overflows can occur due to inadequate sizing or precipitation. H AND W shall submit documentation verifying the installation of the concrete washout station to DEQ prior to resuming concrete washout activities.

**5. DEQ Contact**

Unless otherwise specified in this Order, H AND W shall submit all requirements of Appendix A of this Order to:

Kristen Sadtler  
Stormwater Enforcement Manager  
VA DEQ- Central Office  
629 East Main Street  
Richmond, Virginia 23219  
(804) 698-4149  
Kristen.Sadtler@deq.virginia.gov