



COMMONWEALTH of VIRGINIA

Matthew J. Strickler
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
Blue Ridge Regional Office
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David K. Paylor
Director

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO FRANKLIN COUNTY FOR SUMMIT VIEW Permit No. WP4-17-1447

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 Franklin County, regarding the Summit View business park, for the purpose of resolving certain violations of 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. "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.
2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
3. "The County" means the Franklin County, a political subdivision of the Commonwealth of Virginia. The County is a "person" within the meaning of Va. Code § 62.1-44.3.
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, 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.
7. "Impacts" means results caused by those activities specified in § [62.1-44.15:20](#) A of the Code of Virginia.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "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.
10. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
11. "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.
12. "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.
13. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
14. "Site" means the Summit View business park located at 21725 Virgil Goode Hwy, in Franklin County, Virginia, owned by Franklin County.
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State

Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.

16. "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.
17. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. On December 7, 2017, the Department granted coverage of the Site, to the County, under VWP General Permit for Impacts from Development and Certain Mining Activities and VWP General Permit Tracking Number WP4-17-1447.
2. The Permit granted coverage to permanently impact 1,017 linear feet of stream bed and to temporarily impact 40 linear feet of stream bed to construct building pads, roads, and other infrastructure for the Site.
3. On April 6, 2018, Timmons Group (the County's design engineer) reported to the Department that approximately 730 feet of R4 stream channel had been impacted by the discharge of a pollutant, in the form of sedimentation, 1 to 2 feet in depth. In addition, a sediment deposit fan was observed within the channel of Teels Creek (R3) with approximate dimensions of 20 feet by 30 feet and 2 feet in depth (this notice was not certified by the County as required by the Permit).
4. On April 12, 2018, Department staff inspected the Site for compliance with the requirements of the State Water Control Law, the Regulations and the Permit. Department staff observed that a measurable quantity of sediment had been discharged from the Site to a UT of Teels Creek and Teels Creek, a surface water. Department staff confirmed 730 linear feet of stream impact. Staff observed that the sediment discharge could be attributed to one or more breaches of perimeter erosion and sediment controls at the Site. At the time of the inspection, as much sediment as practical had been removed by manual excavation activities with subsequent seeding and stabilization activities completed. The Site inspection has been documented in a VWP inspection report dated April 19, 2018 and a Stormwater Construction General Permit ("CGP") inspection report dated April 30, 2018.
5. On April 30, 2018, Baker's Construction Services ("BCS"), the County's contractor, reported a discharge of sediment to state waters. The report did not include photographs,

estimated acreage or linear footage of impacts, and a description of the impacts as required by the Permit. The County did not submit a notification about the stream impacts within three business days of the initial discovery of the discharge.

6. On May 3, 2018, Department staff inspected the Site and observed a measurable quantity of sediment had been discharged from two different locations on the Site to two UTs of Teels Creek, as well as Teels Creek. Representatives of the County and Timmons Group were present at the inspection.
 - a. A new sediment discharge was observed in the vicinity of VWP Impact Area #2 (as indicated in the VWP inspection report) and sediment basin 2 (as identified on project plan sheet C3.12) with 1,500 linear feet of impact to the UT of Teels Creek and 125 to 150 feet of linear feet impact to Teels Creek.
 - b. A new sediment discharge was noted from the same area identified on April 12, 2018 with a second 730 linear feet stream impact. Staff observed that the sediment discharge could be attributed to one or more breaches of perimeter erosion and sediment controls at the Site.
7. Staff observed that the sediment discharges could be attributed to one or more breaches of perimeter erosion and sediment controls at the Site. At the time of the inspection, it appeared that manual excavation activities with subsequent seeding and stabilization activities had begun. Total observed stream impacts observed on May 3, 2018 was approximately 2,350 linear feet. The Site inspection has been documented in VWP and CGP inspection reports dated May 17, 2018.
8. On May 22, 2018, BCS notified the Department that new sediment discharges to state waters had occurred on May 17, 18, and 19, 2018. BCS asserted the discharges were the result of heavy rains. BCS estimated that sediment had impacted 300 feet of stream bed. As a follow-up to BCS's notification, the County notified the Department of the sediment discharges but asserted that 50 feet was the amount of stream impact.
9. On May 29, 2018 and June 5, 2018 Department staff inspected the Site and observed that a measurable quantity of sediment had been discharged from the Site to a UT of Teels Creek. A new sediment discharge of 815 linear feet of stream bed was observed. Staff observed that the sediment discharge could be attributed to one or more breaches of perimeter erosion and sediment controls at the Site. The Site inspections have been documented in the VWP inspection report dated June 14, 2018 and the CGP inspection reports dated June 21, 2018.
10. Failure of erosion and sediment control measures resulting in the discharge of sediment to approximately 3,925 linear feet of stream is a violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.

11. Failure of erosion and sediment control measures resulting in the discharge of sediment to approximately 3,925 linear feet of stream is a violation of 9 VAC 25-690-100 (VWP General Permit, Part I.B.5).
12. The County's submittals, required by the VWP general permit, did not contain a signed certification statement as specified in the Permit in violation of 9 VAC 25-690-100 (VWP General Permit, Part II.E.11).
13. The County's notifications to the Department, required by the VWP general permit, did not contain the required information (photographs, estimated acreage or linear footage of impacts, and description of impacts) as specified in the Permit in violation of 9 VAC 25-690-100 (VWP General Permit, Part II.E.10).
14. On May 29, 2018, the Department issued Notice of Violation ("NOV") No. NOV-18-05-BRRO-005 to the County for the violations observed on April 12, 2018 and May 3, 2018.
15. On July 5, 2018, the Department issued NOV No. NOV-18-06-BRRO-006 to the County for the violations observed on May 29, 2018 and June 5, 2018.
16. Based on the results of the April 12, 2018, May 3, 2018, May 29, 2018 and June 5, 2018 inspections and the notifications made on April 6, 2018, April 20, 2018, and May 22, 2018, the Board concludes that the County has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50, 9 VAC 25-690-100 (VWP General Permit, Part I.B.5), 9 VAC 25-690-100 (VWP General Permit, Part II.E.11), and 9 VAC 25-690-100 (VWP General Permit, Part II.E.10) , as described in paragraphs C(12) through C(15), above.
17. DEQ staff inspected the Site on October 23, 2018 and verified that the violations described in paragraphs C(12) through C(15), above, have been corrected.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code § 62.1-44.15 and upon consideration of Va. Code § 10.1-1186.2, the Board orders the County, and the County agrees:

1. To perform the actions described in Appendices A of this Order; and
2. To a civil charge of **\$34,615.00** in settlement of the violations cited in this Order, to be paid as follows:
 - a. The County shall pay **\$10,384.50** of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality

Post Office Box 1104
Richmond, Virginia 23218

The County shall include its Federal Employer Identification Number (FEIN) 54-6001286 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, the County shall be liable for attorneys' fees of 30% of the amount outstanding.

- b. The County shall satisfy **\$24,230.50** of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.
- c. The net project costs of the SEP to the County shall not be less than the amount set forth in Paragraph D.2.b. If it is, the County shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
- d. By signing this Order the County certifies that it has not commenced performance of the SEP.
- e. The County acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by the County to a third party, shall not relieve the County of its responsibility to complete the SEP as described in this Order.
- f. In the event it publicizes the SEP or the SEP results, the County shall state in a prominent manner that the project is part of a settlement of an enforcement action.
- g. The Department has the sole discretion to:
 - i. Authorize any alternate, equivalent SEP proposed by the County; and
 - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

Should the Department determine that the County has not completed the SEP, or alternate SEP, in a satisfactory manner; the Department shall so notify the County in writing. Within 30

days of being notified, the County shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

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. 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, findings of fact, and conclusions of law contained herein.
4. The County 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. 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

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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 3rd day of May, 2019.



Robert J. Weld, Regional Director
Department of Environmental Quality

Franklin County voluntarily agrees to the issuance of this Order.

Date: 3/10/19 By: Christopher L. Whitlow, Deputy County Administrator
Christopher L. Whitlow
Franklin County

Commonwealth of Virginia
City/County of Franklin

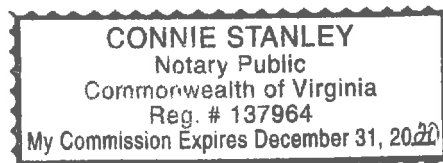
The foregoing document was signed and acknowledged before me this 12 day of March, 2019, by Christopher L. Whitlow, who is the Deputy County Administrator of Franklin County, on behalf of the County.

Connie Stanley
Notary Public

137964
Registration No.

My commission expires: 12-31-2020

Notary seal:



APPENDIX A
FRANKLIN COUNTY
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

In accordance with Va. Code § 10.1-1186.2, the County shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed by the County is to provide thirty-two (32) combustible gas monitors for use by public safety personnel in the all areas of the County.
2. The SEP shall be completed by December 31, 2019.
3. The County shall submit invoices and payment documentation to the Department for verification, for the equipment purchased within 30 days of payment.
4. The County shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment within 30 days of the project completion date. For purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from the County's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
5. If the SEP has not or cannot be completed as described in the Order, the County shall notify DEQ in writing no later than 30 days of the determination. Such notification shall include:
 - a. an alternative SEP proposal, or
 - b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.
6. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Jerry Ford, Jr.
VA DEQ - Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019
Phone: (540) 562-6817
e-mail: Jerry.Ford@deq.virginia.gov