



# **COMMONWEALTH of VIRGINIA**

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

(804) 698-4000  
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### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO EAGLE ON 3, LLC FOR Virginia Pollutant Discharge Elimination System Permit VAR10 VAR10I283**

#### **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 Eagle on 3, LLC regarding a construction site in Chatham, VA for the purpose of resolving certain violations of the State Water Control Law and the applicable permits 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. "2019 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, which is effective July 1, 2019 and which expires on June 30, 2024.
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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
5. "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.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Discharge" means the discharge of a pollutant.
9. "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.
10. "Eagle on 3" means Eagle on 3, LLC a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Eagle on 3 is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "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.
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. "Registration Statement" means a registration statement for coverage under the State Permit.
15. "Site" means the construction activity located at latitude 36.7298 and longitude -79.5416 on Franklin Turnpike in Chatham, Virginia, from which discharges of stormwater

associated with construction activity occur. Eagle on 3 received permit coverage for the site under the General Permit for Discharges of Stormwater from Construction Activities and was assigned registration number VAR10I283.

16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
17. "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.
18. "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.
19. "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.
20. "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.
21. "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.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.
25. "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.

26. "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.
27. "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**

1. Eagle on 3 is the permitted operator for the Site, which discharges stormwater associated with construction activity.
2. DEQ is the VSMP authority for the Site.
3. Eagle on 3 applied for and, on December 5, 2016, was granted coverage under the 2014 Permit. The site was assigned registration number VAR10I283. Eagle on 3's permit coverage under the 2014 permit was administratively continued until coverage under the 2019 Permit was granted on November 25, 2019.
4. On September 24, 2019, Eagle on 3 submitted a stormwater management plan modification to DEQ and DEQ approved the plan modification on October 10, 2019.
5. The 2014 Permit allowed and the 2019 Permit allows Eagle on 3 to discharge stormwater associated with construction activities from the Site to Morris Branch and Strawberry Creek UT in strict compliance with the terms and conditions of the 2014 and 2019 Permits.
6. Morris Branch and Strawberry Creek UT are surface waters located wholly within the Commonwealth and are "state waters" under the State Water Control Law.
7. 2014 Permit Part II.C states: "Upon commencement of land disturbance, the operator shall post conspicuously a copy of the notice of coverage letter near the main entrance of the construction activity..."
8. 2014 Permit Part II.A.1 states in part: "Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 1. General information. e. A legible site plan..."

9. 2014 Permit Part II.A.4 states: "The SWPPP shall contain the following items: "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..."
10. 2014 Permit Part II.A.6 states in part: "Stormwater pollution prevention plan contents. The SWPPP shall include the following items: 6. Qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit."
11. 2014 Permit Part II.A.7 states: "The SWPPP shall contain the following items: 7. Delegation of authority. The individuals or positions with delegated authority, in accordance with Part III.K, to sign inspection reports or modify the SWPPP."
12. 2014 Permit Part II.A.8 states: "The SWPPP shall be signed and dated in accordance with Part III.K."
13. 2014 Permit Part II.B.4 states in part: "The operator shall update the SWPPP no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items: a. A record of dates when: (1) Major grading activities occur; (2) Construction activities temporarily or permanently cease on a portion of the site; and (3) Stabilization measures are initiated."
14. 2014 Permit Part II.E.1 states in part: "All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications."
15. 2014 Permit Part II.F.1 states: "Inspections required by this general permit shall be conducted by the qualified personnel identified by the operator in the SWPPP. The operator is responsible for insuring that the qualified personnel conduct the inspection."
16. 2014 Permit Part II.F.2 states: "Inspection schedule. a. Inspections shall be conducted at a frequency of: (1) At least once every five business days; or (2) At least once every 10 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 no later than the next business day."
17. 2014 Permit Part II(F)(3) states in part: "As part of the inspection, the qualified personnel shall: (1) Record the date and time of the inspection..."
18. 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."

19. 9 VAC 25-850-40(3) states: "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."
20. 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."
21. 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..."
22. 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."
23. DEQ conducted inspections on June 13, 2017, August 1, 2017, December 11, 2017, and August 20, 2018.
24. On June 13, 2017, August 1, 2017, December 11, 2017, and August 20, 2018, the notice of coverage letter was not posted conspicuously near the main entrance of the construction activity as required by 2014 Permit Part II.C.
25. On December 11, 2017 and August 20, 2018, the SWPPP did not contain a signed copy of the registration statement, a copy of the notice of coverage letter, or a legible site plan identifying all appropriate measures as required by Permit Part II.A.1.
26. On December 11, 2017 and August 20, 2018, the SWPPP did not contain an adequate pollution prevention plan as required by Permit Part II.A.4.
27. On December 11, 2017 and August 20, 2018, the SWPPP did not contain information for the qualified personnel conducting inspections, a delegation of authority, and the SWPPP was not signed as required by Permit Parts II.A.6, II.A.7, and II.A.8.
28. On December 11, 2017 and August 20, 2018, the SWPPP did not contain amendments when any modification to its implementation had occurred and was not updated to indicate areas that have reached final stabilization as required by Permit Part II.B.4.
29. On December 11, 2017 and August 20, 2018, the SWPPP did not contain SWPPP inspections as required by Permit Part II.F.

30. On June 13, 2017, August 1, 2017, December 11, 2017, and August 20, 2018, denuded areas requiring stabilization had not been stabilized as required by 9 VAC 25-840-40(1) and (3).
31. On June 13, 2017, December 11, 2017, and August 20, 2018, stormwater conveyance channels were not adequately stabilized as required by 9 VAC 25-840-40(11).
32. On August 1, 2017, December 11, 2017, and August 20, 2018, control measures, including gravel flow spreaders, were not maintained in effective operating condition as required by Permit Part II.E.1 and 9 VAC 25-840-60(A).
33. Va. Code § 62.1-44.5 states in part, "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . Discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land disturbing activities."
34. The VSMP Regulations, at 9 VAC 25-870-310(A), also states, "Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities."
35. Based on the results of the June 13, 2017, August 1, 2017, December 11, 2017, and August 20, 2018 inspections, the Board concludes that Eagle on 3 violated Va. Code § 62.1-44.5, 9 VAC 25-870-310(A), 9 VAC 25-870-54(B), 9 VAC 25-840-40(1), 9 VAC 25-840-40(3), 9 VAC 25-840(11), 9 VAC 25-840-60(A) and the conditions of Sections II.A.1, II.A.4, II.A.6, II.A.7, II.A.8, II.B.4, II.C, II.E.1, II.F, of the 2014 Permit, by discharging stormwater from construction activities at Site 1 while concurrently failing to comply with the conditions of the State Permit, as described in paragraphs C(24)-(32) of this Order.
36. On September 6, 2018, Department staff met with representatives of Eagle on 3 to discuss the company's compliance with the 2014 Permit and steps Eagle on 3 could take to achieve compliance.
37. On November 27-28, 2018, staff from Eagle on 3 participated in a DEQ erosion and sediment control inspector class.
38. On December 18, 2018, DEQ issued NOV No. 2018-CO-0002 to Eagle on 3 for the violations listed above.
39. On January 8, 2019, Department staff met with representatives of Eagle on 3 to discuss the violations.

40. Eagle on 3 has submitted documentation of corrective actions to DEQ and DEQ staff have conducted inspections of the site confirming that the violations above have been corrected.

#### **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 Eagle on 3 and Eagle on 3 agrees to pay a civil charge of \$12,015.50 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

Eagle on 3 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, Eagle on 3 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 Eagle on 3 for good cause shown by Eagle on 3, 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. 2018-CO-0002 dated December 18, 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, Eagle on 3 admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Eagle on 3 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. Eagle on 3 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 Eagle on 3 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. Eagle on 3 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 their part. Eagle on 3 shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Eagle on 3 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 Eagle on 3 intends 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 Eagle on 3. Nevertheless, Eagle on 3 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 Eagle on 3 has completed all of the requirements of the Order;
- b. Eagle on 3 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 Eagle on 3.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Eagle on 3 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 Eagle on 3 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.

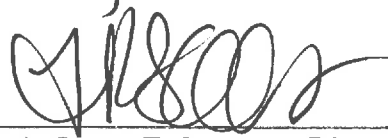
13. The undersigned representative of Eagle on 3 certify that he is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Eagle on 3 to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Eagle on 3.

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, Eagle on 3 voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5<sup>th</sup> day of May, 2020.

*Tiffany R. Serens*

  
Jeffery A. Steers, Enforcement Director  
Department of Environmental Quality

Consent Order  
Eagle on 3, LLC  
VPDES Permit No. VAR10I283  
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Eagle on 3, LLC voluntarily agrees to the issuance of this Order.

Date: 2/24/20 By: *B. L. L.* MANAGER  
(Person) (Title)  
Eagle on 3, LLC

~~State of North Carolina~~  
~~Commonwealth of Virginia~~  
City/County of Moore

The foregoing document was signed and acknowledged before me this 24<sup>th</sup> day of  
February, 2020, by Brian Clodfelter who is  
Manager of Eagle on 3, LLC on behalf of the company.

*Jan S. A.*  
Notary Public

201420400033  
Registration No.

My commission expires: 7-22-2024

Notary seal:

