Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO KOPASSIS CONSTRUCTION, INC. FOR JOHNSTOWN ESTATES – ELENI COURT Unpermitted Activity JOHNSTOWN ESTATES II – LOUTRO COURT VWP General Permit Authorization No. WP4-19-0655

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the Department of Environmental Quality (Department or DEQ) and Kopassis Construction, Inc., regarding the Johnstown Estates – Eleni Court and Johnstown Estates II – Loutro Court, for the purpose of resolving certain violations of State Water Control Law and the applicable WP4-19-0655 permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the terms have the meanings assigned to them in Va. Code § 62.1-44.2 *et seq.* and 9 VAC 25-21-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Kopassis Construction, Inc. (Kopassis) is a business entity authorized to do business in Virginia and references to Kopassis include its affiliates, partners, and subsidiaries. Kopassis is a "person" within the meaning of Va. Code § 62.1-44.3.

2. Kopassis owns operates as a Hampton Roads area custom home construction business. The business has a listed address of 1660 Bay Point Drive, Virginia Beach, Virginia 23454

3. On November 21, 2022, DEQ received a report of potential unauthorized filling of wetlands at Johnstown Estates, Eleni Court (Eleni Court Site) and Johnstown Estates II, Loutro Court (Loutro Court Site), both in Chesapeake, VA.

4. On February 7, 2023, Department staff inspected the Eleni Court Site and the Loutro Court Site with Kopassis at both sites for compliance with the requirements of the State Water Control Law and the Regulations. The DEQ inspector observed 0.25 acres of unpermitted impacts to palustrine forested wetland at the Eleni Court Site, and 0.26 acres of unauthorized impacts to palustrine emergent wetlands at the Loutro Court Site. Kopassis acknowledged the impacts and provided that it would be preferrable for the impacts to remain in place through purchase of mitigation credits.

5. Kopassis did not have permits for the discharge of fill material, a pollutant, into the .25 acres of wetland at the Eleni Court Site or 0.26 acres of wetland at the Loutro Court Site.

6. On February 23, 2023, DEQ issued Notice of Violation (NOV) No. 23-001826 for the unpermitted fill activity at the Eleni Court Site and NOV No. 23-002298 for the unauthorized fill activities at the Loutro Court Site.

7. The discharge of fill material to the wetlands without a Permit is a violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.

8. Based on the results of February 7, 2023 inspections, the Department concludes that Kopassis has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 as described in paragraphs C(3) through (7), above.

9. In order for Kopassis to return to compliance, DEQ staff and representatives of Kopassis 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, the Department orders Kopassis, and Kopassis agrees to:

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

2. Pay a civil charge of $33,000 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

Kopassis shall include its Federal Employer Identification Number (FEIN) 54-1816098 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, Kopassis shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of Kopassis for good cause shown by Kopassis, 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. 23-001826 (Eleni Court Site) dated February 24, 2023 and NOV No. 23-002298 (Loutro Court Site) dated February 24, 2023. This Order shall not preclude the Department 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, Kopassis admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Kopassis consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order. Kopassis 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 Department to modify, rewrite, amend, or enforce this Order.

5. Failure by Kopassis to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department 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.

6. 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.

7. Kopassis 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. Kopassis shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kopassis 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.

8. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

9. This Order shall become effective upon execution by both the Director or his designee and Kopassis. Nevertheless, Kopassis agrees to be bound by any compliance date which precedes the effective date of this Order.

10. This Order shall continue in effect until:

a. The Director or his designee terminates the Order after Kopassis has completed all of the requirements of the Order;

b. Kopassis 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 Department terminates the Order in his or its sole discretion upon 30 days' written notice to Kopassis.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Kopassis from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. Any plans, reports, schedules or specifications attached hereto or submitted by Kopassis 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.

12. The undersigned representative of Kopassis 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 Kopassis to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Kopassis.

13. 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.

14. By its signature below, Kopassis voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20___.

_____
Craig R. Nicol, Regional Director
Department of Environmental Quality

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

Kopassis Construction, Inc. voluntarily agrees to the issuance of this Order.

Date: 4/6/23 By: [signature] President
(Person) (Title)
Kopassis Construction, Inc.

Commonwealth of Virginia
City/County of Virginia Bch

The foregoing document was signed and acknowledged before me this 6th day of April, 2023, by Andrew X Kopassis who is President of Kopassis Construction, Inc. , on behalf of the company.

Taisia Cooper
Notary Public

7576943
Registration No.

My commission expires: 12/31/2026

Notary seal:

TAISIA COOPER
NOTARY
My Comm. Expires 12/31/2026
7576943
PUBLIC
COMMONWEALTH OF VIRGINIA