Commonwealth of Virginia

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MCCAULEY PARK, LLC
FOR
MCCAULEY PARK – SECTION 2
Virginia Pollutant Discharge Elimination System Registration No. VAR103444
&
Permit No. WP4-19-0827

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 McCauley Park, LLC, regarding the McCauley Park – Section 2 site, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

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

1. "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. "2019 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, 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. "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, the discharge of a pollutant.

8. "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.

9. "Facility" or "Site" means the project entitled McCauley Park – Section 2 located at the corner of McCauley Parkway and King William Road in King William County, Virginia, from which discharges of stormwater associated with construction activity occur.

10. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.

11. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.

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

13. "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.

14. "McCauley Park" means McCauley Park, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. McCauley Park is a "person" within the meaning of Va. Code § 62.1-44.3.

15. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

16. "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.

17. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 9 VAC 25-870-10. "Pollutant" also means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.

18. "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 (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) 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; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) 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.

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

20. "Registration Statement" means a registration statement for coverage under the 2019 Permit.

21. "Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 *et seq*, and the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*

22. "Runoff volume" means the volume of water that runs off the site from a prescribed design storm. 9 VAC 25-870-10.

23. "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.

24. "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; 9 VAC 25-210-10.

25. "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.

26. "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.

27. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.

28. "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.

29. "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.

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

31. "VAC" means the Virginia Administrative Code.

32. "VPDES" means Virginia Pollutant Discharge Elimination System.

33. "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.

34. "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.

35. "VWP 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.

36. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. McCauley Park is the operator and permit holder for land disturbance at the site located off of McCauley Parkway in King William County, Virginia, 37.7539, -77.1482 (the "Site"), from which stormwater associated with construction activity is discharged.

2. DEQ is the VSMP authority for the Site.

3. McCauley Park applied for and, on January 21, 2020, was granted coverage under the 2019 Permit, VAR10 of the General Permit Regulation. McCauley Park was assigned registration number VAR103444.

4. The 2019 Permit allows McCauley Park to discharge stormwater associated with construction activities from the Site to an unnamed tributary of Moncuin Creek, in strict compliance with the terms and conditions of the 2019 Permit.

5. The unnamed tributary of Moncuin Creek is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law. The unnamed tributary of Moncuin Creek is located in the York River Basin. During the 2016 and 2020 305(b)/303(d) Water Quality Assessment Integrated Report, the tributary was not assessed for any designated use. It was therefore considered Category 3A. The site is located within the study area for the Pamunkey River and Tributaries Bacterial Total Maximum Daily Load ("TMDL"), which was approved by the Storm Water Control

Board ("SWCB") on December 11, 2014 and by the United States Environmental Protection Agency ("EPA") on April 27, 2015. The discharge was not addressed in the TMDL report. In addition, the Chesapeake Bay TMDL was approved by the EPA on December 29, 2010. The TMDL allocates loads for total nitrogen, total phosphorus, and total suspended solids to protect the dissolved oxygen and submerged aquatic vegetation criteria in the Chesapeake Bay and its tidal tributaries. Moncuin Creek drains to the Pamunkey River tidal freshwater estuary ("PMKTF"). The stream is shown as perennial on the United States Geological Survey topographic map. There is no available water quality data for the tributary so it should be considered a Tier 2 water. The watershed is considered Class VII swampwater.

6. On July 26, 2019, McCauley Park was issued a VWP Permit for the conversion of 0.090 acre of palustrine forested wetland to emergent wetland, Permit No. WP4-19-0827 ("2019 VWP Permit"). The impacts permitted by the 2019 VWP Permit are part of cumulative impacts at the Site that date back to 2003, for which previous permits were issued that have since expired.

7. DEQ VSMP staff conducted inspections of the Site on October 8, 2020 ("October Inspection") and December 29, 2020 ("December Inspection").

8. During the December Inspection, VSMP staff observed the following:

   a. The Stormwater Pollution Prevention Plan ("SWPPP") was not updated or amended and no modified control measures were implemented, despite DEQ's October Inspection and King William County's December 12, 2020 inspection observing that existing controls were failing to minimize pollutants in stormwater discharges from the Site.

      9 VAC 25-870-54(G) states in part: "The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP."

      2019 Permit Part II(C)(1), (2) states that: "(1) The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP. (2) The SWPPP shall be amended if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, VSMP authority, or department is necessary for the control measure, revisions to the SWPPP shall be completed no later than seven calendar days following approval. Implementation of these

additional or modified control measures shall be accomplished as described in Part II H."

b. The SWPPP was not updated or amended to contain a record of dates of major grading activities; dates of when construction activities ceased; dates of initiating stabilization measures; areas that are no longer under the operator's control; and changes in design, construction operations, or maintenance.

See 9 VAC 25-870-54(G) cited above.

2019 Permit Part II(C)(4)(a) states that: "The operator shall update the SWPPP as soon as possible but 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."

2019 Permit Part II(C)(4)(b) states in part that: "The operator shall update the SWPPP as soon as possible but 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: . . . b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and were modified . . ."

c. SWPPP inspection log indicated that SWPPP inspections were not conducted at the minimum frequency required by the Permit.

2019 Permit Part II(B)(5)(b)(3) states in part that for discharges to surface waters with an applicable TMDL the operator shall provide direction in the SWPPP that: "A modified inspection schedule shall be implemented in accordance with Part II(G)(2)(a)"

2019 Permit Part II(G)(2)(a) states, in relevant part, that for discharges to a surface water identified as impaired or having an approved TMDL "inspections shall 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 24 hours following a measurable storm event."

d. The most recent SWPPP inspection reports were signed by someone not currently listed as a qualified personnel and were not certified by the operator or delegated authority.

2019 Permit Part II(G)(4) states that: "Each inspection report shall include the following items: a. The date and time of the inspection and, when applicable, the date and rainfall amount of the last measurable storm event; b. Summarized

findings of the inspection; c. The locations of prohibited discharges; d. The locations of control measures that require maintenance; e. The locations of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location; f. The locations where any evidence identified under Part II G 3 a (6) exists; g. The locations where any additional control measure is needed; 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; i. Documentation of any corrective actions required from a previous inspection that have not been implemented; and j. The date and signature of the qualified personnel and the operator or its duly authorized representative."

e. Corrective actions log in the SWPPP was blank despite the most recent inspection reports identifying needed corrective actions.

See 2019 Permit Part II(G)(4) cited above.

f. Sediment traps #1, #2, and #3 were removed and drainage areas were not stabilized, demonstrating that activities were out of sequence with the approved erosion and sediment control plan.

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

9 VAC 25-840-40.4 states: "Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place."

g. Areas of denuded soil were not stabilized and exhibited erosion.

See 9 VAC 25-870-54(B) cited above.

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."

h. Soil stockpiles were not protected with sediment trapping measures and were not stabilized.

See 9 VAC 25-870-54(B) cited above.

9 VAC 25-840-40.2 states in relevant part: "During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures."

i. Onsite cut and fill slopes were not stabilized and exhibited erosion.

See 9 VAC 25-870-54(B) cited above.

9 VAC 25-840-40.7 states: "Cut and fil 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."

j. Sediment was overwhelming and undermining silt fences located directly downslope of eroded fill slopes onsite.

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…"

2019 Permit Part II(F)(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."

k. Sediment from the construction site was discharging into delineated wetland and stream areas.

Va. Code § 62.1-44.5(A) 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 . . . [d]ischarge stormwater into state waters from . . . land disturbing activities."

9 VAC 25-870-310(A) 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 . . . land-disturbing activities."

l. Barrels of diesel fuel chemical additive were on the ground not within secondary containment adjacent to the construction entrance. SWPPP did not include measures to prevent or minimize the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities.

2019 Permit Part II(B)(4) states that pollution prevention plans shall: "a. Identify the potential pollutant-generating activities and the pollutant that is expected to be

exposed to stormwater; b. Describe the location where the potential pollutant-generating activities will occur, or if identified on the site plan, reference the site plan; c. Identify all nonstormwater discharges, as authorized in Part I E of this general permit, that are or will be commingled with stormwater discharges from the construction activity, including any applicable support activity; d. Identify the person responsible for implementing the pollution prevention practice or practices for each pollutant-generating activity (if other than the person listed as the qualified personnel); e. Describe the pollution prevention practices and procedures that will be implemented . . . f. Describe procedures for providing pollution prevention awareness of all applicable wastes . . . to personnel in order to comply with the conditions of this general permit. The operator shall implement the procedures described in the SWPPP."

m. Construction debris was piled on the ground adjacent to the construction entrance with no pollution prevention measures in place to minimize exposure of construction debris to precipitation and stormwater. The SWPPP did not include measures to prevent or minimize the discharge of pollutants from construction materials or wastes.

See 2019 Permit Part II(B)(4) cited above.

9. As a result, PRO issued Notice of Violation No. 2021-01-PRO-201 on March 8, 2021 ("VPDES NOV").

10. The observation described in Paragraph C(8)(k) above was referred to DEQ's VWP Program staff for further investigation. VWP Program staff reviewed information submitted by McCauley Park and conducted an inspection of the Site on February 3, 2021 ("VWP Inspection").

11. During the VWP Inspection, DEQ staff observed the following:

a. Approximately 0.09 acres of palustrine forested wetlands were impacted by the accumulation of two to four inches of eroded sediment, and in some areas eight to twelve inches. Approximately 715 linear feet of stream channel was impacted by the accumulation of two to four inches of eroded sediment. Sediment erosion and deposition into the palustrine forested wetlands and the unnamed tributary to Moncuin Creek resulted from the failure of onsite erosion and sediment controls or other best management practices. These impacts were not authorized by the 2019 VWP Permit.

Va. Code § 62.1-44.15:20(A) states in relevant part that: "Except in compliance with [a VWP Permit] issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant

alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board."

9 VAC 25-210-50(A) states in relevant part that: "Except in compliance with a VWP permit . . . no person shall dredge, fill, or discharge any pollutant into or adjacent to surface waters . . . otherwise alter the physical, chemical, or biological properties of state waters . . . and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; . . .[or] conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions."

2019 VWP Permit Part I.B.5 states: "Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or for mining activities covered by this general permit, the standards issued by the Virginia Department of Mines, Minerals and Energy that are as effective as those in the Virginia Erosion and sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed."

b. Boundary flagging to mark non-impacted surface waters within 50 feet of permitted activities or within the project right-of-way-limits was missing around non-impacted surface waters.

2019 VWP Permit Part I.B.10 states: "All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters."

12. As a result, PRO issued Notice of Violation No. 2102-001718 on March 8, 2021 ("VWP NOV").

13. On March 9, 2021, representatives of McCauley Park responded to the NOVs and stated that corrective action was underway to address all violations.

14. On May 17, 2021, DEQ conducted a subsequent inspection of the Site ("May Inspection").

15. During the May Inspection, DEQ VSMP staff observed the following:

    a. A Stormwater Construction General Permit "Notice of Coverage Letter" was not posted conspicuously near the main entrance to the construction activity.

       2019 Permit Part II(D) states in relevant part that: "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."

    b. A Stormwater Management Plan was not available ensuring compliance with water quantity that includes the addition of six permanent stormwater culverts that were installed inside the sanitary sewer utility easement, as well as the cutting/filling/grading of slopes observed outside the easement and limits of disturbance.

       2019 Permit Part II(B)(3)(b) states in relevant part that: "For any operator meeting the conditions of 9VAC5-870-47(B) of the VSMP regulation, an approved stormwater management plan is not required. In lieu of an approved stormwater management plan, the SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed."

    c. The operator or delegated authority did not update the SWPPP to include a Stormwater Management Plan that ensures compliance with water quantity and the addition of 6 permanent stormwater culverts that were installed inside the sanitary sewer utility easement, as well as the cutting/filling/grading of slopes observed outside the easement and limits of disturbance.

       See 9 VAC 25-870-54(G) cited above.

       See 2019 Permit Part II(C)(4)(a), (b) cited above.

    d. Documentation in the SWPPP was not available concerning approval by the local VESCP Authority for the use of proprietary "Erosion Eel" curb inlet protection.

       See 9 VAC 25-870-54(G) cited above.

       See 2019 Permit Part II(C)(4)(b) cited above.

    e. Documentation in the SWPPP was not available identifying when construction

sediment discharges occurred, volumes released, and what measures were taken to prevent recurrence.

See 9 VAC 25-870-54(G) cited above.

2019 Permit Part II(C)(4)(e), (f) states, in relevant part, that all modifications or updates to the SWPPP shall be noted and include: "e. The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release; f. Measures taken to prevent the reoccurrence of any prohibited discharge . . ."

f. Silt fence was not installed on a portion of the downslope perimeter prior to upslope activity. Sediment was observed eroding from a home construction site into a paved curb and gutter. Eroded sediment from a stockpile entered a curb and gutter, and washed over the top of a stormwater curb inlet.

See 9 VAC 25-840-60(A) cited above.

See 2019 Permit Part II(F)(1) cited above.

g. Eroded sediment from a stockpile site entered a curb and gutter, and washed over the top of a stormwater curb inlet.

See 9 VAC 25-840-60(A) cited above.

See 2019 Permit Part II(F)(1) cited above.

h. Sediment was accumulated in rip-rap aprons for stormwater outfall pipes. Eroded sediment undermined portions of silt fencing near stormwater inlets that flow to the rip-rap aprons where sediment was accumulated.

See 9 VAC 25-840-60(A) cited above.

See 2019 Permit Part II(F)(1) cited above.

16. During the May Inspection, DEQ staff also observed a gravel access road constructed in the area that was subject to conversion impacts permitted under the 2019 VWP Permit. Subsequent follow-up discussion with McCauley Park confirmed that the portion of on-site wetlands subject to conversion impacts per the 2019 VWP Permit were permanently impacted by the installation of the gravel road required to access a utility easement for the local sanitation authority.

See Va. Code § 62.1-44.15:20(A) cited above.

See 9 VAC 25-210-50(A) cited above.

17. On April 9, 2021, May 17, 21, 26, 2021, and August 16, 2021, McCauley Park provided information in response to DEQ's NOVs and requests.

18. Department staff met by phone with representatives of McCauley Park on multiple occasions to discuss the violations, including McCauley Park's response and information submitted.

19. The Department has not issued coverage under any permit or certificate to McCauley Park other than under the 2019 Permit and the 2019 VWP Permit.

20. Based on the results of the December Inspection, VWP Inspection, May Inspection, and McCauley Park's responses, the Board concludes that McCauley Park violated Va. Code § 62.1-44.5(A); Va. Code § 62.1-44.15:20(A); 9 VAC 25-870-54(B); 9 VAC 25-870-54(G); 9 VAC 25-840-60(A); 9 VAC 25-870-310(A); 9 VAC 25-210-50(A); the conditions of 2019 Permit Parts II(B)(3)(b), (4), (5)(b)(3), 2019 Permit Parts II(C)(1), (2), (4)(a)-(b), (4)(e)-(f), 2019 Permit Parts II(D), II(F)(1), II(G)(2)(a), (4); and the conditions of the 2019 VWP Permit Parts I.B.5, I.B.10 as described in the above paragraphs.

21. In order for McCauley Park to complete its return to compliance, DEQ staff and McCauley Park have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders McCauley Park, and McCauley Park agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $29,859.00 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

McCauley Park 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 as follows: $19,396.00 for deposit into the Virginia Environmental Emergency Response Fund (VEERF) and $10,463.00 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, the Parties 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 McCauley Park for good cause shown by McCauley Park, 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, McCauley Park admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

b. McCauley Park 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 McCauley Park.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve McCauley Park 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 McCauley Park 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 McCauley Park certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind McCauley Park to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of McCauley Park.

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, McCauley Park voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 24th day of June, 2022.

Delegated authority on 03242022

James J. Golden, Regional Director
Department of Environmental Quality

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

McCauley Park, LLC voluntarily agrees to the issuance of this Order.

Date: 5/2/2022 By: _____, manager
(Person) (Title)
McCauley Park, LLC

Commonwealth of Virginia
City/County of Hanover

The foregoing document was signed and acknowledged before me this 2 day of May, 2022, by Todd D. Rogers who is manager of McCauley Park, LLC, on behalf of the company.

Kristin Leigh Converse Parrish
Notary Public

7874983
Registration No.

My commission expires: 9/30/2024

Notary seal:

KRISTIN LEIGH CONVERSE PARRISH
NOTARY PUBLIC
REG. #7874983
My Comm. Exp.
Sep 30. 2024
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Permanent Impacts to Wetlands

a. **Within 30 days** from the effective date of this Order, McCauley Park shall purchase 0.01 mitigation bank wetland credits as compensatory mitigation for the unauthorized impacts described in this Order to achieve no-net-loss of existing wetland acreage and no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116. All compensatory mitigation credits shall be purchased from a DEQ-approved mitigation bank, an approved in-lieu fee (ILF) program, or a combination thereof as specified below. The bank or program must be authorized and approved by DEQ to sell credits in the area in which the impacts have occurred and have credits available (as released by DEQ). Any credit sale shall be in accordance with the approved Mitigation Banking Instrument or ILF Program Instrument. Available mitigation bank released credits shall be purchased first. Any remaining credit obligation may be fulfilled through the purchase of released mitigation credits from an ILF program. Fulfillment of any remaining credit obligation may be achieved through the purchase of advance mitigation credits from an ILF program.

b. **Within 30 days** of credit purchased pursuant to Paragraph 1(a) above, McCauley Park shall submit proof of purchase to DEQ.

McCauley Park has satisfied the requirements of Schedule of Compliance, Sections 1(a)-(b). A Bill of Sale for the purchase of 0.01 compensatory wetland mitigation credits was entered on January 11, 2021. The instrument was reviewed and verified by DEQ staff on January 31, 2021.

2. Erosion & Sediment Control Plan

Within 30 days of the effective date of this Order, McCauley Park shall submit to DEQ documentation verifying approval of the use of erosion eels from the local Erosion and Sediment Control authority.

McCauley Park has satisfied the requirements of Schedule of Compliance, Section 2. Documentation approving use of erosion eels was reviewed and verified by DEQ staff on January 31, 2021.

3. VSMP Plan Approval

Within 30 days of the effective date of this Order, McCauley Park shall submit to DEQ for review and approval updated stormwater management plans for the Site. McCauley Park shall respond to any comments from DEQ regarding the stormwater management plan no later than 14 days following issuance of the comment. McCauley Park shall maintain on-site

and implement the approved stormwater management plan in accordance with 9 VAC 25-870-54(A), (C).

McCauley Park has satisfied the requirements of Schedule of Compliance, Section 3. Stormwater Management Plans were submitted on August 16, 2021 and reviewed by DEQ staff on September 8, 2021.

4. <u>DEQ Contact</u>

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

Enforcement Office
VA DEQ – Piedmont Regional Office
4949A Cox Road, Glen Allen, VA 23060
(804) 720-4754