COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
DOMINION RACEWAY HOLDINGS, LLC
FOR THE
DOMINION RACEWAY
VWP PERMIT NO. WP4-13-0932

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 Dominion Raceway Holdings, LLC, regarding the Dominion Raceway, 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. "CAP" means corrective action plan.

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. "Dominion" or "Permittee" means Dominion Raceway Holdings, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Dominion Raceway Holdings, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.

7. "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.

8. "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.

9. "Impacts" means results caused by human-induced activities conducted in surface waters, as specified in § 62.1-44.15:20 A of the Code of Virginia.

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

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

12. "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.

13. "Permit" or "Virginia Water Protection Permit" means, WP4-13-0932, issued on November 5, 2013, and expires on November 4, 2020, 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.

14. "PFO" means palustrine forested wetlands.

15. "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.

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: (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.

17. "Project Site" or "Property" means the Dominion Raceway project owned by Dominion Raceway Holdings, LLC (Permittee) consists of an automotive racing facility and commercial center with associated parking and infrastructure on an approximately 160 acre parcel located along the eastern side of Interstate 95 and north of Mudd Tavern Road in Spotsylvania County, Virginia.

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

19. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

20. "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.

21. "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.

22. "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.

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

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

25. "VAC" means the Virginia Administrative Code.

26. "Warning letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

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. Dominion owns the Project Site in Spotsylania County, Virginia.

2. The Permit currently issued to Dominion authorizes the total permanent impact of 0.13 acre of surface waters, including 0.09 acre of palustrine forested wetlands, and 0.04 acre (300 linear feet) of stream channel.

3. On July 31, 2015, DEQ staff conducted an inspection and file review for the Project Site. During the inspection and file review DEQ observed unauthorized impacts from grading and filling, of approximately 85 linear feet of intermittent stream. In addition, DEQ observed unauthorized sediment discharges and accumulations in approximately eight locations of surface waters around the perimeter of the Project Site.

4. On August 17, 2015, Based on the file review and the July 31, 2015, inspection, DEQ issued a Warning Letter to Dominion for the observations cited in paragraph C(3) above.

5. On August 18, 2015 and September 11, 2015, DEQ conducted subsequent inspections of the Project Site.

6. The September 11, 2015, inspection was conducted with representatives from the contractor, Dominion, Consultant, the County of Spotsylvania.

7. On October 2, 2015, the Consultant submitted a report to DEQ outlining preliminary assessments of additional surface water and wetland impacts, and the associated circumstances.

8. The October 2, 2015, report combined with the observations made during the inspections conducted on July 31, August 18, and September 11, 2015, demonstrated that the following unauthorized impacts to surface waters occurred at the Project Site:

    a. Unauthorized impacts from grading and filling of an estimated 74 linear feet of intermittent stream. The report detailed that approximately 1,000 linear feet of stream channel, 5,000 square feet of wetlands and 23,000 square feet of riparian buffer were impacted from 6" to 36" of sediment discharged from the Project Site.

    9 VAC 25-210-50.A states that "[e]xcept in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands 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."

Va. Code § 62.1-44.15:20.A states that "[e]xcept 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."

b. Flagging of non-impact areas was not present during construction activities.

Part I.C.10 of the Permit states that '[a]ll non-impacted surface waters and compensatory mitigation areas within 50 feet of permitted activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

9. On October 16, 2015, DEQ issued NOV No. W2015-10-N-0007, to Dominion, dated, for the violations of the Permit Part I.C.10, 9 VAC 25-210-50.A, and Va. Code § 62.1-44.15:20.A.

10. On November 12, 2015, DEQ conducted an inspection of the Project Site . During this follow-up inspection, DEQ observed, an additional estimated 1.25 acres of PFO and 400 linear feet of stream channel impacted by the discharge of fill material due to the failure of erosion and sediment controls.

11. On November 18, 2015, Dominion with the building contractor, and Bowman met with DEQ to discuss the NOV. At the meeting and in subsequent submissions, Bowman provided DEQ with information detailing revised impact totals of 1,399 linear feet of stream channel and 1.30 acre of wetlands.

12. On December 8, 2015, the revised impact totals were accepted by DEQ.

13. Based on the results of the July 31, August 18, September 11, and November 12, 2015 inspections, the November 18, 2015 meeting, and the documentation submitted by representatives of Dominion, the Board concludes that Dominion has violated Permit Part

I.C.10, 9 VAC 25-210-50.A, and Va. Code § 62.1-44.15:20.A, as described in paragraphs C(3) - C(8), C(11), and C (12), above.

14. In order for Dominion to complete its return to compliance, DEQ staff and representatives of Dominion 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 Dominion, and Dominion agrees to:

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

2. Pay a civil charge of $35,000.00 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

Dominion 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Dominion shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Dominion for good cause shown by Dominion, 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. W2015-10-N-0007, dated October 16, 2015. 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, Dominion admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Dominion 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. Dominion 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 Dominion 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. Dominion 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. Dominion shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Dominion 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 Dominion. Nevertheless, Dominion 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 Dominion has completed all of the requirements of the Order;

    b. Dominion 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 Dominion.

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

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, Dominion voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15th day of July, 2016.

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

Dominion Raceway Holdings, LLC voluntarily agrees to the issuance of this Order.

Date: 5/25/16 By: _____, MANAGING MEMBER
(Person) (Title)
Dominion Raceway Holdings, LLC

Commonwealth of Virginia

City/County of Spotsylvania

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

May, 2016, by Steve Britt who is

Managing member of Dominion Raceway Holdings, LLC, on behalf of the company.

Jacqueline L Storm
Notary Public

7672778
Registration No.

My commission expires: 11/30/2020

Notary seal:

JACQUELINE LYNN STORM
NOTARY PUBLIC
REG # 7672778
COMMISSION EXPIRES
11/30/20
COMMONWEALTH OF VIRGINIA

APPENDIX A

SCHEDULE OF COMPLIANCE

A. Corrective Action:

1. No later than 30 days from the execution of this Order Dominion shall submit to DEQ for review and approval, a Corrective Action Plan (CAP) to restore the 74 linear feet of stream channel. The CAP must be sufficient to achieve no net loss of functions in all surface waters in accordance with 9 VAC 25-210-116. Dominion shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.

2. Upon DEQ approval of the CAP, Dominion shall begin implementation of the CAP in accordance with the schedule contained therein. Any changes to the approved Final CAPs or schedule shall not be initiated without advance notice to and approval by DEQ. Dominion shall complete the CAP in accordance with its terms.

    a. If the performance criteria specified in the Final CAP are not achieved at the end of the monitoring period provided in CAP, then Dominion 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. If DEQ thereafter so directs, Dominion shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by Dominion in accordance with the schedule set forth in the alternative CAP.

    b. 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 Dominion 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. Dominion shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Dominion 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.

B. Submissions:

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

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