



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia
23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218
www.deq.virginia.gov

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

Molly Joseph Ward
Secretary of Natural Resources

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WYTHE COUNTY
FOR
APEX CONTRACT 1 ROUGH GRADING APPALACHIAN EXPO
CENTER
Virginia Pollutant Discharge Elimination System Permit No. VAR10I511**

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 Wythe County, regarding the APEX Contract 1 Rough Grading Appalachian EXPO Center, for the purpose of resolving certain violations of the 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. "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.

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. "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.
4. "County" or "Wythe" means Wythe County, a political subdivision of the Commonwealth of Virginia. Wythe County is a "person" within the meaning of Va. Code § 62.1-44.3.
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. "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. "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "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.
11. "Site" means the APEX Contract 1 Rough Grading Appalachian EXPO Center, located in Wythe County, Virginia, from which discharges of stormwater associated with construction activity occur.
12. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
13. "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.
14. "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.

15. "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.
16. "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.
17. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
18. "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.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.
22. "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.
23. "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.
24. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
25. "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. Wythe County owns the APEX Contract 1 Rough Grading Appalachian EXPO Center located in Wythe County, Virginia, which discharges stormwater associated with construction activity.
2. DEQ is the VSMP authority for Wythe County.
3. On November 10, 2016, DEQ granted coverage to the County under the 2014 Permit. DEQ assigned the County registration number VAR10I511.
4. The 2014 Permit allows the County to discharge stormwater associated with construction activities from the Site to surface waters within the Commonwealth, in strict compliance with the terms and conditions of the 2014 Permit.
5. The New River is a surface water located partially within the Commonwealth and is a "state water" under the State Water Control Law.
6. During a DEQ Site inspection on February 28, 2017, DEQ staff observed that the inspection reports included in the SWPPP were not representative of the Site as a whole. None of the inspection reports reviewed during the inspection mentioned the absence of basins/traps 3-6 that were included in the erosion and sediment control plan. Additionally, notes in the inspection reports indicated all silt fence was repaired while DEQ staff observed that the same section of silt fence in disrepair was unchanged from the January 4, 2017 inspection.

2014 Permit Part II(F)(3)(a)(4) states in part: "As part of the inspection, the qualified personnel shall: Inspect the following for installation in accordance with the approved erosion and sediment control plan, identification of any maintenance needs, and evaluation of effectiveness in minimizing sediment discharge, including whether the control has been inappropriately or incorrectly used:

- (a) All perimeter erosion and sediment controls, such as silt fence;...
- (e) Sediment basins and traps, sediment barriers, and other measures installed to control sediment discharge from stormwater;"

2014 Permit Part II(F)(3)(a)(7) states: "Inspect for evidence that the approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications has not been properly implemented."

2014 Permit Part II(F)(4) states in part: "Each inspection report shall include the following items:

- (g) The location(s) where any additional control measure is needed that did not exist at the time of the inspection;"

7. During a DEQ Site inspection on February 28, 2017, DEQ staff observed that corrective actions had not been taken at the Site consistent with the requirements of the permit. Silt fence repairs and the installation of basins and traps were not conducted as the first step in land-disturbing activity and were not made functional before upslope land-disturbing activity. Additionally, rock check dams included in the erosion and sediment control plan were not maintained in effective operating condition. Areas of temporary silt fence throughout the Site were not installed or maintained in effective operating condition in accordance with the erosion and sediment control plan.

2014 Permit Part II(G)(1) states: "The operator shall implement the corrective action(s) identified as a result of an inspection as soon as practicable but no later than seven days after discovery or a longer period as approved by the VSMP authority. If approval of a corrective action by a regulatory authority (e.g., VSMP authority, VESCP authority, or the department) is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained."

2014 Permit Part II(E)(1) states in part:

- (1) All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications...

9 VAC 25-840-40(4) states: "Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place."

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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

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..."

8. During the January 4, 2017 and February 28, 2017 inspections of the Site, it was observed that sequencing of the project had not been implemented in accordance with the approved erosion and sediment control plan. Only two of the six plan approved basins/traps had been installed prior to upslope land disturbance having occurred. The storm flows from the site are not being divided among the multiple controls as designed in the approved plan. The installed controls are receiving runoff from a larger drainage area than what is provided for in the ESC plan.

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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

9 VAC 25-840-40(6) states: “Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin.

- (a) The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre of drainage area and the trap shall only control drainage areas less than three acres.
- (b) Surface runoff from disturbed areas that is comprised of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of drainage area. The outfall system shall, at a minimum, maintain the structural integrity of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in runoff calculations shall correspond to a bare earth condition or those conditions expected to exist while the sediment basin is utilized.”

9. During the January 4, 2017 and February 28, 2017 inspections of the Site, it was observed that stabilization had not been applied within seven days to denuded areas which are not at final grade, but will remain dormant for more than 14 days.

2014 Permit Part II(A)(2)(c)(8) states: “ A properly implemented erosion and sediment control plan, “agreement in lieu of a plan”, or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, adequately ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days.”

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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

9 VAC 25-840-40(1) states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”

10. During the January 4, 2017 and February 28, 2017 inspections of the Site, it was observed that earthen structures onsite had not been stabilized immediately after installation.

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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

9 VAC 25-840-40(5) states: "Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation."

11. During the January 4, 2017 and February 28, 2017 inspections of the Site, it was observed that concentrated runoff was flowing down cut or fill slopes and was not contained in an adequate channel, flume or slope drain.

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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

9 VAC 25-840-40(8) states: "Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure."

12. During the February 28, 2017 inspection of the Site, it was observed that the temporary slope drain located above Basin 1 did not have adequate inlet protection. Inlet protection for the slope drain has not been installed in accordance with the Virginia Erosion and Sediment Control Handbook as required by the approved erosion and sediment control plan.

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."

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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

13. During the February 28, 2017 inspection of the Site, it was observed that the temporary slope drain located above Basin 1 did not have adequate outlet protection. Outlet protection for the slope drain has not been installed in accordance with the Virginia

Erosion and Sediment Control Handbook as required by the approved erosion and sediment control plan.

9 VAC 25-840-40(11) states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

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. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

14. Based on the results of the January 4, 2017 and February 28, 2017 inspections, the Board concludes that Wythe violated 9 VAC 25-840-40(1), 9 VAC 25-840-40(4), 9 VAC 25-840-40(5), 9 VAC 25-840-40(6), 9 VAC 25-840-40(8), 9 VAC 25-840-40(10), 9 VAC 25-840-40(11), 9 VAC 25-840-60(A), 9 VAC 25-870-54(B), and the conditions of the 2014 Permit Parts II(A)(2)(c)(8), II(E), II(F)(3)(a)(4), II(F)(3)(a)(7), II(F)(4), and II(G)(1) by discharging stormwater from a construction activity while concurrently failing to comply with the conditions of the State Permit, as described in paragraphs C(6) - (13) of this Order.
15. On January 23, 2017 DEQ issued Warning Letter No. WL-002-0117-SC for the violations described above that were documented during DEQ Site inspection on January 4, 2017. On March 16, 2017 DEQ issued NOV No. NOV-004-0317-SC for the violations described above that were documented during DEQ Site inspections on January 4, 2017 and February 28, 2017.
16. The County responded to the Warning Letter and Notice of Violation by submitting a plan to address the violations. The corrective action plan proposed by the County was inadequate and did not sufficiently address the cited deficiencies.
17. On April 12, 2017, Department staff met with representatives of the County to discuss the violations, including the County’s written response.
18. DEQ staff visited the Site on April 3, 2017, and observed that the violations as described in paragraph C(10) and (13), above, have been corrected.
19. DEQ staff visited the Site on April 27, 2017, and observed that the violations as described in paragraphs C(6), (9), and (12) have been corrected.
20. In order for the County to return to compliance, DEQ staff and the County 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, 62.1-44.15:25, and 62.1-44.15:48, the Board orders Wythe County, and Wythe County agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$12,285 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

Wythe County shall include its Federal Employer Identification Number (FEIN) (54-6002871) 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, Wythe County 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 the County for good cause shown by the County, 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. NOV-004-0317-SC dated March 16, 2017 and Warning Letter No. WL-002-0117-SC dated January 23, 2017. 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, the County admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. The County consents to venue in the Circuit Court of Wythe County for any civil action taken to enforce the terms of this Order.

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

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

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, the County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 27 day of July, 2017.



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

Wythe County voluntarily agrees to the issuance of this Order.

Date: 5/24/2017 By: Steph O Bear, County Administrator
(Person) (Title)
Wythe County

Commonwealth of Virginia
City/County of Wythe

The foregoing document was signed and acknowledged before me this 24 day of

May, 2017, by Stephen D. Bear who is
County Administrator of Wythe County.

Jennifer Druien
Notary Public

7705512

Registration No.

My commission expires: 11-30-20

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Plan and Schedule of Corrective Action

- a. The County will install all sediment traps and basins in accordance with the approved erosion and sediment control plan or submit a revised erosion and sediment control plan to the VESCP authority and DEQ by June 9, 2017.
- b. The County will ensure that concentrated runoff does not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain by June 9, 2017.

2. DEQ Contact

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

**Kristen Sadtler
Stormwater Enforcement Manager
VA DEQ - Central office
629 East Main Street
Richmond, VA 23219
804-698-4149
Kristen.Sadtler@deq.virginia.gov**