



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
QUALITY BUILT HOMES, INC.
FOR
OAKWOOD ESTATES
VWP GP: WP4-08-0434**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Quality Built Homes, Inc., regarding the Oakwood Estates property, 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. "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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the

contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

5. "E&S" means Erosion and Sediment.
6. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
7. "Impacts" means results caused by those activities specified in § 62.1-44.15:20 A of the Code of Virginia.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
10. "Oakwood" or "Oakwood Estates" refers to the "Property," as defined below.
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. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
13. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
14. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

15. "Property" or "Parcel" means the tract of land at the intersection of Elden Drive and Highway 301, in King George County, Virginia, owned by Quality Built Homes, Inc.
16. "QBH" means Quality Built Homes, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Quality Built Homes, Inc. is a "person" within the meaning of Va. Code [§ 10.1-1300/§ 10.1-1400/§ 62.1-44.3].
17. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
18. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
20. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VSMP authority" means an authority approved by the board after September 13, 2011, to operate a Virginia Stormwater Management Program or the department.

SECTION C: Findings of Fact and Conclusions of Law

1. QBH owns the Property under construction in King George County, Virginia.
2. On July 30, 2015, DEQ reissued VWP General Permit No. WP4-08-0434 to Quality Built Homes, Inc. for the development of Oakwood Estates: a 508 acre residential subdivision and its associated infrastructure (Property).
3. On July 30, 2018, DEQ received a report from King George County VSMP Authority regarding a sediment release due to failed Erosion and Sediment (E&S) controls at the Property.
4. On August 3, 2018, Department staff inspected the Property for compliance with the requirements of the State Water Control Law and the Regulations. The DEQ inspector observed two sections of super-silt fencing had failed during the recent storm, and had

discharged a pollutant in the form of sediment into, a surface water. Approximately 1,400 linear feet (lf) of stream channel was impacted by this discharge.

5. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters. The July 30, 2018 sediment discharge activity was neither exempted or excluded, nor authorized by the Permit.
6. A file review by DEQ revealed that QBH did not submit completed Construction Status Update forms for December 2017, nor June 2018.
7. VWP General Permit WP4-08-0434 and 9VAC25-690.100 Part II.E.2 & Part II.E.3 requires reporting and notification of updates of construction activities to DEQ prior to its commencement, and thereafter twice per year for the duration of permit coverage. These shall be submitted to DEQ by July 10th for the June construction status update, and by January 10th for the December construction status update.
8. On August 20, 2018, DEQ issued NOV No. 1808-000820 to QBH for the violation of Va. Code § 62.1-44.15:20, 9 VAC 25-210-50, and VWP General Permit WP4-08-0434.Part II.E.2 & E.3.
9. On September 13, 2018, Department staff met with representatives of QBH to discuss the violations, including QBH's response dated August 20, 2018, which acknowledged intermittent stream impact as a result of the E&S control failure, and missed filing dates for the VWP construction update forms. Correct construction update forms were attached to this response.
10. DEQ conducted an inspection on November 1, 2018 to examine remediation of the 1,400 LF of unauthorized impact, and to compare current impact maps to on-site visual observations.
11. Based on the results of the August 3, 2018 and November 1, 2018 inspections, the September 13, 2018 meeting, and the documentation submitted by QBH on August 20, 2018, the Board concludes that QBH has violated Permit condition Part II.E.2 and Part II.E.3, and Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50, as described in paragraphs C(1) through C(11), above.
12. QBH has submitted documentation that verifies (confirmed by DEQ staff inspecting the Facility on November 1, 2018) that the violations described above in paragraphs C(1) through C(11) have been addressed through remediation, and the late submission of documentation.
13. In order for QBH to complete its return to compliance, DEQ staff and representatives of QBH have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

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

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$4,001.50** 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

QBH shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, QBH 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 QBH for good cause shown by QBH, 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. 1808-000820 dated August 20, 2018. 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, QBH admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. QBH 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. QBH 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 QBH 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. QBH 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. QBH shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. QBH 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 QBH. Nevertheless, QBH 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 QBH has completed all of the requirements of the Order;
 - b. QBH 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 QBH.

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

And it is so ORDERED this 8th day of April, 2019.



Thomas Faha, Regional Director
Department of Environmental Quality

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Quality Built Homes, Inc. voluntarily agrees to the issuance of this Order.

Date: 1/31/2019 By: [Signature], vice President
(Person) (Title)
Quality Built Homes, Inc.

state of Maryland
~~Commonwealth of Virginia~~
City/County of Calvert

The foregoing document was signed and acknowledged before me this 31st day of January, 2019, by Rodney N. Gertz who is vice President of Quality Built Homes, Inc., on behalf of the company.

[Signature]
Notary Public

190061
Registration No.

My commission expires: July 11, 2022

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

1. Within 10 days of the execution of this Order, QBH shall conduct a review of existing and proposed erosion and sediment (E&S) control measures to identify the cause of the sediment discharge and measures to prevent future discharge of fill into surface waters. A summary of the results of this evaluation shall be provided to DEQ.
2. Within 60 days of the execution of this Order, QBH shall conduct a field evaluation to identify and demarcate all stream channels on-site, and update the VWP General Permit No. WP4-08-0434 Impact Map to depict all stream channels on-site. A Notice of Planned Change for this Impact Map shall be submitted to NRO-VWP to incorporate the updated Impact Map into the Permit.
3. Within 60 days of the execution of this Order, QBH shall clearly flag headwater boundaries of surface water and all surfaces within 50 feet of any permitted activities or construction right-of-way limits as required in Permit Part I.C.10. QBH shall notify NRO in writing when this action is complete.
4. Unless otherwise specified in this Order, QBH shall submit all requirements of Appendix A of this Order to:

**Virginia Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193**