



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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Secretary of Natural Resources

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Tricord Incorporated
FOR
Wilderness Shores
VPDES Permit No. VAR10
Registration No. VAR105007**

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 Tricord Incorporated, regarding Wilderness Shores, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "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.

3. "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.
4. "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.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means the discharge of a pollutant.
8. "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.
9. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
10. "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.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "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.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . .” 9 VAC 25-870-10.

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 (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) 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; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are ‘pollution.’” Va. Code § 62.1-44.3.
16. “Registration Statement” means a registration statement for coverage under the 2014 Permit.
17. “Runoff volume” means the volume of water that runs off the site from a prescribed design storm. 9 VAC 25-870-10.
18. “Site” means the area encompassing Sections 5 and 6 of the Wilderness Shores Subdivision located at Latitude 38.375559, Longitude -77.754802, near the intersection of Route 3 and Route 711, in Orange County, Virginia, from which discharges of stormwater associated with construction activity occur.
19. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
20. “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.
21. “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.
22. “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.
23. “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.

24. "Tricord" means Tricord Incorporated, a corporation authorized to do business in Virginia. Tricord is a "person" within the meaning of Va. Code § 62.1-44.3.
25. "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.
26. "Va. Code" means the Code of Virginia (1950), as amended.
27. "VAC" means the Virginia Administrative Code.
28. "VPDES" means Virginia Pollutant Discharge Elimination System.
29. "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.
30. "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.
31. "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.
32. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
33. "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. Tricord is the construction activity operator for the Site located in Orange County, Virginia, from which stormwater associated with construction activity is discharged.
2. DEQ is the VSMP authority for the Site.
3. Tricord applied for and, on October 10, 2014, was granted coverage under the 2014 Permit, VAR10 of the General Permit Regulation. Tricord was assigned registration number VAR105007.
4. The 2014 Permit allows Tricord to discharge stormwater associated with construction activities from the Site to the Rapidan River, in strict compliance with the terms and conditions of the 2014 Permit.
5. The Rapidan River is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
6. While under coverage of the 2014 Permit, Tricord submitted a modified registration statement on or about April 29, 2019, to DEQ, to apply for coverage under the 2019 General Permit for Discharges of Stormwater from Construction Activities, at the Site. Tricord’s coverage under the 2014 Permit has been administratively continued while DEQ processes Tricord’s registration statement for coverage under the 2019 General Permit.
7. The Department has not issued, for the Site, coverage under any permit or certificate to Tricord other than under the 2014 Permit.
8. On January 25, 2019, March 6, 2019, April 8, 2019, and July 19, 2019, DEQ staff conducted inspections of the Site to review Tricord’s compliance with the Permit and the VSMP Regulations. DEQ issued an inspection report for each of the inspections as follows: January 31, 2019, March 11, 2019, April 11, 2019, and July 22, 2019, respectively.
9. It was observed during DEQ’s inspections of the Site on January 25, 2019 and March 6, 2019, that Tricord was performing SWPPP inspections approximately every five business days on average, with no observed modifications to the inspection schedule following a measureable storm event. Additionally, there was one observed instance from January 8, 2019 to January 22, 2019 when a SWPPP inspection was not completed for ten business days.
10. Part I.B.4.d.(1) of the 2014 Permit presents the requirements for performance of SWPPP inspections for discharges of stormwater from construction activities to *impaired* surface waters, which differ from the typical SWPPP inspections requirements in Part II.F.2 of the 2014 Permit. For sites discharging to impaired surface waters, Part I.B.4.d.(1) of the 2014 Permit states that: “Inspections shall be conducted at a frequency of (i) at least once

every four business days or (ii) at least once every five business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day.”

11. During the four Site inspections performed by DEQ staff from January through July 2019, accumulated sediment was observed in several of the approximately 25 sediment traps that were present at the Site. The quantity/volume of accumulated sediments exceeded one-half of the wet storage capacity of each of the sediment traps in question.

The number of sediment traps observed in need of sediment cleanout that had insufficient capacity were as follows: two sediment traps at the time of the January 2019 inspection; four sediment traps at the time of the March 2019 inspection, three sediment traps at the time of the April 2019 inspection; and two sediment traps at the time of the July 2019 inspection.

When notified by DEQ after each inspection, Tricord was prompt in the performance of sediment trap maintenance/cleanout and submitting documentation of said work to DEQ.

12. 9 VAC 25-840-60.A. states in part: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function...”

Part II.E.1. of the 2014 Permit states: “All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II F identifies a control measure that is not operating effectively, corrective action(s) shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.”

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.”

STD & SPEC 3.13 of the Virginia Erosion and Sediment Control Handbook, as incorporated by reference into the approved Erosion and Sediment Control Plan for the Site, requires, at a minimum, the trap capacity for temporary sediment traps be maintained such that “Sediment should be removed from the basin when the volume of the wet storage is reduced by one-half.”

13. During the DEQ inspection performed on March 6, 2019, DEQ staff observed that the temporary stone construction entrance located adjacent to the box containing the SWPPP, was not installed in accordance with the approved erosion and sediment control plan. Specifically, the size of the stone used to construct the entrance and the length of the entrance were not in accordance with the approved plan.

14. 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.”
15. On March 18, 2019, DEQ issued Warning Letter (WL) No. SW2019-03-NRO-0003 to Tricord based on the results of the Site inspections performed on January 25, 2109, and March 6, 2019.
16. Prior to issuance of the WL, Tricord provided a written summary with photographic support to DEQ to demonstrate the performance of corrective actions to address the deficiencies cited during the inspection.
17. On April 1, 2019, DEQ stated acceptance of Tricord’s response to the WL and acknowledged Tricord’s performance of corrective actions at the Site.
18. On May 6, 2019, DEQ issued Notice of Violation No. SW2019-05-NRO-0001 to Tricord based on the results of the Site inspection performed on April 8, 2019.
19. On May 30, 2019, DEQ received a written response to the NOV.
20. On June 28, 2019, Department staff met with representatives of Tricord to discuss the violations and the written NOV response that was submitted to DEQ.
 - a. Tricord stated that the temporary construction entrances had been paved or had plans to be paved in the very near future. DEQ staff observed during the July 19, 2019 Site inspection that the temporary construction entrances at the Site were no longer present and had been paved.
 - b. As part of Tricord’s May 30, 2019 NOV response, documentation was provided to DEQ showing that Tricord had revised its inspection schedule and has been in compliance with the frequency of self-inspections since April 11, 2019.
 - c. Tricord presented documentation of regular on-going maintenance of sediment traps on the Site, of which actions taken by Tricord in response to each inspection as described in paragraph C(11), above, were a part.
21. Based on the results of the inspections performed on January 25, March 8, April 9, and July 19, 2019, the WL response and NOV response submitted to DEQ, the meeting between DEQ and representatives of Tricord on June 28, 2019, and post-meeting correspondence and documentation submitted to DEQ, the Board concludes that Tricord violated 2014 Permit Part I.B.4.d.(1), 2014 Permit Part II.E.1., 9 VAC 25-840-60.A, and 9 VAC 25-870-54.B as described above in paragraphs C(1) through C(20).
22. As described above in paragraphs C(19) and C(20), through re-inspection of the Site on April 19, 2019, and through information submitted by Tricord, DEQ has received

sufficient documentation to verify that the issues concerning SWPPP inspection frequencies and temporary construction entrances at the Site have been adequately resolved.

23. On February 21, 2020, Tricord submitted written and photographic documentation to DEQ. The documentation demonstrated corrective actions performed by Tricord to address the issues concerning sediment trap maintenance related to sediment trap storage capacity from accumulated sediment.

On March 2, 2020, DEQ staff performed a Site inspection, and during the inspection verified adequate resolution of the sediment trap maintenance issue as per the documentation submitted by Tricord on February 21, 2020.

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 Tricord, and Tricord agrees to pay a civil charge of **\$10,806.25** 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

Tricord 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 Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Tricord 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 Tricord for good cause shown by Tricord, 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. SW2019-05-NRO-0001 dated May 6, 2019 and WL No. SW2019-03-N-0003 dated March 18, 2019. 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, Tricord admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Tricord 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. Tricord 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 Tricord 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. Tricord 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. Tricord shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tricord 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 Tricord. Nevertheless, Tricord 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 Tricord has completed all of the requirements of the Order;
 - b. Tricord 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 Tricord.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tricord 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 Tricord 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 Tricord certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Tricord to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Tricord.
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, Tricord voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of May, 2020.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Tricord Incorporated voluntarily agrees to the issuance of this Order.

Date: 3/31/20 By: *Douglas K. Jones* President
(Person) (Title)
Tricord Incorporated

Commonwealth of Virginia
City/County of Spotsylvania

The foregoing document was signed and acknowledged before me this 31st day of
March, 2020, by Douglas K. Jones who is
President of Tricord Incorporated, on behalf of the corporation.

Duanna Jean Fike
Notary Public

7857974
Registration No.

My commission expires: 03/31/2024

Notary seal:

