COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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Matthew J. Strickler
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David K. Paylor
Director
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James J. Golden
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO

S.B. Ballard Construction Company
For
Ft. Lee Training Support Facility
Virginia Pollutant Discharge Elimination System
Permit No. VAR10J641

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 S.B. Ballard Construction Company (S.B. Ballard), regarding the Training Support Facility development located at Ft. Lee, Virginia, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

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

1. "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, 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.

8. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 *et seq*.

9. "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.

10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation issued pursuant to 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. "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.

13. "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.

14. "Property" or "Site" means the development site for the Training Support Facility located at Ft. Lee, Virginia from which discharges of stormwater associated with construction activity occurs.

15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

16. "S.B. Ballard Construction Company" or "S.B. Ballard" is a corporation authorized to do business in Virginia, including any affiliates, partners, and subsidiaries. S.B. Ballard is a "person" within the meaning of Va. Code § 62.1-44.3.

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 and 9 VAC 25-210-10.

19. "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.

20. "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.

21. "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.

22. "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.

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

24. "VAC" means the Virginia Administrative Code.

25. "VESCP" or "Virginia Erosion and Sediment Control Program" means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement where authorized. Va. Code § 62.1-44.15:51.

26. "VESCP authority" means an authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created.pursuant to § 62.1-44.15.2-5102. Va. Code § 62.1-44.15:51.

27. "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.

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 Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

32. S.B. Ballard is the operator of the development known as the Training Support Facility located at Ft. Lee, Virginia, from which stormwater associated with construction activity is discharged.

33. DEQ is the VSMP authority for the Property.

34. The receiving water is an un-named tributary of Harrison Branch - James River Basin (Appomattox River Subbasin). During the 2016 305(b)/303(d) Water Quality Assessment, the tributary was not assessed for designated uses and is considered a Category 3A waterbody. The discharge is not addressed in the Appomattox River Basin Bacterial Total Maximum Daily Load (TMDL) approved by the U.S. Environmental Protection Agency (EPA) on August 30, 2004 and by the Virginia State Water Control Board (SWCB) on December 20, 2005. The TMDL requires E. coli reductions in the watershed. The Chesapeake Bay TMDL was approved by EPA on December 29, 2010. The TMDL allocates loads for total nitrogen, total phosphorus, and total suspended solids to protect dissolved oxygen and submerged aquatic vegetation criteria in the Chesapeake Bay and its tidal tributaries. Harrison Branch drains to the Appomattox Tidal Freshwater estuary (APPTF). The site is located on an ephemeral ditch, and is considered a Tier 1 water body.

35. The un-named tributary and subject area of Harrison Branch-James River Basin are surface waters located within the Commonwealth and are "state waters" under the State Water Control Law.

36. On July 21, 2017, DEQ granted coverage to S.B. Ballard under the 2014 Permit, and assigned it registration No. VAR10J641. The 2014 Permit authorizes discharge of stormwater associated with construction activities covering approximately 15.66 acres at the Site to surface waters within the Commonwealth in strict compliance with the terms and conditions of the permit.

37. During a DEQ Site inspection on December 20, 2018, staff observed that the SWPPP inspection reports did not include a description of corrective actions taken and/or required as a result of regular inspections or to maintain permit compliance.

    Permit Part II(F)(4)(h)-(i) states: "Each inspection report shall include the following items: . . . (h) A list of corrective actions required (including any changes to the SWPPP that are necessary) as a result of the inspection or to maintain permit compliance; [and] (i) Documentation of any corrective actions required from a previous inspection that have not been implemented."

38. During the December 20, 2018 inspection, staff observed that a concrete washout basin servicing the Site was not lined. Standing wash water was observed beneath the basin.

    Permit Part II(A)(4)(e)(5) requires: "A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of

stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall: . . . (5) Direct concrete wash water into a leak-proof container or leak-proof settling basin. The container or basin shall be designed so that no overflows can occur due to inadequate sizing or precipitation. Hardened concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wastes. Liquid concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wash waters and shall not be discharged to surface waters."

39. During the December 20, 2018 inspection, staff observed that erosion and sediment, and stormwater control measures were not installed and maintained consistent with good engineering practices, including inadequate: a) clean-out of silt fencing and sediment traps; b) stabilization of slopes, diversions and ditches; c) protection of stormwater inlets and outlets; and d) maintenance of site ingress/egress to minimize off-site sediment transport onto public roads from vehicles.

    9 VAC 25-840-40(1), (3)--(5), (7), (10)-(11), (15) and (17) state in relevant part: "(1) Permanent or temporary soil stabilization shall be applied to denuded areas within sevendays 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. (3) A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion. (4) 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. (5) Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation. . . . (7) Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected. . . . (10) 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. (11) 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. . . . (15) The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed. . . . (17) Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported into a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities."

9 VAC 25-840-60(A) states: "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan."

Permit Part II(A)(2)(c)(8) states: "A properly implemented erosion and sediment control plan . . . ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have been 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."

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 . . . to maintain the continued effectiveness of the control measures."

40. During the December 20, 2018 inspection, staff observed that S.B. Ballard failed to install erosion and sediment, and stormwater control measures in accordance with or in sequence with approved plans, resulting in unstable site conditions. Measures that were not installed include installation of protection for storm sewer inlets and diversion outlets. Installation of protection for storm sewer inlets and diversion outlets was completed by S.B. Ballard in response to DEQ's request for corrective action.

    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."

    9 VAC 25-870-54(C) states in part: "A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities."

41. On January 28, 2019, the Department issued NOV No. 2018-12-PRO-203 to S.B. Ballard citing the violations observed during the December 20, 2018 site inspection.

42. Department staff met with S.B. Ballard on the Site on March 8, 2019 and determined that S.B. Ballard completed all required corrective action.

43. Based on the results of the December 20, 2018 Site inspection, the Board concludes that S.B. Ballard violated Va. Code § 62.1-44.15:34(A); Va. Code § 62.1-44.15.55; 9 VAC 25-840-40(1), (3)-(5), (7), (10)-(11), (15) and (17); 9 VAC 25-840-54(B) and (C); 9 VAC 25-840-60(A); and the 2014 Permit requirements as described above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders S.B. Ballard and S.B. Ballard agrees to pay a civil charge of **$23,400** 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

S.B. Ballard 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 is required to refer collection of moneys due under this Order to the Department of Law, S.B. Ballard 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 S.B. Ballard for good cause shown by S.B. Ballard, 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. 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, S.B. Ballard admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. S.B. Ballard 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. S.B. Ballard declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and 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 S.B. Ballard 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. S.B. Ballard 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 his control and not due to a lack of good faith or diligence on his part. S.B. Ballard shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on his part. S.B. Ballard 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 S.B. Ballard. Nevertheless, S.B. Ballard 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 S.B. Ballard has completed all of the requirements of the Order;

b. S.B. Ballard petitions the Director or his designee to terminate the Order after he 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 S.B. Ballard.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve S.B. Ballard from his 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 S.B. Ballard 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. Any documents to be submitted pursuant to this Order shall be submitted by S.B. Ballard or an authorized representative of S.B. Ballard

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 his signature below, S.B. Ballard voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2019.

_____
James J. Golden, Regional Director
Virginia Department of Environmental Quality
Piedmont Regional Office

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S.B. Ballard Construction Company voluntarily agrees to the issuance of this Order.

Date: 7-24-19 By: _____
Stephen B. Ballard

Commonwealth of Virginia

City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 24th day of July, 2019, by Stephen B. Ballard, who is an authorized signing official for S.B. Ballard Construction Company.

_____
Notary Public

191125
Registration No.

My commission expires: 1/31/2020

Notary seal:

ANN E. MASON
NOTARY PUBLIC
REG # 191125
MY COMMISSION EXPIRES
1/31/2020
COMMONWEALTH OF VIRGINIA