COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO SPOTSYLVANIA COURTHOUSE VILLAGE II, LLC FOR THE SPOTSYLVANIA COURTHOUSE VILLAGE AREA C, PHASE 1 PROJECT

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 Spotsylvania Courthouse Village II, LLC, regarding the Spotsylvania Courthouse Village Area C, Phase 1 Project, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and 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. "CAP" means corrective action plan.

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.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "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.

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. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.

8. "Impacts" means results caused by human-induced activities conducted in surface waters, as specified in § 62.1-44.15:20 A of the Code of Virginia.

9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

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" means, Construction Stormwater General Permit Authorization No. VAR10G495, issued on July 1, 2014, and expires on June 30, 2019.

13. "PFO" means palustrine forested wetlands.

14. "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.

15. "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.

16. "Project Site" or "Property" means the Spotsylvania Courthouse Village Area C, Phase 1 Project owned by Spotsylvania Courthouse Village II LLC, located at the end of Courthouse Commons Drive in Spotsylvania County, Virginia.

17. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*

18. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

19. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.

20. "Spotsylvania Courthouse" or "Permittee" means Spotsylvania Courthouse Village II, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Spotsylvania Courthouse Village II, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.

21. "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 62.1-44.14:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.

22. "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.

23. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.

24. "Timmons" means The Timmons Group, environmental consultant.

25. "Va. Code" means the Code of Virginia (1950), as amended.

26. "VAC" means the Virginia Administrative Code.

27. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Spotsylvania Courthouse owns the Project Site in Spotsylvania County, Virginia.

2. The development of the site is subject to the Permit.

3. On May 18, 2016, DEQ received a complaint reporting sediment discharges, a pollutant, from the Site to an unnamed tributary to the Ni River, originating from several events beginning in December 2015.

4. In response to the complaint, DEQ staff conducted an inspection and file review for the Project Site on May 13, 19, and 20, 2016.

5. The documents combined with the observations made during the inspections conducted on May 13, 19, and 20, 2016, demonstrated unauthorized impacts to approximately 1,800 linear feet of stream channel and approximately 1.6 acres of PFO due to sediment discharge from the Project Site.

6. 9 VAC 25-210-50.A states that "[e]xcept in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands on or after October 1, 2001, conduct the following activities in a wetland: 1) New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2) Filling or dumping; 3) Permanent flooding or impounding; or 4) new activities that cause significant alteration or degradation of existing wetland acreage or functions."

7. Va. Code § 62.1-44.15:20.A states that "[e]xcept in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1) Excavate in a wetland; 2) On or after October 1, 2001, conduct the following in a wetland: a) New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b) Filling or dumping; c) Permanent flooding or impounding; or d) New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3) Alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board."

8. On May 26, 2016, DEQ issued NOV No. W2016-05-N-001, to Spotsylvania Courthouse, for the violations of 9 VAC 25-210-50.A and Va. Code § 62.1-44.15:20.A, as described in paragraph C(5) above.

9. On June 28, 2016, representatives of Spotsylvania Courthouse and Timmons met with DEQ to discuss the NOV. At the meeting, representatives of Spotsylvania Courthouse submitted a detailed survey and revised impact totals of 2,061 linear feet of stream channel and 1.02 acres of PFO. The revised impact amounts were accepted by DEQ during the meeting.

10. On September 23, 2016, Timmons on behalf of Spotsylvania Courthouse, submitted a report to DEQ detailing sediment discharges to an unnamed tributary to the Ni River at the Project Site.

11. On October 5, 2016 Department Staff conducted an inspection of the Project Site. During the inspection DEQ confirmed approximately 414 lf of stream and 0.18 acre of PFO wetlands were adversely affected by additional sediment fills. These impacts were in addition to the areas affected by previous discharges cited in the NOV W2016-05-N-001, dated May 26, 2016.

12. On October 5, 2016, DEQ Staff conducted a review of the Department records and files, and did not locate any authorization for these observed impacts to surface waters.

13. Virginia State Water Control Law § 62.1-44.5, states "[e]xcept 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, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

14. On October 18, 2016, DEQ issued NOV No. 1610-000010, to Spotsylvania Courthouse, for the violations of 9 VAC 25-210-50.A and Va. Code § 62.1-44.5, as described in paragraphs C(10) – C(13) above.

15. Based on the results of the May 13, 19, and 20, 2016, and October 5, 2016, inspections, the June 28, 2016 meeting, and the documentation submitted by representatives of Spotsylvania Courthouse, the Board concludes that Spotsylvania Courthouse has violated 9 VAC 25-210-50.A, Va. Code § 62.1-44.15:20.A, and Va. Code § 62.1-44.5 as described in paragraphs C(5), C(9), and C(11) above.

16. In order for Spotsylvania Courthouse to complete its return to compliance, DEQ staff and representatives of Spotsylvania Courthouse 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 Spotsylvania Courthouse, and Spotsylvania Courthouse agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $74,400.00 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

Spotsylvania Courthouse 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, Spotsylvania Courthouse 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 Spotsylvania Courthouse for good cause shown by Spotsylvania Courthouse, 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 Nos. W2016-05-N-001, dated May 26, 2016 and 1610-000010, dated October 18, 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, Spotsylvania Courthouse admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Spotsylvania Courthouse 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. Spotsylvania Courthouse 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 Spotsylvania Courthouse 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. Spotsylvania Courthouse 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. Spotsylvania Courthouse shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Spotsylvania Courthouse 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 Spotsylvania Courthouse. Nevertheless, Spotsylvania Courthouse 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 Spotsylvania Courthouse has completed all of the requirements of the Order;

   b. Spotsylvania Courthouse 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 Spotsylvania Courthouse.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Spotsylvania Courthouse 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 Spotsylvania Courthouse 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 Spotsylvania Courthouse 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 Spotsylvania Courthouse to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Spotsylvania Courthouse.

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, Spotsylvania Courthouse voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 19th day of July, 2017.

Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

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

Spotsylvania Courthouse Village II, LLC voluntarily agrees to the issuance of this Order.

Date: 3.2.2017 By: _____, Manager.
(Person) (Title)
Spotsylvania Courthouse Village II, LLC

Commonwealth of Virginia

~~City~~/County of Spotsylvania

The foregoing document was signed and acknowledged before me this 2nd day of

March, 2017, by William J. Vakos, Jr. who is

Manager of Spotsylvania Courthouse Village II, LLC, on behalf of the company.

Theresa J. Cornwell
Notary Public

200791
Registration No.

My commission expires: 9-30-18

Notary seal:

THERESA J. CORNWELL
NOTARY PUBLIC
MY COMMISSION NUMBER 200791
COMMONWEALTH OF VIRGINIA

APPENDIX A

SCHEDULE OF COMPLIANCE

A. Corrective Action:

1. No later than May 15, 2017, Spotsylvania Courthouse shall submit to DEQ for proof of the completion of items within the Final Corrective Action Plan (CAP) submitted to DEQ on December 12, 2016. The action items to restore the 2,475 lf of stream channel and 1.20 acres of PFO, set forth in the approved CAP, are an enforceable part of this Order.

2. Notice of commencement shall occur at the time of activities.

3. Any changes to the approved Final CAP shall not be initiated without advance notice to and approval by DEQ. Spotsylvania Courthouse shall complete the CAP in accordance with its terms.

    a. If the performance criteria specified in the Final CAP are not achieved at the end of monitoring period provided in CAP, then Spotsylvania Courthouse shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. Spotsylvania Courthouse shall respond to any notice of deficiency regarding the CAP or monitoring reports within 14 calendar days. If DEQ thereafter so directs, Spotsylvania Courthouse shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by Spotsylvania Courthouse in accordance with the schedule set forth in the alternative CAP.

    b. The Final Report shall evaluate all areas affected by the sediment discharge, as identified in the graphic labeled "WTIM-Additional" received December 12, 2016, for acceptable remediation. If affected areas are determined by DEQ to have functional or areal aquatic resource losses, additional action shall be required.

    c. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then Spotsylvania Courthouse shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or Final Report, or as applicable, any previously submitted alternate CAP. Spotsylvania Courthouse shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Spotsylvania Courthouse shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.

B. Submissions:

Unless otherwise specified in this Order, Spotsylvania Courthouse shall submit all requirements of Appendix A of this Order to:

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