



Piedmont Regional Office

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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CARTER OAKS, LLC
FOR
CARTER OAKS SUBDIVISION, SECTION C, HENRICO, VIRGINIA
Permit No. WP4-06-1557**

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 Carter Oaks, LLC, regarding Carter Oaks Subdivision, Section C, Henrico, Virginia, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and 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. "Carter Oaks" means Carter Oaks, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Carter Oaks is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
6. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
7. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
8. "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.
9. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "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.
12. "Permit" means general permit WP4-06-1557 issued by DEQ to Carter Oaks, LLC on August 8, 2006 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. The Permit expired on August 7, 2011.
13. "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.
14. "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.

15. "Property" or "Parcel" means the tract of land consisting of 8 lots at Carter Oaks Subdivision, Section C, Henrico County, Virginia, recorded in the Henrico County Circuit Court Clerk's Office in Deed Book 3388 at page 0551, owned and developed by Carter Oaks, LLC.
16. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
17. "Regulations" means the VWP Permit Program Regulations, 9 VAC 25-210 *et seq.*
18. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
19. "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 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
20. "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.
21. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
22. "USACE" means the United States Army Corps of Engineers.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means the Virginia Administrative Code.
25. "VWP" means Virginia Water Protection.
26. "VWPP 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.

27. "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. Carter Oaks owns and developed the Property in Henrico County, Virginia.
2. On August 8, 2006 DEQ issued Permit WP4-06-1557 to Carter Oaks, LLC for wetland impacts associated with the construction of Carter Oaks Subdivision, Section C, Henrico County, Virginia. The Permit authorized permanent impacts to 0.41 acres of palustrine forested wetlands and no more than 0.02 acres of temporary impacts to palustrine forested wetlands. The Permit required Carter Oaks to create 0.60 acres of palustrine forested wetlands onsite and purchase of 0.22 acres of wetland credits. The Permit expired on August 7, 2011.
3. On October 20, 2006, USACE issued permit 06-V1557. This permit expired on November 1, 2007.
4. Prior to April of 2007, construction monitoring reports submitted to DEQ indicated construction impacts had commenced to permitted wetland areas.
5. On August 27, 2007, Carter Oaks, by email, requested from the USACE, whether it could modify its mitigation proposal, from creating 0.60 acre of forested wetlands onsite and the purchase of 0.22 acres of wetland credits to the purchase of a minimum of 0.82 acres of wetland credits. Carter Oaks did not get a response. Carter Oaks did not contact DEQ.
6. By January of 2008, four construction monitoring reports were submitted by Carter Oaks, which showed that wetland impacts were completed on 4 of the 8 lots in Section C.
7. On September 14, 2011, DEQ staff viewed online aerial photography, and conducted a site inspection of the Property, which revealed that a portion of the authorized impacts were completed and that compensation by onsite creation of 0.60 acres of palustrine forested wetlands had not occurred. DEQ staff subsequently reviewed the file for Permit WP4-06-1557 and found no record of documentation that mitigation bank credits were purchased and no record that a final wetland compensation plan had been submitted prior to initiating construction in permitted impact areas.
8. WP4-06-1557, Part II.A.5, states, "the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage or the fund contribution has been submitted to and received by DEQ."

9. WP4-06-1557, Part II.A.7, states, “[a]ll aspects of the compensation plan shall be finalized, submitted and approved by the board prior to any construction activity in permitted impact areas. The board shall review and provide written comments on the plan within 30 days of receipt or it shall be deemed approved. The final compensation plan as approved by the board shall be an enforceable requirement of this VWP general permit authorization. Any deviations from the approved plan must be submitted and approved in advance by the board.”
10. WP4-06-1557, Part II.A.12, states, “[a]ll work in impact areas shall cease if compensation site construction has not commence within 180 days of commencement of project construction, unless otherwise authorized by the board.”
11. Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50(A) of the VWP Permit Regulations state that except in compliance with a permit no person shall dredge, fill or discharge any pollutant into or adjacent to surface waters, excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: filling or dumping.
12. 9 VAC 25-210-90(A) of the VWP Permit Regulations states “[d]uty to comply. The permittee shall comply with all conditions of the VWP permit. Nothing in this chapter shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.”
13. 9 VAC 25-690-100 states that “any applicant whose application has been accepted by the Board shall be subject to the following requirements [of the permit].”
14. On October 12, 2011, DEQ issued NOV No. 11-09-PRO-702 for the violation of permit WP4-06-1557, Part II.A.5, Part II.A.7, Part II.A.12, Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50(A).
15. On November 16, 2011, DEQ sent a no response letter to Carter Oaks, since no response had been received as a result of the NOV.
16. On November 29, 2011, DEQ received a response to the NOV from the consultant for Carter Oaks.
17. On December 9, 2011, DEQ staff met with representatives of Carter Oaks to discuss the violations. Carter Oaks representatives provided additional information to DEQ staff.
18. On December 9, 2011, Carter Oaks’ consultant confirmed, by email, that 0.239 acres of wetland impacts had been taken under the Permit, and stated that Carter Oaks would be

purchasing 0.48 credits for the impacts already taken as agreed to in the meeting with DEQ.

19. On January 11, 2012, DEQ received confirmation that Carter Oaks had purchased 0.068 acres of wetland credits at the Virginia Habitats II Environmental Bank from Virginia Habitats II, LLC.
20. On January 17, 2012, DEQ received confirmation that Carter Oaks had purchased 0.412 acres of wetland credits from Ragland Farm, LLC.
21. Further file review indicated that construction in the permitted wetland impact areas was over halfway complete, however, DEQ staff found no record of receiving a 10-day notification letter prior to commencement of construction activities in permitted impact areas.
22. WP4-06-1557, Part II. E.2 states “DEQ shall be notified in writing at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include a projected schedule for initiation and completion of work at each permitted impact area.”
23. Based on the results of the site inspection, review of the permit file, and the December 9, 2011, meeting, the Board concludes that Carter Oaks has violated permit WP4-06-1557 permit conditions Part II.A.5, Part II.A.7, Part II.A.12, Part II.E.2; Va. Code § 62.1-44.15:20, 9 VAC 25-210-50(A); 9 VAC 25-690-100 and 9 VAC 25-210-90(A) as described above.
24. On March 20, 2012, DEQ issued permit WP4-12-0114 to Carter Oaks, LLC. This permit expires on March 19, 2017 and authorizes 0.115 acres of impacts to palustrine forested wetlands at Carter Oaks Subdivision, Section C, Henrico County, Virginia. WP4-12-0114 requires Carter Oaks, to purchase 0.23 acres of wetland credits to compensate for the authorized impacts.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Carter Oaks and Carter Oaks agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$26,049.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
October 1, 2012	\$3,256.13 or balance
January 1, 2013	\$3,256.13 or balance
April 1, 2013	\$3,256.13 or balance
July 1, 2013	\$3,256.13 or balance
October 1, 2013	\$3,256.13 or balance
January 1, 2014	\$3,256.13 or balance
April 1, 2014	\$3,256.13 or balance
July 1, 2014	\$3,256.13 or balance

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 by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Carter Oaks. Within 15 days of receipt of such letter, Carter Oaks 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 Order.
4. 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
5. Carter Oaks 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 Carter Oaks for good cause shown by Carter Oaks, 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, Carter Oaks admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Carter Oaks 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. Carter Oaks 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 Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Carter Oaks 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. Carter Oaks 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. Carter Oaks shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Carter Oaks 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.

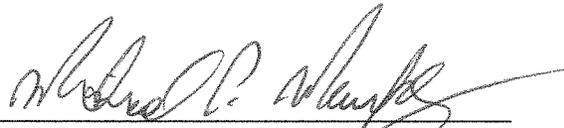
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement 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 Carter Oaks. Nevertheless, Carter Oaks 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 Carter Oaks has completed all of the requirements of the Order;
 - b. Carter Oaks 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 Board terminates the Order in his or its sole discretion upon 30 days' written notice to Carter Oaks.

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

And it is so ORDERED this 27th day of SEPTEMBER, 2012.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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Carter Oaks, LLC voluntarily agrees to the issuance of this Order.

Date: 6/25/12 By: W. L. Stinson MEMBER
(Person) (Title)
Carter Oaks, LLC

Commonwealth of Virginia

City/County of Powhatan

The foregoing document was signed and acknowledged before me this 25th day of

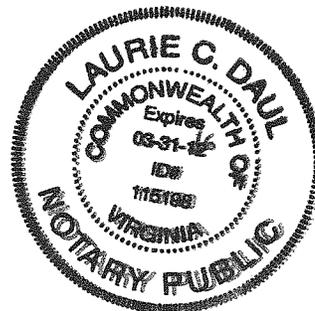
June, 2012 by William L. Stinson who is
a member of Carter Oaks, LLC, on behalf of the company.

Laurie C. Daul
Notary Public

115198
Registration No.

My commission expires: 3/31/2016

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Purchase of Wetland Credits

- a. On or before August 15, 2012, Carter Oaks shall purchase 0.23 acre wetland credits to compensate for the permitted impacts to 0.115 acres of Palustrine forested wetlands under Permit WP4-12-0114. Wetland credits shall be purchased from an approved wetland mitigation bank in the same or adjacent hydrologic unit code as the impacted wetlands. Wetland credits shall be purchased in accordance with compensatory mitigation requirements found in Va. Code § 62.1 – 44.15:23.
- b. On or before August 15, 2012, Carter Oaks shall provide verification of the purchase of wetland credits from an approved wetland mitigation bank to DEQ.

2. DEQ Contact

Unless otherwise specified in this Order, Carter Oaks shall submit all requirements of Appendix A of this Order to:

Gina Pisoni
Enforcement Specialist, Sr.
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5156
804-527-5106 (fax)
Gina.Pisoni@deq.virginia.gov