



COPY

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO**

Haley Builders & Dixon Automotive

FOR

**Virginia Pollutant Discharge Elimination System Permit or Registration No.
VAR100381**

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 Department of Environmental Quality and Haley Builders, regarding the Dixon Automotive, for the purpose of resolving certain violations of the State Water Control Law and the applicable 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. "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.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means the discharge of a pollutant.
7. "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.
8. "Dixon" means Dixon Holdings, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Dixon Holdings is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "Facility" or "Site" means the Dixon Automotive located at 956 Richmond Tappahannock Highway, Suite 4, King William County, Virginia, from which discharges of stormwater associated with construction activity occur.
10. "Haley" means Haley Builders, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Haley Builders is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
12. "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.
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

14. "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.
15. "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.
16. "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 Reple, are 'pollution.'" Va. Code § 62.1-44.3.
17. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
18. "Registration Statement" means a registration statement for coverage under the 2019 Permit.
19. "Runoff volume" means the volume of water that runs off the site from a prescribed design storm. 9 VAC 25-870-10.
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
21. "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.
22. "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.

23. "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.
24. "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.
25. "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.
26. "Va. Code" means the Code of Virginia (1950), as amended.
27. "VAC" means the Virginia Administrative Code.
28. "VPDES" means Virginia Pollutant Discharge Elimination System.
29. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Repeal after September 13, 2011, and until June 30, 2013, or the State Water Control Repeal 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.
30. "VSMP authority" means an authority approved by the Repeal 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.
31. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. Dixon Holdings, LLC owns the Dixon Automotive Facility located in King William County, Virginia, from which stormwater associated with construction activity is discharged with Haley Builders hired by Dixon Holdings to perform duties as general contractor.
2. DEQ is the VSMP authority for the Site. King William County is the VESCP authority for the Site.
3. Dixon Holdings, LLC applied for permit coverage of VAR10 of the General Permit Regulation on May 7, 2020.
4. King William County approved Erosion and Sediment Control plans for the development project with 2.04 acres of land disturbance on January 13, 2021.
5. On January 19, 2021, DEQ Stormwater provided an approval email for a Stormwater Management Plan at the subject area. However, the permit fee form was never submitted to DEQ and final issuance of 2019 Construction General Permit was not processed.
6. On April 9, 2021, DEQ Stormwater emailed Haley Builders indicating a permit fee for the CGP was not paid. On April 9, 2021, Haley Builders made a payment of \$2700.00 to DEQ. Haley Builders claims they did not know a permit fee was required prior to April 9, 2021.
7. On April 12, 2021, DEQ staff conducted a Comprehensive Site Inspection at Dixon Automotive. At the time of the inspection, the Site did not have permit coverage while ground disturbance commenced. During this inspection, DEQ staff observed a Stormwater Pollution Prevention Plan (SWPPP) inspection report in the SWPPP that indicated land disturbance and a SWPPP inspection were conducted on March 18, 2021 prior to Dixon Holdings, LLC receiving permit coverage on April 13, 2021.
8. On April 13, 2021, DEQ provided Dixon Automotive a Letter of Coverage under VPDES 2019 Construction General Permit.
9. The 2019 Permit allows Dixon Automotive to discharge stormwater associated with construction activities from the Dixon Automotive facility to palustrine forested wetlands, in strict compliance with the terms and conditions of the 2019 Permit.
10. The receiving waters are unnamed tributaries and palustrine forested wetlands within the Pamunkey River, UT-York River Basin. During the 2020 305(b)/303(d) Water Quality Assessment Integrated Report, the tributary was not assessed for any designated use. It is therefore considered a Category 3A waterbody. It is located within the study area for the Pamunkey River and Tributaries Bacteria Total Maximum Daily Load (TMDL), which was approved by the Virginia State Water Control Board (SWCB) on December 11, 2014 and by the U.S. Environmental Protection Agency (EPA) on April 27, 2015. The TMDL states that "...all new or revised stormwater permits must stay consistent with the

assumptions and requirements of any applicable TMDL WLA.” 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. The tributary drains to the Pamunkey River tidal freshwater estuary. All regulated stormwater discharges received aggregated wasteload allocations. The receiving stream is shown as perennial on the U.S. Geological Service topographic map. DEQ has not collected data on the tributary and the water body is considered a Tier 2 water by default.

11. The receiving water is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law. Reported impact to state waters includes 0.45 palustrine forest wetlands.
12. During the inspection on April 12, 2021, DEQ staff visited the Site and observed that land-disturbing activities greater than one acre occurred at the Site in an area subject to stormwater runoff. Dixon did not register for coverage under the 2019 General VPDES Permit for Discharges of Stormwater from Construction Activities, and no other certificate or permit was issued for the discharge of stormwater from construction activities at the Site. Dixon did not submit a permit application fee to the Virginia Stormwater Management Program (VSMP) authority and did not obtain VSMP authority approval to begin land disturbance.

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.”

Va. Code § 62.1-44.15:34 states: “A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance.”

Va. Code §§ 62.1-44.15:24 and -44.15:34 define “land-disturbing activity” and describe regulated land-disturbing activities (including exemptions), respectively.”

13. During the April 12, 2021 inspection, a Stormwater Pollution Prevention Plan (SWPPP) was not available on-site and was not made available to the Department upon the request of DEQ staff. No notice of the SWPPP’s location was posted near the main entrance of the Site.

9 VAC 25-870-54(G) states in part: “The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP’s location must be posted near the main entrance at the construction site.

14. During the April 12, 2021 inspection, an approved erosion and sediment control plan was not at the Site. Land disturbing activity was observed in the upslope drainage areas without temporary sediment traps and diversions being completed, functional and stabilized per the plans. Stone outlet structures on temporary sediment traps #1 and #2, and a portion of the Eastern Diversion to temporary sediment trap #1, were not installed per the plans provided onsite.

9 VAC 25-870-54(B) states: “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 25-870-54(C) states “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.”

15. During the inspection on April 12, 2021, DEQ staff observed that the SWPPP did not contain an adequate pollution prevention plan describing a legible site plan and identifying all pollution prevention plan practice measures and support activities

9 VAC 25-870-54(D) states: “A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences...”

9 VAC 25-870-56(A) states: “A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to: 1.) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge; 2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and 3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

9 VAC 25-870-56(B) states: "The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e): 1) Wastewater from washout of concrete, unless managed by an appropriate control; 2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials; 3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and 4) Soaps or solvents used in vehicle and equipment washing.

9 VAC 25-870-56(C) states: "Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c)."

16. At the time of the April 12, 2021 inspection, the Department had not issued coverage under any permit or certificate to Dixon other than under the 2019 Permit.
17. Based on the results of the April 12, 2021 inspection, DEQ concludes that Dixon violated Va. Code §62.1-44.15:34 (A), Va. Code § 62.1-44.5(A), 9 VAC 25-870-310(A), 9 VAC 25-870-54 (B)-(D) & (G), 9 VAC 25-870-56 (A)-(C), as described above.
18. DEQ PRO issued a Notice of Violation for the violations noted above as follows: NOV No. 2021-04-PRO-201, issued April 19, 2021.
19. On May 1, 2021, Dixon and Haley responded to the Notice of Violation. The response included supporting documentation and photographs indicating corrective action was taken in response to each observation noted in the Notice of Violation.
20. On May 3, 2021, the 2019 Stormwater Construction General Permit was transferred from Dixon Holdings, LLC. to Haley Builders, Inc.
21. On July 29, 2021, DEQ Enforcement held a phone conference with Haley Builders, Dixon Automotive, ECS Mid-Atlantic, Parker Design Group as well as DEQ Stormwater and VWP staff. The purpose of the call was to discuss the alleged violations stated in the Notice of Violation and to discuss any further corrective action to bring the site into full compliance.
22. On August 13, 2021, DEQ participated in a phone call with Dixon and Haley where Haley Builders assumed liability for the DEQ Enforcement Action.
23. On August 23, 2021, DEQ received a response to the NOV. Within the response, Haley summarized all corrective action conducted and provided photo documentation indicating all requested corrective action is complete.
24. On October 19, 2021, a Focused Level Inspection site visit was conducted by DEQ Stormwater and VWP. The inspection included the following observations:

“All SWM & SWPPP corrective action observations listed in the previous (4/12/2021) SWCGP Inspection report have be substantially addressed & corrected. Please be reminded that all potential modifications to the current approved SWCGP & SWM plan (including any changes in total acreage of land disturbance) must be reviewed and approved by DEQ before implementing onsite. Any potential modifications to the approved ESC plan must be reviewed and approved by the local VESCP Authority at King William County prior to implementation onsite.”

25. Haley Builders submitted documentation verifying corrective action complete. DEQ staff inspected the Facility on October 19, 2021 and reported that the violations described above are corrected.

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, DEQ orders Haley Builders, and Haley Builders agrees to:

1. Pay a civil charge of \$3,437.50 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

Haley Builders 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 into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Haley Builders shall be liable for attorneys' fees of 30 percent of the amount outstanding.

SECTION E: Administrative Provisions

1. Department may modify, rewrite, or amend this Order with the consent of Haley Builders for good cause shown by Haley Builders, 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. 201-04-PRO-201 dated April 19, 2021. This Order shall not preclude the Replace 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, Haley Builders admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
 4. Haley Builders 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. Haley Builders 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 Replacé to modify, rewrite, amend, or enforce this Order.
 6. Failure by Haley Builders to comply with any of the terms of this Order shall constitute a violation of an order of the Replacé. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Replacé 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. Haley Builders 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. Haley Builders shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Haley Builders 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 Haley Builders. Nevertheless, Haley Builders 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 Haley Builders has completed all of the requirements of the Order;
 - b. Haley Builders 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 Replace terminates the Order in his or its sole discretion upon 30 days' written notice to Haley Builders.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Haley Builders 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 Haley Builders 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 Haley Builders certifies that they are a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Haley Builders to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Haley Builders.
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, Haley Builders voluntarily agrees to the issuance of this Order.

Haley Builders, Inc. voluntarily agrees to the issuance of this Order.

Date: 11-4-22 By: Greg Haley, President
(Person) (Title)
Haley Builders, Inc.

Commonwealth of Virginia
City/County of Hanover

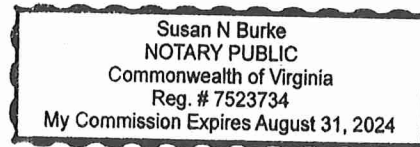
The foregoing document was signed and acknowledged before me this 4th day of
November, 2022, by Greg Haley who is
President of Haley Builders, Inc., on behalf of the corporation.

Susan N Burke
Notary Public

752.3734
Registration No.

My commission expires: 8/31/2024

Notary seal:



And it is so ORDERED this _____ day of _____, 2022.

Jerome Brooks, Regional Director
Department of Environmental Quality

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