



# 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

### EXECUTIVE COMPLIANCE AGREEMENT

GEORGE MASON UNIVERSITY

FOR THE

CENTER FOR THE ARTS

**VWP General Permit Authorization Number WP4-07-2670**

This is an Executive Compliance Agreement (Agreement) between the George Mason University and the Virginia Department of Environmental Quality (DEQ) pursuant to the Director's authority, as set forth in §§ 10.1-1185, -1192, and § 62.1-44.15 of the Code of Virginia (Va. Code), to administer and enforce the State Water Control Law and regulations.

George Mason University, a state agency established pursuant to Va. Code § 23.14 and authorized to operate a state-supported institution of higher education (Permittee), owns the George Mason University's Center for the Arts (Art Center) whose mission is to make the arts an intrinsic part of the lives of every George Mason University student and area residents.

On April 1, 2008, DEQ issued VWP General Permit Authorization Number WP4-07-2670 (Permit) for significant alteration to 0.12 acre of state waters consisting of 0.06 acre of palustrine scrub-shrub wetland (PSS), 0.02 acre of palustrine emergent wetland (PEM), and 0.04 acre (480 linear feet) of intermittent stream channel associated with the construction of the Art Center. Compensation for the significant alteration of wetlands was to be provided through the purchase of 0.11 wetland credit from the Foggy Bottom Wetland Mitigation Bank in Prince William County. Compensation for the significant alteration of the stream was to be provided through the off-site stream channel enhancement activities along 647 linear feet of a perennial stream channel and 2.41 acres of riparian buffer reforestation along the channel (100 feet along both sides).

On January 31, 2012, DEQ staff conducted an inspection and file review. During the inspection and file review the following observations were made:

1. DEQ had not received the required preconstruction notification.

2. Impacts to surface waters had commenced and that all impacts had been taken and DEQ had not received the required construction monitoring reports.
3. DEQ had not received the required commencement notification of compensatory mitigation activities.
4. DEQ had not received the required Compensation Monitoring Reports.
5. DEQ has not received the required documentation of 0.11 wetland compensation credit purchase from the Foggy Bottom Farm Wetland Mitigation Bank.
6. Approximately 210 linear feet (lf) of additional stream channel had been significantly altered due to the discharge of fill material.

**Permit Condition Part II.E.2** requires that “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.”

**Permit Condition Part II.E.3** requires that “[c]onstruction monitoring reports shall be submitted to DEQ no later than the 10th day of the month following the month in which the monitoring event specified in Part II B takes place.”

**Permit Condition Part II.A.11** requires that “DEQ shall be notified in writing at least 10 days prior to the initiation of construction activities at the compensation site(s).”

**Permit Condition Part II.E.5** requires that “DEQ shall be notified in writing at least 10 days prior to the initiation of activities at the compensation site. The notification shall include a projected schedule of activities and construction completion.”

**Permit Condition Part II.E.6** requires that “[a] compensation monitoring reports shall be submitted annually by December 31, with the exception of the last year of authorization, in which case the report shall be submitted at least 60 days prior to expiration of authorization under the general permit.”

**Permit Condition Part II.A.10** requires that “[a]ll work in impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.

**Permit Condition Part II.A.1** requires the permittee to provide appropriate and practicable compensation for all impacts meeting the conditions outlined in this VWP general permit.

**Permit Condition Part II.A.4** requires that “[f]or compensation involving the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage or of the fund contribution has been submitted to and received by DEQ.”

**9 VAC 25-210-116.A** requires that “[c]ompensatory mitigation for project impacts shall be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters.”

**Permit Condition Part III.Q** requires that “[e]xcept in compliance with this VWP general permit, it shall be unlawful for the permittee to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or 4. On and after October 1, 2001, conduct the following activities 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.”

**9 VAC 25-210-50.A** states that “[e]xcept in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.”

**§ 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.”

As a result of the observations listed above, DEQ issued a Notice of Violation (NOV) to the Permittee on February 6, 2012. On February 14, 2012, a representative of the Permittee contacted DEQ, stating that the Permittee was issued a Nationwide Permit 18 (NWP 18) from the U.S. Army Corps of Engineers for a separate and complete project (Upper Level Student Housing) in the vicinity of the Arts Center. The representative submitted documents identifying the state waters permitted under the NWP 18 and the compensation associated with the NWP 18 for the construction of Upper Level Student Housing and requested a meeting.

On February 23, 2012, DEQ meet with the Permittee to discuss the NOV. At the meeting, the Upper Level Student Housing project associated with NWP 18 was discussed. Based on the materials presented, DEQ has determined that 150 lf of the 210 lf of stream, observed by DEQ staff on January 31, 2012 as being significantly altered, was included under the NWP 18. In addition, the Permittee advised DEQ that it failed to follow the approved compensation plan requiring off-site stream restoration and instead purchased stream credits from the Northern Virginia Stream Restoration Bank.

To remedy the remaining matters, George Mason University and DEQ agree to the schedule of action in Appendix A.

This Agreement shall become effective upon the date of its execution by the Director of the Department of Environmental Quality or his designee. George Mason University agrees to be bound by any compliance dates in this Agreement that may predate its effective date.

  
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Thomas Calhoun, Vice President of Facilities  
George Mason University

4/3/2012  
Date

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

4.4.12  
Date

## APPENDIX A

George Mason University agrees to:

1. Within 30 days of the effective date of this Agreement, submit to DEQ a final report, documenting all the dredging, draining, discharges of fill material, and significant alteration of state waters that has occurred during the construction of the Arts Center.
2. Within 30 days of the effective date of this Agreement, submit to DEQ for review and approval a compensation proposal which includes the use of stream credits to compensate for the additional 60 lf of stream channel impact. Said credits shall be purchased from a DEQ approved stream mitigation bank which is authorized under a DEQ approved mitigation banking agreement to sell credits to this project sufficient to fulfill the compensation burden of 60 lf stream compensation requirements.
3. Within 30 days of the approval of item 2 above, submit to DEQ proof of purchase of stream credits to compensate for the additional stream channel impact.
4. Within 30 days of the effective date of this Agreement, submit to DEQ documentation of the 0.11 wetland compensation credit purchase from the Foggy Bottom Farm Wetland Mitigation Bank.
5. Within 30 days of the effective date of this Agreement, submit to DEQ documentation demonstrating that the Northern Virginia Stream Restoration Bank stream credit purchase is adequate to fulfill the compensation burden required by the Permit.
6. If DEQ determines that the stream credit purchase referenced in item 5 above is not adequate to fulfill the compensation burden required by the Permit, submit to DEQ within 30 days of notification by DEQ, proof of purchase of additional stream credits.
7. Within 30 days of completing all requirements of this Agreement, submit to DEQ a request to terminate the Permit.

Correspondence required by this Agreement, shall be submitted to:

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

