



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

www.deq.virginia.gov

Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

PROPOSED CONSENT ORDER AND
NOTICE OF INFORMAL FACT-FINDING PROCEEDING

Table with permit details: Permittee (Erwin Construction, Inc.), Facility Name (Miller Homestead), Facility Address (1046 Moore Street), Facility City (Harrisonburg), Zip Code (22801), Permit No (VAR108469), EA ID (VR24-0803), NOV Date (08/09/2024), NOV No (2024-VRO-0011)

Dear Sir/Madam:

The Virginia Department of Environmental Quality (DEQ) issued a Notice of Violation (NOV) for alleged violations observed at the facility identified above. You may resolve this matter by entering into a Consent Order with DEQ. If DEQ does not enter into a Consent Order, DEQ will proceed with conducting an Informal Fact Finding Proceeding as explained in Section II below.

I. PROPOSED CONSENT ORDER

DEQ wishes to resolve the alleged violations in the NOV by entering into a Consent Order which is enclosed for your review. The Consent Order includes:

Table with 3 rows detailing consent order terms: 1. Civil charge of \$1,145.00; 2. Injunctive relief to stabilize denuded areas; 3. Injunctive relief to maintain stabilization measures.

If you agree with the terms of the Consent Order, please sign, date, and return the Consent Order as follows:

<b>Due Date:</b>	08/23/2024
<b>Enforcement Specialist:</b>	Francesca Wright
<b>Address:</b>	PO Box 3000, Harrisonburg, Virginia 22801
<b>Email:</b>	francesca.wright@deq.virginia.gov
<b>Phone Number:</b>	(804) 543-7707

The Consent Order is subject to 30-day public notice and comment period before it can become final. Once public notice is completed, a copy of the fully executed Consent Order will be submitted to you. DEQ may reduce the civil charge listed above if you demonstrate an inability to pay the civil charge through submittal of a complete Ability to Pay Application.<sup>1</sup> Please contact the Enforcement Specialist listed above within ten days from the date of this letter to request an Ability to Pay Application. DEQ will assume that you are able to pay the civil charge unless you make a timely request for an Ability to Pay Application and submit a complete application in accordance with the schedule and directions provided.

## **II. NOTICE OF INFORMAL FACT FINDING PROCEEDING**

You are hereby notified that if DEQ does not receive the signed Consent Order by the due date, an Informal Fact-Finding Proceeding will be held via conference call at the date and time listed below. At the scheduled time, dial the call-in number and enter the access code when requested.

<b>Hearing Date:</b>	09/09/2024	<b>Hearing Time:</b>	10:00 AM
<b>Hearing Phone Number:</b>	(312)757-3121	<b>Access Code:</b>	253-160-749

The Informal Fact-Finding Proceeding will be conducted pursuant to Va. Code §§ 2.2-4019 and 10.1-1186 to determine whether you violated the Virginia Code and Regulations as listed in the Section C: Findings of Fact and Conclusions of Law of the Consent Order. The Informal Fact-Finding Proceeding will also determine the appropriateness of a civil charge and injunctive relief.

DEQ staff will request a Special Order requiring the Permittee to:

✓	Pay the maximum civil charge authorized by law and pay attorneys' fees of 30% of the amount outstanding should DEQ have to refer collection of the civil charge to the Department of Law.
✓	Within 7 days of the effective date of the order, and for the duration of this order, apply stabilization measures to the denuded areas of the Site in accordance with 9VAC25-875-560(1) and Permit Part II.B.2.c.9.
✓	Within 7 days of the effective date of the order, and for the duration of this order, maintain stabilization measures at the Site in accordance with 9VAC25-875-300(G) and Permit Part II.F.

To ascertain the facts in this matter, DEQ staff may rely upon DEQ's inspection report for the Facility, the NOV, other public documents in DEQ files, and the information presented by witnesses. DEQ staff will also rely on

<sup>1</sup> The Ability to Pay Application includes tax documentation and information regarding assets and liabilities. An inability to pay a civil charge does not relieve you of any injunctive relief or corrective action requirements.

applicable statutes, regulations, and DEQ guidance. Full texts of statutes, regulations, and DEQ guidance can be obtained at <http://www.deq.virginia.gov/LawsRegulations.aspx> or <http://lis.virginia.gov/> (statutes and regulations) and <http://townhall.virginia.gov/L/GDocs.cfm> (DEQ guidance). Copies will be provided upon request.

You may participate in the conference by yourself, by counsel, or other qualified representative. At this Informal Fact-Finding Proceeding, you will be able to present factual data, argument, or proof in connection with this case to a Presiding Officer. The Presiding Officer will prepare an independent Findings of Fact and Conclusions of Law and a Draft Special Order for consideration by the Director of DEQ. The Director may issue a Special Order based on the Presiding Officer's recommendation under Va. Code § 10.1-1186, which may include a civil charge and injunctive relief.

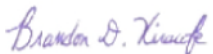
Be advised that if you fail to attend the Informal Fact-Finding Proceeding or appear without good cause, the Presiding Officer may issue a default order pursuant to Va. Code § 2.2-4020.2. If a default order is issued, the Presiding Officer may conduct all further proceedings necessary to complete the adjudication and shall determine all issues in the adjudication, including those affecting you. Further, a default order may be issued against you based on any admissions or other evidence without notice to you.

You will be notified of the results of the Informal Fact-Finding Proceeding in accordance with Va. Code § 2.2-4019 and have the right to appeal any adverse decision in accordance with Va. Code § 2.2-4026.

If you have any questions regarding this Informal Fact-Finding Proceeding or require accommodations under the Americans with Disabilities Act, translation services in a language other than English, or other reasonable accommodations to facilitate your meaningful participation in the Informal Fact-Finding Proceeding please contact:

<b>Agency Advocate:</b>	Kristen Sadtler
<b>Address:</b>	1111 East Main Street, Suite 1400, Richmond, VA 23219
<b>Email:</b>	kristen.sadtler@deq.virginia.gov
<b>Phone Number:</b>	(804) 664-3864

Sincerely,


Regional Director



Commonwealth of Virginia

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Michael S. Rolband, PE, PWD, PWS Emeritus
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DEPARTMENT OF ENVIRONMENTAL QUALITY
CONSENT ORDER
ISSUED to

Erwin Construction, Inc.

FOR

Miller Homestead

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, 62.1-44.15:48, and 62.1-44.32 for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the terms used in this Consent Order have the meanings assigned to them in Va. Code § 62.1-44.2 et seq., § 62.1-44.15:24 et seq., 10.1-1182 et seq., 9VAC25-875-10 et seq., and 9VAC25-880-1 et seq.

SECTION C: Findings of Fact and Conclusions of Law

Table with permit details including Permittee (Erwin Construction, Inc.), Site Address (1046 Moore Street, Harrisonburg, Virginia), Inspection Date(s) (07/18/2024 and 08/06/2024), and NOV Number(s) and Date(s) (2024-VRO-0011 - 08/09/2024).

The Department of Environmental Quality has the authority to regulate the discharge of stormwater from construction activities and to require measures intended to mitigate the same, specifically the temporary or permanent stabilization of denuded areas, pursuant to Va. Code § 62.1-44.5, the Virginia Erosion and Stormwater Management Regulation, and the General Virginia Pollutant Discharge Elimination System Permit for Discharges of Stormwater From Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, issued July 1, 2019 and re-issued under the State Water Control Law and Regulations, 9 VAC 25-880-1, et seq., on July 1, 2024 and expiring June 30, 2029.

The Permittee is a "person" within the meaning of Va. Code § 62.1-44.3.



Explanation of Penalty				
Violation	Observations & Legal Requirements	Civil Charge		Subtotal
✓	<input checked="" type="checkbox"/> Failure to maintain stabilization in effective operating condition. <b>Permit Part II(F)(1), 9 VAC 25-875-300(G)<sup>2</sup></b>  <input checked="" type="checkbox"/> Failure to apply stabilization to denuded areas within required timeframes. <b>9 VAC 25-875-500(B); 9VAC25-875-550; 9VAC 25-875-560(1), Permit Part II.B.2.c.<sup>3</sup></b>	<b>Occurrences</b>	1	\$ 916.00
		<b>Potential for Harm</b>	Marginal	
		<b>Serious:</b> Construction activities that result in land disturbance of greater than or equal to ten acres of total land area.		
		<b>Moderate:</b> Construction activities that result in land disturbance of greater than or equal to five acres and less than ten acres of total land area.		
		<b>Marginal:</b> Construction activities that result in land disturbance up to five acres of total land area.		
✓	No mitigating factors are present in this case to a sufficient degree to warrant deviation from the potential for harm determination.			
<b>Violation Civil Charge Subtotal</b>			\$ 916.00	
<b>Aggravating Factors</b>				
<b>Degree of Culpability</b>				
✓	Awareness of the legal requirements violated	✓	Control of the site in question and the activity.	Whether reasonable precautions were taken
	Previous instances of a similar nature.		Failed to comply with terms of a previous order.	Commonality of ownership, management, or personnel with a previous action.
	Previous NOV within the past 36 months.		Unjustified delay in the prevention, mitigation, or remedy of the violation.	✓ Knew or should have known/level of sophistication
Degree of Culpability		Moderate		\$ 229.00
Consent Order in another media program within 36 months		No		\$ 0.00
Consent Order in the same media program within 36 months		No		\$ 0.00
<b>Aggravating Factors Subtotal</b>			\$ 229.00	
<b>Civil Charge Subtotal and Aggravating Factor Subtotal</b>			\$ 1,145.00	
Cooperativeness and Quick Settlement		0%		\$ 0.00
Economic Benefit of Noncompliance		No		
Ability to Pay was evaluated and there is an ability to pay.		Yes		

<sup>2</sup> Prior to July 1, 2024, this citation was located at 9VAC25-840-60(A).

<sup>3</sup> Chapters 758 and 68 of the 2016 Acts of Assembly combined the Stormwater Management Act and Erosion and Sediment Control Law to create the Virginia Erosion and Stormwater Management Act and the regulations were combined into the Virginia Erosion and Stormwater Management Regulations. Prior to July 1, 2024, these citations were located at 9VAC25-870-54 and 9VAC25-840-40.

<b>Total Civil Charge</b>	\$ 1,145.00
Based on the results of staff observations and discussions with the Permittee, the Department concludes that the Permittee has violated the Va. Code, Regulations and/or Permit as identified herein.	

**SECTION D: Agreement and Consent 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, and 62.1-44.32 the Department orders the Permittee, and the Permittee agrees to:

- Within 7 days of Permittee signature, and for the duration of the Order, apply permanent and/or temporary stabilization measures to the denuded areas of the Site in accordance with 9VAC25-875-560(1) and Permit Part II.B.2.c.9.
- Within 7 days of Permittee signature, and for the duration of the Order, maintain stabilization measures at the Site in accordance with 9VAC25-875-300(G) and Permit Part II.F.

Pay the total civil charge of in settlement of the violations cited in this Consent Order in accordance with the following:

- Within 30 days of the effective date of the Consent Order, or
- In accordance with the following payment schedule:

Due Date	Amount

If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Consent Order, and the Department may demand in writing full payment by the Permittee. Within 15 days of receipt of such letter, Permittee shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Consent Order.

Payment shall be made either by credit card at [www.deq.virginia.gov](http://www.deq.virginia.gov), or 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, VA 23218

The Permittee shall include its Federal Employer Identification Number (FEIN), if applicable, with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Consent Order for deposit into the Stormwater Local Assistance Fund. If the Department must refer collection of moneys due under this Consent Order to the Department of Law, Permittee 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 Consent Order with the consent of the Permittee for good cause shown by the Responsible Party, 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 Consent Order addresses and resolves only those violations specifically identified in Section C of this Consent Order. This Consent 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 Consent Order.
3. For purposes of this Consent Order and subsequent actions with respect to this Consent Order only, the Permittee admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Consent Order.
4. The Permittee consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Consent Order.
5. The Permittee 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 Consent Order.
6. Failure by the Permittee to comply with any of the terms of this Consent 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 Consent 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.
7. If any provision of this Consent Order is found to be unenforceable for any reason, the remainder of the Consent Order shall remain in full force and effect.
8. The Permittee shall be responsible for failure to comply with any of the terms and conditions of this Consent 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 Permittee shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Permittee 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 Consent 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.
  - e. 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 Consent Order.
9. This Consent Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Consent Order shall become effective upon execution by both the Director or his designee and the Permittee. Nevertheless, the Permittee agrees to be bound by any compliance date which precedes the effective date of this Consent Order.
11. This Consent Order shall continue in effect until:
  - a. The Director or his designee terminates the Consent Order after the Permittee has completed all of the requirements of the Consent Order;

- b. The Permittee petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Consent Order and the Director or his designee approves the termination of the Consent Order; or
  - c. The Director or Department terminates the Consent Order in his or its sole discretion upon 30 days' written notice to Permittee.
  - d. Termination of this Consent Order, or any obligation imposed in this Consent Order, shall not operate to relieve the Permittee 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 Permittee and approved by the Department pursuant to this Consent Order are incorporated into this Consent Order. Any non-compliance with such approved documents shall be considered a violation of this Consent Order.
  13. The undersigned representative of the Permittee certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Consent Order and to execute and legally bind the Permittee to this document. Any documents to be submitted pursuant to this Consent Order shall also be submitted by a responsible official of Permittee.
  14. This Consent Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Consent Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Order.
  15. By its signature below, the Permittee voluntarily agrees to the issuance of this Consent Order.

And it is so ORDERED.

DEQ Signee Signature

Date

DEQ Signee Name

Title

I hereby certify that I am the Permittee or duly appointed representative/officer of the Permittee.

Permittee Signature

Date

Permittee Name

Title