



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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Director

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
KEY WESTERN, LLC
FOR
PROPERTY LOCATED AT LATITUDE 36° 54' 02"N and LONGITUDE 82°
03' 42"W
Unpermitted**

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 Key Western LLC, regarding the unpermitted property located north off of Overlook Drive at approximate latitude 36° 54' 02"N and longitude 82° 03' 42"W 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. "Key Western" means Key Western, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Key Western is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "Site" means the property located north off of Overlook Drive at approximate latitude 36° 54' 02"N and longitude 82° 03' 42"W in Russell County, VA, from which discharges of stormwater associated with construction activity occur.
9. "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.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "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.
12. "Registration Statement" means a registration statement for coverage under the State Permit.
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 VAC2 5-870-10.
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. "SWRO" means the Southwest Regional office of DEQ, located in Abingdon, Virginia.
19. "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.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "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.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
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 to 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 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. Key Western is the operator of the Site located north off of Overlook Drive at approximate latitude 36° 54' 02"N and longitude 82° 03' 42"W, located in Russell County, Virginia, which discharges stormwater associated with construction activity.
2. DEQ is the VSMP authority for Russell County.
3. Russell County is the VESCP authority and the Clinch Valley Soil and Water Conservation District is the VESCP plan-approving authority for Russell County.
4. Stormwater from construction activities at the Site is discharged to Little Cedar Creek, which is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
5. On December 19, 2016, DEQ staff conducted a construction stormwater inspection of the Site. During the inspection, DEQ staff observed the following:
 - a. DEQ staff 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.

Va. 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."
 - b. DEQ staff observed that erosion and sediment control measures were not installed or maintained in accordance with VSMP Regulations as follows:
 - i. Sediment trapping measures and perimeter controls were not installed prior to upslope land disturbance.
 - ii. Silt fence was not properly installed or maintained.
 - iii. Denuded areas dormant longer than fourteen days had not been temporarily or permanently stabilized.

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(4) of the Erosion and Sediment Control Regulations 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 25-840-60(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 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.”

- c. DEQ staff observed that there was no approved erosion and sediment control plan for the land-disturbing activities at the Site.

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.”

- d. DEQ staff observed that there was no approved stormwater management plan for the land-disturbing activities at the Site.

Va. 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.”

6. SWRO issued a Notice of Violation for the violations noted above in C(5)(a)-(d) as follows: NOV No. 001-0117-SC, issued January 9, 2017.
7. On January 10, 2017, Department staff discussed the violations in the NOV with Key Western via phone.
8. Based on the results of the December 19, 2016 inspection, the Board concludes that Key Western violated Va. Code § 62.1-44.15:34(A), 9 VAC 25-870-54(B), 9 VAC 25-870-54(C), 9 VAC 25-840-40(1), 9 VAC 25-840-40(4), and 9 VAC 25-840-60(A) by discharging stormwater from a construction activity as described in paragraphs C(5)(a)-(d) of this Order.
9. Key Western submitted an application for coverage under the 2014 Permit, which was received by DEQ on January 17, 2017.
10. On January 17, 2017, a stormwater management plan was submitted for the Key Western Site. DEQ issued comments to Key Western on February 9, 2017 in response to the stormwater management plan. As of May 25, 2017, DEQ has not received plan resubmittals from Key Western.
11. On February 27, 2017, DEQ staff met with Key Western representatives to discuss the NOV and site conditions.
12. DEQ visited the Site on May 1, 2017 to check on the progress at the Site. As of May 1, 2017, vegetation had been established at the site, the silt fence was properly installed and erosion and sediment controls had been installed, correcting the violations described in paragraph C(5)(b).
13. On May 3, 2017, DEQ staff met with Key Western representatives to discuss the current Site conditions.
14. On September 13, 2017, the Clinch Valley Soil and Water Conservation District approved an erosion and sediment control plan for the Site.
15. As of September 26, 2017, the Site is stabilized. In addition to the approved erosion and sediment control plan, future Site development will require submission of a stormwater management plan.

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 Key Western, LLC, and Key Western, LLC, agrees to pay a civil charge of \$4,140 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payments 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

Key Western shall include its Federal Employer Identification Numbers (FEIN) (~~47~~
~~5679877~~) 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, Key Western 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 Key Western for good cause shown by Key Western, 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. 001-0117-SC dated January 9, 2017. 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, Key Western admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Key Western 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. Key Western 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 Key Western 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. Key Western 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. Key Western shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Key Western 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.

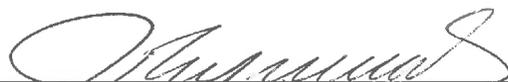
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Key Western. Nevertheless, Key Western agrees to be bound by any compliance date which 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 Key Western has completed all of the requirements of the Order;
 - b. Key Western 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 Key Western.

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

And it is so ORDERED this 3rd day of January, 2018.



Jefferson Reynolds, Director of Enforcement
Department of Environmental Quality

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Key Western LLC voluntarily agrees to the issuance of this Order

Date: 10-4-17 By: DAVID LEONARD GEN. PARTNER
(Person) (Title)
Key Western, LLC

Commonwealth of Virginia

City/County of Russell

The foregoing document was signed and acknowledged before me this 4th day of October, 2017, by David A. Leonard who is General Partner of Key Western, LLC, on behalf of the company.

Betsy H. Brown
Notary Public

168576

Registration No.

My commission expires: 12/31/2019

Notary seal:

