



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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May 8, 2020

Mr. Francisco Metcalf
FAM Construction, LLC
3877 Fairfax Ridge Road, 3rd Floor, Suite 300C
Fairfax, VA 22033

VIA EMAIL at fmecalf@fam66.us

NOTICE OF VIOLATION

RE: NOV No. SW2020-05-NRO-001
“Transform 66 P3 Project General Construction Activities” (I-66 Main Corridor Improvements)
Fairfax & Prince William Counties, VA
VPDES Construction General Permit (CGP) Number VAR10K601
Virginia Water Protection (VWP) Individual Permit No. 18-1140

Dear Mr. Metcalf:

The Department of Environmental Quality (DEQ or the Department) has reason to believe that FAM Construction, LLC may be in violation of the Virginia State Water Control Law, Regulations, and Permit No. VAR10K601 and 18-1140 (the Permits)¹ at the “Transform 66 P3 Project General Construction Activities” project (Site).

This letter addresses conditions at the Site and describes compliance requirements of the Virginia Stormwater Management Act, § 62.1-44.15:24 et seq., Virginia Water Resources and Wetlands Protection Program, § 62.1-44.15:20 et seq., Regulations and the Permit. Pursuant to Va. Code § 62.1-44.15(8a), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 et seq. (APA). DEQ requests that you respond within 30 days of the date of this letter.

OBSERVATIONS AND LEGAL REQUIREMENTS

On December 18, 2017, DEQ granted coverage to FAM Construction, LLC under the CGP Permit for discharge of stormwater associated with construction activities at the Site, assigning it registration number VAR10K601. On February 11, 2019, DEQ granted coverage under the VWP Program permit for specific impacts to surface waters, assigning it the number 18-1140. On February 11, 2020, April 17, 2020, April

¹ Permit terms and conditions are found at 9 Virginia Administrative Code (VAC) 25-880-70, and 25-210 et. seq.

27, and May 4, 2020, DEQ staff conducted inspections and/or a file review of the project Site. The May 4, 2020, CGP and VWP inspection reports are attached. The following describes staff observations and identifies applicable legal requirements:

1. Observations: During the inspections conducted, staff observed the following items not in compliance with VAR10K601.
 - a. On February 11, April 17, April 27, and May 4, 2020, land disturbance activities conducted were observed to be inconsistent with the approved plan for erosion and sediment control and stormwater management.
 - b. On February 11, 2020, a location of land disturbance associated with the Site that exceeded the approved limits of disturbance and did not have approved plans prior to initiating the land clearing.
 - c. On April 17, and April 27, 2020, staff observed that a sediment basin required by the erosion and sediment control plan was not installed. The inspection report directed the operator to correct the deficiency by implementing the practice in accordance with the approved plan. On April 27, 2020, the same location was re-inspected for corrective actions and found a sediment trap was constructed in lieu of the required sediment basin practice, inconsistent with the approved erosion and sediment control plan.
 - d. On May 4, 2020, DEQ staff observed another discrete location where the approved erosion and sediment control plan required a sediment basin that was not constructed as a first step in land disturbing activities.

Legal Requirements: Virginia Stormwater Management Program Regulation 9VAC25-880-70. Any operator whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements contained therein and be subject to all requirements of 9VAC25-870.

Legal Requirements: Virginia Stormwater Management Program Regulation 9VAC25-870-54. A. A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of this section. B. 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. C. A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.

Legal Requirements: Virginia Erosion and Sediment Control Regulation 9VAC25-840-40.4. 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.

2. *Observations:* During each of the inspections conducted on April 17, April 27, and May 4, 2020, separate, discrete discharges of measureable sediment to surface waters were documented. Over the course of the project, the operator has identified sediment discharges to surface waters on 18 separate dates prior to April 17, 2020.

Legal Requirements: Except in compliance with an individual or general Virginia Water Protection 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.

A. 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; excavate in wetlands; or on or after October 1, 2001, 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.

Legal Requirements: Virginia State Water Control Law § 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.”

Legal Requirements: Virginia Stormwater Management Program Regulation 9VAC 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.”

Legal Requirements: Virginia Erosion and Sediment Control Regulation 9VAC 25-840-60(A) states: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.”

Legal Requirements: VPDES Construction General Permit Part I(G)(1) states: “The operator must select, install, implement and maintain control measures as identified in the SWPPP at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standards.”

Legal Requirements: VPDES Construction General Permit Part II(E) states in part: “The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F.1. All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. . . .”

ENFORCEMENT AUTHORITY

Va. Code § 62.1-44.15:42 and §62.1-44.23 of the State Water Control Law provide for an injunction for any violation of the State Water Control Law, the Stormwater Management Act, or any rule, regulation, approved standard and specification, order, or permit condition issued by the State Water Control Board, DEQ, or authorized VSMP authority. Va. Code §§ 62.1-44.15 and 62.1-44.32 provide for a civil penalty up to \$32,500 per day of each specified violation. Va. Code § 62.1-44.15 authorizes the State Water Control Board to issue orders to any person to comply with the State Water Control Law and regulations, including the imposition of a civil penalty for violations of up to \$100,000. Also, Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the State Water Control Law and regulations. Va. Code §§ 62.1-44.32 (b) and 62.1-44.32(c) provide for other additional penalties

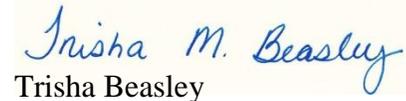
FUTURE ACTIONS

DEQ staff wishes to discuss all aspects of their observations with you, including any actions needed to ensure compliance with state law and regulations, any relevant or related measures you plan to take or have taken, and a schedule, as needed, for further activities. In addition, please advise DEQ if you dispute any of the observations recited herein or if there is other information of which DEQ should be aware. In order to avoid adversarial enforcement proceedings, FAM Construction, LLC may be asked to enter into a Consent Order with the Department to formalize a plan and schedule of corrective action, and to settle any outstanding issues regarding this matter, including the assessment of civil charges.

In the event that discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ’s Process for Early Dispute Resolution. Also, if informal discussions do not lead to a satisfactory conclusion, you may request in writing that DEQ take all necessary steps to issue a final decision or fact finding under the Administrative Procedure Act on whether or not a violation has occurred. For further information on the Process for Early Dispute Resolution, please see Agency Policy Statement No. 8-2005 posted on the Department’s website under “Programs,” “Enforcement,” and “Laws, Regulations, & Guidance” (http://www.deq.virginia.gov/Portals/0/DEQ/Enforcement/Guidance/process%20for%20early%20dispute%20resolution%20no8_2005.pdf) or ask the DEQ contact listed below.

Please contact **Mark Miller** at **703-583-3850** or mark.miller@deq.virginia.gov within **30 days of the date of this letter** to discuss this matter and arrange a conference.

Sincerely,


Trisha Beasley
DEQ- NRO VWP Program Manager

cc: CASE FILE
ENFORCEMENT SPECIALIST
Ms. Marian Carroll, MS4 Coordinator, VDOT – VIA EMAIL
Mr. David Knepper, US Army Corps of Engineers – VIA EMAIL
Mr. John Olenic, VDOT CO – VIA EMAIL
Ms. Angel Deem, VDOT CO – VIA EMAIL
Mr. Dave Davis, Manager, Office of Wetlands and Stream Protection, DEQ CO – VIA EMAIL
Mr. Matt Stafford, Stormwater Compliance Coordinator, DEQ CO – VIA EMAIL
Mr. Jerome Brooks, Manager Office of Water Compliance, DEQ CO – VIA EMAIL
Ms. Hannah Schul, VWP Permitting & Compliance Specialist, DEQ CO – VIA EMAIL