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

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

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

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BLAND DEVELOPMENT CORPORATION
FOR
EAGLE PRESERVE AT JORDAN ON THE JAMES
Virginia Pollutant Discharge Elimination System Permit Registration No. VAR105270

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 Bland Development Corporation, regarding the Eagle Preserve at Jordan on the James, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

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

1. "Bland" means the Bland Development Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Bland is a "person" within the meaning of Va. Code § 62.1-44.3.

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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Discharge" means the discharge of a pollutant.

7. "Discharge of a pollutant" means:

    a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

    b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

8. "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 under Va. Code § 62.1-44.15.

11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

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

13. "Site" means the Eagle Preserve at Jordan on the James located at Jordan Point Rd. and James River Dr. in Prince George, Virginia, from which discharges of stormwater associated with construction activity occur.

14. "State 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.

15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.

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.

17. "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.

18. "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.

19. "TMDL" means Total Maximum Daily Load, the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

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

21. "VAC" means the Virginia Administrative Code.

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. "VPDES" means Virginia Pollutant Discharge Elimination System.

24. "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.

25. "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.

26. "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. Bland is the operator of construction activities at the Site located in Prince George County, Virginia, which discharges stormwater associated with construction activity.

2. DEQ is the VSMP authority for Prince George County, Virginia.

3. Bland applied for and, on August 15, 2014, was granted coverage under the State Permit, VAR10 of the General Permit Regulation. Bland was assigned registration number VAR105270.

4. The State Permit allows Bland to discharge stormwater associated with construction activities from the Site to the James River—Bailey Creek, in compliance with the terms and conditions of the State Permit.

5. The James River—Bailey Creek is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.

6. The James River—Bailey Creek is located in the James River Basin. The James River is subject to a TMDL for sediment and nutrients.

7. During DEQ Site inspections on March 31, 2016 and May 26, 2016, DEQ staff documented that SWPPP inspections had not been conducted and/or recorded at the minimum frequency required by the State Permit. The Site discharges stormwater to a tributary to the James River, for which TMDL wasteload allocations for sediment and nutrients were established in 2010.

   State Permit Part I(B)(4) requires that when a construction site discharges stormwater to surface waters with a TMDL wasteload allocation for sediment or nutrients established and approved before July 1, 2014, SWPPP inspections must be conducted at a frequency of "(i) at least once every four business days or (ii) at least once every five 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 on the next business day."

   State Permit Part II(F)(4) states, "The inspection report and any actions taken in accordance with Part II must be retained by the operator as part of the SWPPP for at least three years from the date that general permit coverage expires or is terminated."

8. On October 21 and 24, 2016 Bland informed DEQ staff that from April 18, 2016 to July 15, 2016, Bland had selected the inspection frequency of at least once every five business days and no later than 48 hours following a measurable storm event. During that time-period, the SWPPP for the Site did not include the location of the on-site rain gauge or a methodology established in consultation with the VSMP authority used to identify measurable storm events for inspection purposes.

   State Permit Part II(A)(1)(e)(7) requires the SWPPP to include "[w]hen applicable, the location of the on-site rain gauge or the methodology established in consultation with the VSMP authority used to identify measurable storm events for inspection purposes."

9. PRO issued a Notice of Violation for the violations noted above as follows: NOV No. 2016-06-PRO-201, issued June 28, 2016.

10. On July 7, 2016 and September 23, 2016, Department staff spoke with Bland's representatives to discuss the violations.

11. Based on the results of the inspections on March 31, 2016 and May 26, 2016, the Board concludes that Bland violated the conditions of Parts I(B)(4), II(A)(1), and II(F)(4) of the State Permit, as described in paragraph C(7) and C(8) 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 Bland, and Bland agrees to pay a civil charge of $3,008.75 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

Bland shall include its Federal Employer Identification Number (FEIN) (20-3139931) 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, Bland 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 Bland for good cause shown by Bland, 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. 2016-06-PRO-201 dated June 28, 2016. 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, Bland admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

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

    b. Bland 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 Bland.

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

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, Bland voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26 day of JANUARY, ~~2016.~~ 2017

pp. Tom Powell

Jefferson D. Reynolds, Enforcement Director
Department of Environmental Quality

----------(Remainder of Page Intentionally Blank)----------

Bland Development Corporation voluntarily agrees to the issuance of this Order.

Bland Development Corporation

By: _____
James E. Cuddihy Jr., President of
Date: December 7, 2016

COMMONWEALTH OF VIRGINIA,
CITY OF HOPEWELL, to-wit:

The foregoing document was signed and acknowledged before me this 7th day of December, 2016, by James E. Cuddihy, Jr. who is President of Bland Development Corporation, on behalf of the corporation.

Commission expires: 08/31/2020 ; Registration No.: 7520957

_____
Notary Public

(Notary Seal Required)

JULIE ANN ANGONE
NOTARY PUBLIC
REG # 7520957
COMMISSION EXPIRES 8/31/2020
COMMONWEALTH OF VIRGINIA