



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3821

www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO HOWARD HUGHES MEDICAL INSTITUTE

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 Howard Hughes Medical Institute, regarding the Janelia Farm Campus, 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. "Howard Hughes" means Howard Hughes Medical Institute, a non-profit medical research organization with headquarters in Chevy Chase, Maryland. Howard Hughes is a "person" within the meaning of Va. Code §62.1-44.3.
5. "Janelia Farm" means Howard Hughes Medical Institute's Janelia Farm Research Campus located at 19700 Helix Drive in Ashburn, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "NRO" means the Northern Regional office of DEQ, located in Woodbridge, Virginia.
8. "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.
9. "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.
10. "PFO" means palustrine forested wetlands.
11. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
12. "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.
13. "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.
14. "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.
15. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.

18. "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. Impacts to surface waters associated with the construction of Janelia Farm were authorized through VWP Permits WP4-02-1253 on August 29, 2002, and WP4-03-1537, on September 5, 2003. These permitted impacts were partially mitigated by creating a minimum of 1.3 acres of forested wetlands onsite.
2. On November 19, 2009, DEQ released Howard Hughes from further monitoring and reporting, affirming that the compensatory forested wetland creation site was meeting the success criteria from the approved compensation plan.
3. On March 9, 2012, DEQ was notified of activities that resulted in the removal of the trees from the compensatory forested wetland creation site and the associated upland buffer by apparent mowing. DEQ also received a proposed Corrective Action Plan (CAP) from Wetland Studies and Solutions, Inc. on behalf of Howard Hughes.
4. On March 28, 2012, DEQ staff conducted a site inspection and file review in order to determine compliance with the requirements of the State Water Control Law and the Regulations. DEQ staff observed the following:
 - a. The compensatory forested wetland creation site appeared to have experienced significant alteration or degradation of existing wetland acreage or function by the removal of nearly all of the trees that existed upon the release of monitoring in 2009.
 - b. Based on a review of DEQ files, the compensatory forested wetland creation site was established with a deed restriction that prohibited mowing.
5. Va. Code § 62.1-44.15:20, and the Regulations at 9 VAC 25-210-50 prohibit the significant alteration or degradation of existing wetland acreage and function without a Permit issued by the Director.
6. On April 3, 2012, DEQ issued NOV No. W2012-04-N-001 for the violations observed in C(4) above.
7. On April 9, 2012, a response to the Notice of Violation was received by DEQ. The response noted that Howard Hughes had replanted trees and shrubs in the compensatory forested wetland creation site to replace those that were mowed, and had put internal controls in place to ensure that a similar incident does not occur.

8. On May 14, 2012, DEQ met with representatives from Howard Hughes and their consultant to discuss the aforementioned violations. Howard Hughes caused significant alteration or degradation of existing wetland acreage or function to approximately 2.0 acres of forested wetlands and 1.42 acres of upland buffer, both of which were to be protected in perpetuity through a deed restriction.
9. Based on the results of the March 28, 2012, site inspection and file review, and the May 14, 2012, meeting, the Board concludes that Howard Hughes has violated Va. Code §62.1-44.15:20 and VWP Permit Regulations 9 VAC 25-210-50.
10. In order for Howard Hughes to return to compliance, DEQ staff and Howard Hughes 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 Howard Hughes, and Howard Hughes agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$20,800.00 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

Howard Hughes shall include his 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 Howard Hughes for good cause shown by Howard Hughes, 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, Howard Hughes admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies the findings of fact, and conclusions of law contained in this Order.
4. Howard Hughes 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. Howard Hughes 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 Howard Hughes 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. Howard Hughes 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. Howard Hughes shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Howard Hughes 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 Howard Hughes. Nevertheless, Howard Hughes 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 Howard Hughes has completed all of the requirements of the Order;
 - b. Howard Hughes 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 Howard Hughes.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Howard Hughes 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 Howard Hughes 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 Howard Hughes 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 Howard Hughes to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Howard Hughes.

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, Howard Hughes voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of March, 2012.

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

Howard Hughes Medical Institute voluntarily agrees to the issuance of this Order.

Date: 7th NOVEMBER By: [Signature], DIRECTOR OF FACILITIES
2012 (Person) (Title)
MARK PHILIP

Commonwealth of Virginia
City/County of Loudoun

The foregoing document was signed and acknowledged before me this 7th day of November, 2012, by MARK PHILIP

Shannon Kelly Taylor
Notary Public

7141292
Registration No.

My commission expires: April 30, 2015

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Howard Hughes Medical Institute shall:

1. Immediately cease any activities that impact surface waters. Howard Hughes Medical Institute shall not resume such impacts unless authorization from DEQ is granted via a Permit.
2. Implement the Mitigation Site Restoration Plan submitted to DEQ on March 9, 2012, and the Area Monitoring Proposal submitted on May 31, 2012, and approved by DEQ on June 1, 2012, in accordance with the schedule contained therein. Any changes to the approved Plan or Proposal or schedule shall not be initiated without advance notice to and approval by DEQ. Howard Hughes shall complete the Plan and Proposal in accordance with their terms.
 - a. If the performance criteria specified in the Proposal are not achieved at the end of the applicable monitoring period, then Howard Hughes 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, Howard Hughes shall submit to DEQ for review and approval an alternative Proposal within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative Proposal shall then be implemented by Howard Hughes in accordance with the schedule set forth in the alternative Proposal.
 - b. If the performance criteria specified in the Mitigation Site Restoration Plan or any alternative Mitigation Site Restoration Plan are not achieved by the end of the last monitoring period as described in the Area Monitoring Proposal, then Howard Hughes shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to use mitigation bank credits to address any remaining corrective action required in the Mitigation Site Restoration Plan or, as applicable, any previously submitted alternate Mitigation Site Restoration Plan. Howard Hughes shall respond to any DEQ notice of deficiency to the Mitigation Site Restoration Plan in accordance with the terms of the notice. Howard Hughes shall provide proof of mitigation bank credits as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.
3. Unless otherwise specified in this Order, Howard Hughes 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