



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

November 12, 2024

Mr. Mansour Azimipour
A & K Development Corporation
4444 Germana Highway, No. 150
Locust Grove, VA 22508

Notice of Special Order Proceeding

DATE: December 13, 2024

TIME: 1PM

CONFERENCE CALL INFORMATION:

CALL-IN NO.: 434-230-0065
ACCESS CODE: 385129044#

In re: A & K Development Corporation
VWP IP 19-1582
VPDES Permit Registration No. VAR10N975

Dear Mr. Azimipour:

You are hereby notified that, pursuant to Virginia Code ("Va. Code") §§ 2.2-4019 and 10.1-1186, a Special Order Proceeding will be held on December 13, 2024 at 1PM regarding Twin Lakes Estates/Germanna Estates (the "Facility"/ "Site") located in Orange County, Virginia. **The Special Order Proceeding will be held via conference call.** At the scheduled time, dial (434) 230-0065, and enter the Access Code 385129044# when requested. If you have any difficulty accessing the conference call, please call Gary Wooldridge at 804-584-6716

PURPOSE

The Special Order Proceeding will determine whether A & K Development Corporation ("A&K") has violated certain provisions of the State Water Control Law, applicable regulations, the 2019 General VPDES Permit for Discharges of Stormwater from Construction Activities

(“2019 Permit”),¹ the 2024 General VPDES Permit for Discharges of Stormwater from Construction Activities (“2024 Permit”),² and the Virginia Water Protection Program Individual Permit Number 19-1582 (“VWP Permit”). The Special Order Proceeding will determine the appropriateness of injunctive relief and a civil penalty. The alleged violations are set forth in this Notice Letter. DEQ staff will be seeking two separate Special Orders requiring A&K to comply with the above statutes and regulations at the Facility and pay the maximum civil penalty permitted under the law. One Special Order will relate to the alleged violations of stormwater and erosion and sediment control requirements, and one Special Order will relate to alleged violations of Virginia Water Protection Program (“VWPP”) requirements.

INFORMATION TO BE USED BY DEQ

This letter notifies you of information upon which DEQ staff may rely to request the issuance of Special Orders. In addition to the information enclosed with this Notice Letter and labeled as “DEQ Exhibit Book,” DEQ staff may also rely on other public documents in DEQ files. The enclosed information, the information in DEQ’s case file, and the information presented by witnesses will be relied upon to ascertain the facts in this matter.

DEQ staff will also rely on applicable statutes, regulations, and DEQ guidance. In addition to the laws and regulations cited in this Notice Letter, DEQ may rely on other authorities. 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.

ALLEGED VIOLATIONS AND LEGAL REQUIREMENTS

A. Alleged Violations of Stormwater and Erosion and Sediment Control Requirements

1. *Observations:* During the June 22, 2023, July 14, 2023, and August 4, 2023 inspections, DEQ staff made the following observations after review of the Stormwater Pollution Prevention Plan (“SWPPP”):
 - An updated site plan identifying all appropriate measures was not included in the SWPPP.
 - The erosion and sediment control plan approved for phases 2 – 4 of the Site was not included in the SWPPP.
 - The stormwater management plan approved for phases 2 – 4 of the Site was not included in the SWPPP.
 - Grading and construction activity logs did not document work performed within phases 2 – 4 of the project.
 - Inspection reports were not signed by the operator or duly authorized signatory.

¹ The 2019 Permit was promulgated at 9 VAC 25-880-70, was issued under the State Water Control Law and Regulations on July 1, 2019, and expired on June 30, 2024.

² The 2024 Permit is promulgated at 9 VAC 25-880-70, was issued under the State Water Control Law and Regulations on July 1, 2024, and expires on June 30, 2029.

Legal Requirements: 2019 Permit Part II.B.1.e(1-7) states: “The SWPPP shall include ...A legible site plan identifying: . . . Locations of major structural and nonstructural control measures, including sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to filter, settle, or similarly treat sediment, that will be installed between disturbed areas and the undisturbed vegetated areas in order to increase sediment removal and maximize stormwater infiltration;”

2019 Permit Part II.B.2 states in part: “The SWPPP shall include the following items... An erosion and sediment control plan designed and approved in accordance with the Virginia Erosion and Sediment Control Regulations (9VAC25-840)”

2019 Permit Part II.B.3.a states: “The SWPPP shall include ... a stormwater management plan approved by the VSMP authority as authorized under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870)”

2019 Permit Part II.C.4.a requires the SWPPP to include “A record of dates when:
(1) Major grading activities occur;
(2) Construction activities temporarily or permanently cease on a portion of the site;
(3) Stabilization measures are initiated;”

2019 Permit Part II.G.4.j states: “Each inspection report shall include ...The date and signature of the qualified personnel and the operator or its duly authorized representative”.

2. *Observations:* During the Site inspections on June 22, 2023, July 14, 2023, August 4, 2023, September 14, 2023, and July 9, 2024, DEQ observed that Site activities were not conducted in accordance with the Erosion and Sediment Control Minimum Standards, and/or the approved Erosion and Sediment Control Plan (“ESC Plan”). The following were observed on June 22, 2023, July 14, 2023, August 4, 2023, September 14, 2023, and July 9, 2024 except as otherwise noted:
- Sequencing of the project was not implemented in accordance with the ESC Plan;
 - Dormant areas were not stabilized (July 14, 2023, September 14, 2023, and July 9, 2024 inspections only);
 - Stockpiles were not stabilized or protected by sediment trapping measures;
 - Permanent stabilization was not established on slopes above the emergency spillway of the stormwater management pond (June 22, 2023 and July 14, 2023 inspections only)
 - Sediment trapping facilities were not installed as the first step in land disturbance activities (June 22, 2023, July 14, 2023, August 4, 2023, and September 14, 2023 inspections only);
 - Erosion and sediment controls were not installed in accordance with specifications in the ESC Plan;
 - Earthen structures were not stabilized immediately after installation (June 22, 2023, July 14, 2023, and August 4, 2023 inspections only);

- Sediment traps and basins were not installed in accordance with the specifications in the ESC Plan and minimum standard 6 (July 14, 2023, August 4, 2023, September 14, 2023, and July 9, 2024 inspections only)
- Finished cut and fill slopes were not adequately stabilized to prevent excessive erosion (September 14, 2023 and July 9, 2024 inspections only);
- Concentrated runoff down cut or fill slopes was not contained in adequate permanent or temporary structures (September 14, 2023 inspection only);
- Operational storm sewers inlets lacked adequate inlet protection (June 22, 2023, July 14, 2023, and September 14, 2023 inspections only);
- Required corrective action was not completed within the time frame required by the permit (July 9, 2024 inspection)
- Restabilization of in-stream construction was not complete (June 22, 2023, July 14, 2023, August 4, 2023, and September 14, 2023);
- Sediment was tracked onto and had accumulated on paved roadways (September 14, 2023 and July 9, 2024 inspections only); and
- Erosion and sediment control measures were not maintained in effective operating condition.

Legal Requirements:³ 9VAC25-875-500.B states, “An erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 must be designed and implemented during construction activities. . . .”

9VAC25-875-550.A states in part, “The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit of land will be so treated to achieve the conservation objections in 9VAC25-875-560.”

9VAC25-875-560.1 states, “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.

9VAC25-875-560.2 states, “During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. . . .”

9VAC25-875-560.3 states, “A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.”

9VAC25-875-560.4 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.”

³ Prior to July 1, 2024, all regulatory citations currently located in 9VAC25-875-560 could be found in 9VAC25-840-40, and citations currently located in 9VAC25-875-500 and 9VAC25-875-550 could be found in 9VAC25-870-54.

9VAC25-875-560.5 states, “Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.”

9VAC25-875-560.6 states “Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin,” in accordance with enumerated specifications.

9VAC25-875-560.7 states “Cut and fill 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.”

9VAC25-875-560.8 states “Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.”

9VAC25-875-560.10 states, “All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.”

9VAC25-875-560.15 states “The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.”

9VAC25-875-560.17 states “Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. . . .”

2019 and 2024 Permit Part II.F.1 states, “All control measures shall be properly maintained in effective operating condition”

2024 Permit Part II.F.2 states that: “If a site inspection required by Part II G identifies a control measure that is not operating effectively or needs routine maintenance, corrective actions or routine maintenance shall be completed as soon as practicable, but no later than five business days after discovery or a longer period as established by the VESMP authority, to maintain the continued effectiveness of the control measures.”

3. *Observation:* On July 9, 2024 DEQ inspected the Site and observed failures to perform and document inspections in the SWPPP at the frequency required by the 2019 and 2024 Permits.

Legal Requirement: 2024 Permit Part II.G.2.a.1 states that: “For construction activities that discharge 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. In the event that a measurable storm event occurs when there are more than 24 hours between business days, the inspection shall be conducted on the next business day.”

B. Alleged Violations of VWPP Requirements

1. *Observation:* Based on the discharge submitted to DEQ by A & K on July 10, 2023, A&K identified a discharge of sediment from construction activities impacting 50 linear feet of stream channel. DEQ inspection on September 14, 2023 observed discharges impacting 50 linear of stream and approximately .03 acres of palustrine emergent (‘PEM’) wetlands.

Legal Requirements: Va. Code § 62.1-44.15:20.A states, “Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: ... 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, “Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter 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...”

2. *Observation:* Based on DEQ’s September 14, 2023 inspection and file review conducted, A&K failed to maintain onsite or produce upon request while onsite: pre-construction photos, monthly inspection reports with elevations of pipes constructed within stream channels, or the approved impacts map. The pre-construction photographs were not transmitted with the 10-day construction notification and have not been received by DEQ.

Legal Requirements: VWP Permit Part I.H.1 states, “The permittee shall submit written notification at least ten (10) calendar days prior to the initiation of land disturbance or construction activities in permitted areas. The notification shall include a preconstruction photographs... a. Preconstruction photographs shall be taken at each impact area prior to initiation of activities within impact areas. . . .”

VWP Permit Part I.H.3 states, “Site inspections shall be conducted once every calendar month and recorded on the Monthly VWP Permit Inspection Checklist... by the permittee or the permittee’s qualified designee during active construction within

authorized surface water impact areas. . . . The Monthly VWP Permit Inspection Checklist (Attachment 2) shall be completed in its entirety for each monthly inspection and shall be kept on-site and made available for review by DEQ staff upon request during normal business hours.”

3. *Observation:* Based on DEQ’s September 14, 2023 inspection and file review conducted, impact footprint of stream crossings PR2 & PR3 exceeded the impacts authorized. Impacts were exceeded at PR2 by estimated at 15 linear feet of stream, and 2 separate channels at PR3 were estimated at 15 linear feet of stream each. The total estimated stream impacts were 50 linear feet of stream.

Legal Requirements: 9 VAC 25-210-50.A. states, “Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall ... discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter 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...”

4. *Observation:* Based on DEQ’s September 14, 2023 inspection and file review conducted, A&K failed to flag the non-impacted surface waters.

Legal Requirement: VWP Permit Part I.C.21. states, “All nonimpacted surface waters that are within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged or demarcated for the life of the construction activity within that area. The permittee shall notify all contractors and subcontractors that no activities are to occur in these marked areas.”

5. *Observation:* Based on DEQ’s September 14, 2023 inspection and file review conducted, the operator installed riprap in an area permitted as a temporary impact and failed to restore the impact to preconstruction conditions at impact area TU-1 within 30 days of having taken those impacts. The impact was estimated to be 0.03 acre of PEM wetlands.

Legal Requirement: VWP Permit Part I.C.16 states, “All temporarily disturbed wetland areas shall be restored to preconstruction conditions within 30 calendar days of completing work in the areas”

6. *Observation:* Based on DEQ’s September 14, 2023 inspection and file review conducted, the operator failed to report the unauthorized impacts at PR2, PR3, & TU-1 (see, paragraph 4 and 5 above). The semi-annual reports indicated all impacts were in accordance with the authorization.

Legal Requirements: VWP Permit Part I.H.6 states, “The permittee shall notify DEQ within 24 hours of discovering impacts to surface waters including wetlands, stream channels, and open water that are not authorized by this permit”

Legal Requirement: VWP Permit Part I.A.4. states, “The permittee shall notify the DEQ of any changes in authorized impacts to surface waters or any changes to the design or type of construction activities in surface waters authorized by this permit. DEQ approval shall be required prior to implementing the changes. Any additional impacts, modifications, or changes shall be subject to individual permit review and/or modification of this permit.”

7. *Observation:* The August 10, 2023 report identified that the culvert work in PR2, PR3 & TU1 locations was complete. Subsequent inspection by DEQ on February 2, 2024 did confirm that the culverts located in PR2 and PR3 were not countersunk as required.

Legal Requirement: VWP Permit, Part I H.5 states, “When countersinking culverts in streams, the permittee shall install the structure and any riprap or ancillary features in a manner to ensure reestablishment of the stream channel within 15 days post construction. When installing culverts in any surface water, the permittee shall install the culvert and ancillary features in a manner that will maintain the pre-construction hydrologic regime. Surface water depth within the impact area shall be consistent with depths upstream and downstream of the impact area.”

RECOMMENDED DECISION, RELIEF AND CIVIL PENALTY

DEQ staff will request two separate Special Orders to address the alleged violations noted above.

With respect to alleged violations regarding stormwater and erosion and sediment control, DEQ will request a Special Order requiring A&K to pay the maximum penalty allowed by law within 30 days of the Order’s effective date, and pay attorneys’ fees of 30% of the amount outstanding should DEQ have to refer collection of the civil penalty to the Department of Law.

With respect to alleged violations of VWPP requirements, DEQ will request a Special Order requiring A&K to:

1. Pay the maximum penalty allowed by law within 30 days of the Order’s effective date, and pay attorneys’ fees of 30% of the amount outstanding should DEQ have to refer collection of the civil penalty to the Department of Law
2. Submit an approvable corrective action plan to restore the impairments to state waters caused by the lack of countersinking for the culverts in impact areas PR-2 and PR-3 within 30 days of the Order’s effective date.
3. Submit an approvable corrective action plan to restore impacted wetlands in area TU-1 within 30 days of the Order’s effective date.

PROCEDURES

You may participate in the conference call yourself or by counsel or other qualified representative pursuant to Va. Code § 2.2-4019. At this proceeding, A & K Development will be able to present factual data, argument, or proof in connection with this case. DEQ staff may rely on the enclosed documents, other documents in its files, and statements of DEQ staff to

substantiate the alleged violations. A presiding officer will hear the evidence in this case and prepare an independent Findings of Fact and Conclusions of Law and a draft Order for the Director's review. The Director will then issue a decision in this matter. If the Director issues a Special Order under Va. Code § 10.1-1186, it may include both injunctive relief and a civil penalty.

Be advised that if you fail to attend or appear without good cause at an informal fact-finding proceeding conducted pursuant to Va. Code § 2.2-4019, the presiding officer may issue default orders regarding the subject of this notice. 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, an 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 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.

Gary Wooldridge will represent DEQ at this proceeding. Please contact Gary Wooldridge at 804-584-6716 or gary.wooldridge@deq.virginia.gov within ten (10) calendar days of the receipt of this letter to indicate whether you will be represented at this Special Order Proceeding by counsel or if you are unable to participate by conference call at the scheduled time.

DEQ encourages settlement of this matter at any time if such settlement is consistent with the provision and objectives of the applicable laws and regulations. You may request a settlement conference with DEQ staff to discuss the allegations in the notice. A request for a settlement conference or the opportunity to submit documentation will not affect the scheduled proceeding unless the parties and the presiding officer otherwise agree. If you wish to arrange an informal settlement conference or discuss the opportunity to submit documentation, please call Gary Wooldridge within ten (10) calendar days of receipt of this notice.

If you have any questions or require assistance, please contact Gary Wooldridge at 804-584-6716 or gary.wooldridge@deq.virginia.gov.

Sincerely,



Lee Crowell
Director, Division of Enforcement
1111 E. Main Street
Richmond VA 23219

Enclosure:
Exhibit List

CC: Gary Wooldridge, DEQ; Carla Pool, DEQ; Davis Wilcox, DEQ