



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Craig R. Nicol
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
York Properties, L.L.C.
FOR
Wolf Trap Industrial Park
VPDES Permit No. VAG84
Storm Water Registration No. VAG840215**

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 York Properties, L.L.C., regarding Wolf Trap Industrial Park, 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. "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. "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. "CSCE" means comprehensive site compliance evaluation.

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. "Discharge" means the discharge of a pollutant.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program 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.
8. "DMR" means Discharge Monitoring Report.
9. "Facility" means the Wolf Trap Industrial Park facility located at 2001 Wolf Trap Road in Yorktown, Virginia, from which process wastewater and commingled stormwater is discharged to state waters.
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. "Permit" means VPDES General Permit No. VAG84, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. Wolf Trap applied for registration under the Permit and was issued Registration No. VAG840215 on July 1, 2014.
13. "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 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
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 (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.

15. "Registration statement" means a registration statement for coverage under a storm water general permit.
16. "Regulation" means The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Nonmetallic Mineral Mining," 9 VAC 25-190-10, *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "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.
19. "SWPPP" means Stormwater Pollution Prevention Plan.
20. "TRO" means the DEQ Tidewater Regional Office, located in Virginia Beach, Virginia.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "Wolf Trap" means York Properties, L.L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Wolf Trap is a "person" within the meaning of Va. Code § 62.1-44.3.

SECTION C: Findings of Fact and Conclusions of Law

1. Wolf Trap owns and operates the Facility, an open pit sand and marl mine, located in Yorktown, Virginia.
2. The Permit allows Wolf Trap to discharge process wastewater and commingled stormwater (i.e. stormwater and borrow pit water) associated with mineral mining from

the Facility to an unnamed tributary that leads to Chisman Creek, in strict compliance with the terms and conditions of the Permit.

3. Chisman Creek is located in the Chesapeake Bay/Atlantic/Small Coastal Basins watershed. Chisman Creek is listed in DEQ's 305(d) report as impaired for shellfishing and recreation uses. The causes of impairment are fecal coliform and Enterococcus bacteria.
4. Part I.A.1 of the Permit requires Wolf Trap to conduct benchmark monitoring of commingled storm water and wastewater discharges from the Facility's outfall (001) for the presence of pollutants of concern once during each benchmark monitoring period and record benchmark monitoring results on a DMR.
5. A review of DEQs files indicates that Wolf Trap failed to submit DMRs for the second quarter of 2018 monitoring period.
6. Wolf Trap violated condition Part I.A.1 of the Permit as noted in paragraph C(4) of this Order.
7. Wolf Trap is required to develop and implement a Facility SWPPP in accordance with the requirements outlined in Part II of the Permit.
8. Part II.H.3.d.(2) of the Permit requires that Wolf Trap perform routine Facility inspections at a frequency specified in the SWPPP and at a minimum quarterly.
9. Part II.H.3.d.(3) of the Permit requires that Wolf Trap perform quarterly visual examinations of stormwater discharges associated with industrial activity, including the examination of stormwater samples representative of storm event discharges from the facility and observation of color, odor, clarity, etc.
10. Part II.H.3.d.(4) of the Permit requires that Wolf Trap document and maintain visual examinations onsite with the SWPPP.
11. Part II.H.3.e of the Permit requires that Wolf Trap perform employee training for all personnel responsible for implementation activities identified in the SWPPP and address topics such as spill response, good housekeeping, and material management practices, and periodic dates for training.
12. Part II.H.4 of the Permit requires that Facility personnel who are familiar with the mining activity, best management practices, and the SWPPP conduct site compliance evaluations at appropriate intervals specified in the plan but no less than once per year. Evaluations shall include all areas where industrial materials or activities are exposed to stormwater as identified in Part II.H.2.b.

13. Part II.H.4.c requires that the site compliance evaluation be made available and retained as required in Part III.B (records requirements).
14. During the DEQ Facility inspection on April 16, 2018, DEQ staff documented compliance deficiencies with respect to the SWPPP requirements of the Permit, including the following:
 - a. A SWPPP was not available for review upon request.
 - b. Quarterly visual monitoring reports were not available upon request.
 - c. Records of routine facility inspections were not available upon request.
 - d. Records of employee training were not available upon request.
 - e. Annual CSCEs were not available upon request.
 - f. The failure to sample when a discharge is occurring. DEQ observed a discharge from the sedimentation pond to Outfall 001 during the inspection. Wolf Trap has been reporting "no discharge" on its DMRs because, according to staff, it did not believe that sampling was needed when the pump from the sedimentation pond to Outfall 001 was not running; however, Wolf Trap is required to sample whenever there is a discharge regardless of whether the pump is on.
15. Based on the results of the April 16, 2018, inspection, the Board concludes that Wolf Trap has violated conditions Part II.D, Part II.H.3.d.(2), Part II.H.3.d.(3), Part II.H.3.d.(4), Part II.H.3.e, Part II.H.4, and Part II.H.4.c of the Permit as noted in paragraph C(14) of this Order.
16. DEQ issued Notices of Violation for the violations noted above as follows: NOV No. W2018-06-T-0004, issued June 27, 2018; and NOV No. W2018-08-T-0002, issued August 10, 2018.
17. Wolf Trap responded to the NOVs by telephone on June 29, 2018 and July 11, 2018.
18. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances
19. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
20. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

21. The Department has issued coverage under no permits or certificates to Wolf Trap other than under VPDES Permit No. VAG840215.
22. The unnamed tributary of Chisman Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
23. Based on the results of the April 16, 2018 inspection and a review of DEQ files, the Board concludes that Wolf Trap has violated the Permit, as described in paragraphs C(4) to C(14), above.
24. In order for Wolf Trap to return to compliance, DEQ staff and Wolf Trap 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 Wolf Trap, and Wolf Trap agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$15,540.00 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

Wolf Trap 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, Wolf Trap 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 Wolf Trap for good cause shown by Wolf Trap, 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. W2018-06-T-0004 dated June 27, 2018 and NOV No. W2018-08-T-0002 dated August 10, 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, Wolf Trap admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Wolf Trap 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. Wolf Trap 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 Wolf Trap 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. Wolf Trap 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. Wolf Trap shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Wolf Trap 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 Wolf Trap. Nevertheless, Wolf Trap 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 Wolf Trap has completed all of the requirements of the Order;
 - b. Wolf Trap 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 Wolf Trap.

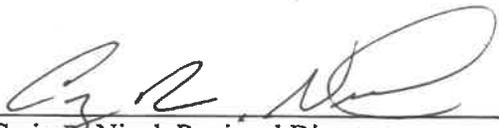
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Wolf Trap from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Wolf Trap 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 Wolf Trap 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 Wolf Trap to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Wolf Trap.

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, Wolf Trap voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21 day of MARCH, 2019.


Craig R. Nicol, Regional Director
Department of Environmental Quality

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York Properties, L.L.C. voluntarily agrees to the issuance of this Order.

Date: 1-15-19 By: [Signature], PRESIDENT
(Person) (Title)
York Properties, L.L.C.

Commonwealth of Virginia
City/County of York

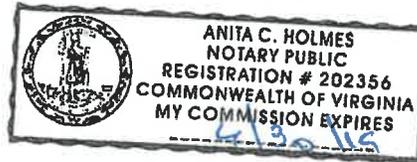
The foregoing document was signed and acknowledged before me this 15 day of January, 2019, by Robert Ben who is owner of York Properties, L.L.C., on behalf of the limited liability company.

[Signature]
Notary Public

202356
Registration No.

My commission expires: 4/30/19

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Wolf Trap shall:

1. Discharge Monitoring Reports

- a. Submit on DMRs the results of the monitoring required by the Permit no later than the 10th day of the month after monitoring takes place (i.e. January-February-March, due April 10th; April-May-June, due July 10th; July-August-September, due October 10th; October-November-December, due January 10th).
- b. Submittals of DMRs shall be monitored for two quarters. If submittals comply with the requirements of the Permit and this Order for two consecutive quarters, then this CAP requirement shall be deemed complete and Wolf Trap shall continue to monitor and submit DMRs in accordance with its Permit.
- c. If submittals fail to comply with the requirements of the Permit and this Order, then monitoring of submittals shall be extended for an additional quarter.

2. Stormwater Pollution Prevention Plan

- a. Within 30 days of the effective date of this Order, submit to DEQ for review a Facility SWPPP that complies with all requirements set forth in Part II.D of the Permit.

3. Quarterly Visual Examinations

- a. Within 30 days of the effective date of this Order, submit to DEQ for review a quarterly visual examination form that complies with all requirements set forth in Part II.H.3.d.(3) of the Permit.
- b. Upon approval of the quarterly visual examination form, submit to DEQ for review and approval quarterly visual examination reports for two quarters following form approval.
- c. Submittals of quarterly visual examinations shall be extended for an additional monitoring period (i.e. a third quarter) if compliance deficiencies continue to be identified. Failure of visual examination reports to comply with the Permit may result in further enforcement.

4. Annual Comprehensive Site Compliance Evaluation

- a. By January 10, 2019, submit to DEQ for review the annual CSCE for 2018. The annual CSCE shall comply with requirements set forth in Part II.H.4 of the Permit.

5. Employee Training

- a. As expeditiously as possible but in no event later than January 10, 2019, perform employee training in compliance with requirements set forth in Part II.H.3.e.
- b. Provide to DEQ documentation of employee training that complies with requirements set forth in Part II.H.3.e of the Permit.

6. DEQ Contact

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

Enforcement VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, VA 23462
757-518-2000