COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FRANCIS M. BARLOW, JR.
FOR
FROG LEVEL FARM 614

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Francis M. Barlow, Jr., regarding the Frog Level Farm 614, for the purpose of resolving certain violations of 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. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.

5. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.

6. "Mr. Barlow" means Mr. Francis M. Barlow, Jr., currently a resident of Caroline County, Virginia. Barlow is a "person" within the meaning of Va. Code §62.1-44.3.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

9. "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.

10. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act 33 United States Code ("USC") § 1344.

11. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.

12. "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: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) 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; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

13. "Property" or "Parcel" means Farm Level Farm 614, tract 1611 located at one half mile east from the US 301/ VSH 600 intersection on the north side of VSH 600 (Frog Level Road), Caroline County, Virginia owned by Barlow.

14. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*

15. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.14:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.

16. "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 and 9 VAC 25-210-10.

17. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.

18. "USACE" means the United States Army Corps of Engineers.

19. "Va. Code" means the Code of Virginia (1950), as amended.

20. "VAC" means the Virginia Administrative Code.

21. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Barlow owns and operates the Property located in Caroline County, Virginia.

2. On May 7, 2009, DEQ received notification from the USACE of land clearing and filling activities resulting in unauthorized impacts to surface waters at the Property.

3. On May 14, 2009, DEQ staff and USACE staff conducted an inspection of the Property to determine compliance with the requirements of the State Water Control Law and the Regulations. The inspection was conducted and a review of previous inspection reports and site maps made by the United States Department of Agriculture's Natural Resource Conservation Service staff. The DEQ inspector observed that approximately 2.5 acres of surface waters, in the form of wetlands, had been impacted as a result of clearing, grubbing and excavation to create additional fields and filling to create a roadbed along a proposed fence line.

4. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit excavation or filling of surface waters without a Permit issued by the Director. Mr. Barlow does not have a VWP Permit for the above activities.

5. On June 30, 2009, DEQ issued NOV No. 2009-06-NRO-001 for the violations as described above.

6. On August 5, 2009, DEQ staff met with Mr. Barlow and his consultant to discuss the violation and the need for restoration of the surface waters at the impacted area on his property.

7. The unauthorized impacts to approximately 2.5 acres of surface waters, arising from the clearing, grubbing, and excavation to create additional fields and filling to create a roadbed along a proposed fence line, 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 the May 14, 2009 inspection, and the August 5, 2009 meeting, the Board concludes that Mr. Barlow has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50, as described in paragraph C.3 above.

9. In order for Mr. Barlow to return to compliance, DEQ staff and Mr. Barlow 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 Board orders Francis M. Barlow, Jr., and Francis M. Barlow, Jr. agrees to:

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

2. Pay a civil charge of $19,500.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 30 days of the effective date of the Order.	$4,875.00 or balance
Within 120 days of the effective date of the Order.	$4,875.00 or balance
Within 210 days of the effective date of the Order.	$4,875.00 or balance
Within 300 days of the effective date of the Order.	$4,875.00

3. 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, the Department shall have the right to demand in writing full payment of the entire remaining balance under this order by Francis M. Barlow, Jr., and the entire remaining balance of

the civil charge shall be immediately due and owing. Francis M. Barlow, Jr. shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or of a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.

4. All payments 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

5. Francis M. Barlow, Jr. 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 Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Francis M. Barlow, Jr. for good cause shown by Francis M. Barlow, Jr., 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. This Order shall not preclude the Board 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, Francis M. Barlow, Jr. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Francis M. Barlow, Jr. 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. Francis M. Barlow, Jr. declares he has received fair and due process under the Administrative Process Act and the State Water Control Law and he 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 Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Francis M. Barlow, Jr. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board 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. Francis M. Barlow, Jr. 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 occurrence. Francis M. Barlow, Jr. shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on its part. Francis M. Barlow, Jr. 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 Francis M. Barlow, Jr. intends 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, their 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 Francis M. Barlow, Jr.. Nevertheless, Francis M. Barlow, Jr. 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. Francis M. Barlow, Jr. petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Francis M. Barlow, Jr..

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Francis M. Barlow, Jr. from his 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 Francis M. Barlow, Jr. 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. 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, Francis M. Barlow, Jr. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of April, 2011.

Thomas A. Faha

Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

Mr. Francis M. Barlow, Jr. voluntarily agrees to the issuance of this Order.

Date: 1-3-11 By: Francis M Barlow Jr
(Francis M. Barlow, Jr.)

Commonwealth of Virginia

City/County of Caroline

The foregoing document was signed and acknowledged before me this 3rd day of January, 2010, by Francis M. Barlow, Jr.

Casey Wainscott Pugh
Notary Public

7117238
Registration No.

My commission expires: 1/31/2011

Notary seal:

CASEY WAINSCOTT PUGH
COMMONWEALTH
REGISTRATION NO.
7117238
MY COMMISSION EXPIRES
01/31/2011
OF VIRGINIA
NOTARY PUBLIC

APPENDIX A
SCHEDULE OF COMPLIANCE

Francis M. Barlow, Jr. owner of Frog Level Farm 614 shall:

1. Immediately cease any activities that impact surface waters that require authorization from the VWP Permit Program and shall not resume such impacts unless authorization from DEQ is granted via a Permit.

2. Provide DEQ by July 15, 2010, a corrective action plan (CAP) to restore approximately 2.5 acres of forested wetlands. The CAP shall be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters in accordance with 9 VAC 25-210-116. The CAP shall include the information in 9 VAC 25-210-116.F for each activity and the information/clarifications requested in the DEQ letter dated May 17, 2010. The CAP shall include an evaluation of the functions of the impacted wetland and an accounting of how the CAP will restore these functions.

3. Respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.

4. Notify DEQ in writing at least 10 days prior to the initiation of construction activities at the site referenced in paragraph 2.

5. Begin implementation of the CAP within 60 days of DEQ approval. The restoration site shall be graded and planted within 240 days after the start of construction. Any changes to the approved final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. Francis M. Barlow, Jr. shall complete the CAP in accordance with its terms.

   - If the performance criteria specified in the final CAP are not achieved at the end of each monitoring period, then Francis M. Barlow, Jr. shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. Francis M. Barlow, Jr. shall submit to DEQ for review and approval an alternative CAP within 60 days of noting the deficiency. The DEQ-approved alternative CAP shall then be implemented by Francis M. Barlow, Jr. in accordance with the schedule set forth in the alternative CAP.
   - If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then Francis M. Barlow, Jr. shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the final CAP or, as applicable, any previously submitted alternate CAP. Francis M. Barlow, Jr. shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Francis M. Barlow, Jr. shall purchase mitigation bank credits

or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.

6. Conduct an as-built ground survey (or an aerial survey provided by a firm that specializes in aerial surveys and includes documentation of the variation from actual ground conditions within +/- 0.2 feet) for the graded areas of restoration, including invert elevations for all water elevation control structures and spot elevations throughout the site. This survey shall be prepared by a licensed land surveyor and certified by the licensed land surveyor or a registered professional engineer to conform to the design plans and specifications.

7. Unless otherwise specified in this Order, Francis M. Barlow, Jr. shall submit all requirements of Appendix A of this Order to:

Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193