



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

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

**Melvin L. Davis Oil Company, Inc.**  
**FOR**

**Davis C Store Stony Creek**

**Virginia Pollutant Discharge Elimination System Permit Registration No.  
VAR10H212**

### 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 Melvin L. Davis Oil Company, Inc., regarding the Davis C Store Stony Creek, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

### 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. "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.
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.

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4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means the discharge of a pollutant.
6. "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.
7. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
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. "MLD" means Melvin L. Davis Oil Company, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. MLD is a "person" within the meaning of Va. Code § 62.1-44.3.
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. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
13. "Site" means the Davis C Store Stony Creek located at 11042 Blue Star Hwy in Sussex County, Virginia, from which discharges of stormwater associated with construction activity occur.
14. "State 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.

15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
16. "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.
17. "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.
18. "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.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "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.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.
23. "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.
24. "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.

25. "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,
26. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
27. "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. MLD owns the Davis C Store Stony Creek located in Sussex County, Virginia, which discharges stormwater associated with construction activity.
2. DEQ is the VSMP authority for Sussex County, Virginia.
3. MLD applied for and, on December 11, 2015 was granted coverage under the State Permit, VAR10 of the General Permit Regulation. MLD was assigned registration number VAR10H212.
4. The State Permit allows MLD to discharge stormwater associated with construction activities from the Davis C Store Stony Creek to Rowanty Creek in strict compliance with the terms and conditions of the State Permit.
5. Rowanty Creek is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
6. Rowanty Creek is located in the Chowan River and Dismal Swamp River Basin.
7. During DEQ Site inspections on December 3, 2015; February 1, 2016; March 3, 2016; and July 12, 2016; DEQ staff documented that the pollution prevention plan in the SWPPP was not filled out to identify pollutant generating activities at the Site.

State Permit Part II(A)(4) requires that the SWPPP include "A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall;

- a. Identify the potential pollutant-generating activities and the pollutant that is expected to be exposed to stormwater . . . ."

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.”

8. During a DEQ Site inspections on February 1, 2016; March 3, 2016; and July 12, 2016, DEQ staff observed that the SWPPP was not updated to include a record of dates of major grading activities, dates when construction activities temporarily or permanently ceased, dates of initiating stabilization measures, and areas no longer under the control of the operator and dates on which the operator no longer had legal control.

State Permit Part II(B)(4) requires the operator to “update the SWPPP no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items:

a. A record of dates when:

- (1) Major grading activities occur;
- (2) Construction activities temporarily or permanently cease on a portion of the site; and
- (3) Stabilization measures are initiated;

....

d. All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property; . . . .”

9 VAC 25-870-54(G) requires the SWPPP to be “amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP.”

9. During DEQ Site inspections on February 1, 2016, March 3, 2016, and July 12, 2016, DEQ staff documented that the last inspection report contained in the SWPPP was dated December 2, 2015.

State Permit Part II(F)(2) requires inspections to be conducted at a frequency of “at least once every five business days; or at least once every 10 business days and no later than 48 hours following a measurable storm event...”

State Permit Part II(F)(4) states, “The inspection report and any actions taken in accordance with Part II must be retained by the operator as part of the SWPPP for at least three years from the date that general permit coverage expires or is terminated.”

10. During a DEQ Site inspection on July 12, 2016, DEQ staff documented that the SWPPP did not include an updated delegation of authority for the individual currently performing those inspections. The SWPPP was signed by someone who was not a responsible corporate officer or a duly authorized representative.

State Permit Part II(A)(7) requires the SWPPP to include “[t]he individuals or positions with delegated authority, in accordance with Part III K, to sign inspection reports or modify the SWPPP.”

State Permit Part II(A)(8) states, "the SWPPP shall be signed and dated in accordance with Part III K."

State Permit Part III(K)(2) requires the SWPPP to be signed by a person described in Part III(K)(1) [for a corporation, a "responsible corporate officer"] or by a duly authorized representative of that person.

11. During a DEQ Site inspection on July 12, 2016, DEQ staff documented that the MLD failed to maintain the silt fence around the stockpile in effective operating condition in accordance with the erosion and sediment control plan.

State Permit Part II(A)(2)(c) of the State Permit requires the proper implementation of an approved erosion and sediment control plan.

State Permit Part II(E)(1) states, "All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacture specifications..."

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..."

9 VAC 25-840-60(A) 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. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan."

9 VAC 25-840-40(2) states, "During construction of the project, soil stockpiles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site."

12. During a DEQ Site inspection on July 12, 2016, DEQ staff documented that MLD failed to install and maintain the inlet protection in accordance with the erosion and sediment control plan.

State Permit Part II(A)(2)(c) of the State Permit requires the proper implementation of an approved erosion and sediment control plan.

State Permit Part II(E)(1) states, "All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications..."

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..."

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."

13. During DEQ Site inspections on December 3, 2015 and July 12, 2016, DEQ staff documented that there was evidence concrete washout occurred onto the ground, not into a leak-proof settling container or basin.

State Permit Part II(A)(4)(e)(5) requires concrete wash water to be directed into a leak-proof container or leak-proof settling basin.

9 VAC 25-870-56(B)(1) states, "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..."

14. During a DEQ Site inspection on July 12, 2016, DEQ staff documented that the MLD failed to maintain pollution prevention measures to minimize the exposure of trash and construction debris to precipitation and stormwater.

State Permit Part II(A)(4)(e)(6) requires practices and procedures to be implemented that minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials and wastes including construction and domestic wastes and trash.

9 VAC 25-870-56(A) requires pollution prevention measures, at a minimum, "be designed, installed, implemented, and maintained to" minimize exposure of construction wastes and trash to precipitation and stormwater.

15. Based on the results of the December 3, 2015; February 1, 2016; March 3, 2016; and July 12, 2016 inspections, the Board concludes that MLD violated 9 VAC 25-870-54, 9 VAC 25-840-40, 9 VAC 25-840-60, 9 VAC 25-870-56, and the conditions of Parts II(A)(2) II(A)(4), II(A)(7) and (8), II(B)(4), II(E)(1), II(F)(2), II(F)(4), and III(K)(2), of the State Permit as described in paragraphs C(7)-(14) of this Order.
16. PRO issued a Warning Letter and a Notice of Violation for the violations noted above as follows: WL No.2016-03-PRO-301, issued March 7, 2016 and NOV No. 2016-07-PRO-201, issued July 25, 2016.
17. On September 2, 2016, Department staff met with MLD and Barker Construction representatives on-site to discuss the violations and determine if corrective actions had been completed.

18. On September 2, 2016, DEQ staff verified that the erosion and sediment control violations described in paragraphs C(11)-(14) have been corrected. MLD corrected the delegation of authority violation described in paragraph C(10) above. MLD also agreed to begin perform SWPPP inspections as required by the general permit.
19. On September 2, 2016, MLD submitted documentation via email that verifies that MLD has an updated pollution prevention plan, correcting the violation described in paragraph C(7). MLD also submitted a SWPPP activity log, correcting the violation described in paragraph C(8).
20. On November 9, 2016, DEQ staff met with an MLD representative to discuss the Proposed Consent Order.
21. On November 16, 2016, DEQ staff met again with an MLD representative to discuss the Proposed Consent 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 MLD, and MLD agrees to:

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

MLD shall include its Federal Employer Identification Number (FEIN) (54 - 0954632) 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, MLD shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

- I. The Board may modify, rewrite, or amend this Order with the consent of MLD for good cause shown by MLD, 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. 2016-07-PRO-201 dated July 25, 2016 and Warning Letter No.2016-03-PRO-301 dated March 7, 2016. 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, MLD admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. MLD 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. MLD 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 MLD 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. MLD 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. MLD shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. MLD 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 MLD. Nevertheless, MLD 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 MLD has completed all of the requirements of the Order;
  - b. MLD 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 MLD.

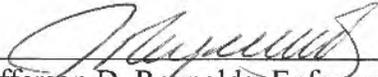
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve MLD from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by MLD 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 MLD 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 MLD to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of MLD.
- 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, MLD voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23 day of February, 2017.

  
\_\_\_\_\_  
Jefferson D. Reynolds, Enforcement Director  
Department of Environmental Quality

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Melvin L. Davis Oil Company, Inc. voluntarily agrees to the issuance of this Order.

Date: DEC 15, 2016 By: J. Rex Davis, PRESIDENT  
(Person) (Title)  
Melvin L. Davis Oil Company, Inc.

Commonwealth of Virginia  
City/County of Sussex

The foregoing document was signed and acknowledged before me this 15 day of  
December, 2016, by J. Rex Davis who is  
President of Melvin L. Davis Oil Company, Inc., on behalf of the  
corporation.

Jeanne B. Mosela  
Notary Public  
7507530  
Registration No.

My commission expires: My Commission Expires October 31, 2019

Notary seal:

