*COMMONWEALTH of VIRGINIA*

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

Blue Ridge Regional Office

www.deq.virginia.gov

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# STATE WATER CONTROL BOARD
# ENFORCEMENT ACTION - ORDER BY CONSENT
# ISSUED TO
# DAVID LeSEUR
# FOR
# LeSEUR FARM

## 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 David LeSeur, regarding the LeSeur Farm, 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. "BRRO-L" means the Blue Ridge Regional Office of DEQ, located in Lynchburg, Virginia.

3. "DCR" means the Department of Conservation and Recreation, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-100.

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

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

6. "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.

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

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. "LeSeur Farm" or "Site" means the tract of land at 6951 Bell Road in Dillwyn, Virginia (Buckingham County), owned by Mr. David LeSeur.

10. "Mr. LeSeur" means David LeSeur, currently a resident of Buckingham County, Virginia. Mr. LeSeur is a "person" within the meaning of Va. Code § 62.1-44.3.

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

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. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution.

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."

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

16. "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

17. "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.

18. "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.

19. "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.

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

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

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

23. "VAC" means the Virginia Administrative Code.

24. "VWP 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.

25. "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. At all times relevant to the facts specified below, Mr. LeSeur owned and operated the Site, at which Mr. LeSeur intends to operate a chicken farm.

2. On February 29, 2012, Department and USACE staff inspected the Site for compliance with the requirements of the State Water Control Law and the Regulations. The DEQ inspector observed that a significant alteration to approximately 0.229 acres of wetlands had occurred as a result of a recent discharge of fill material, a pollutant, from clearing and grubbing activities in emergent wetlands, a surface water, at the Site.

3. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibits the discharge of fill material or activities that cause significant alteration or degradation of existing wetland acreage or functions of surface waters without a VWP Permit issued by the Director. Mr. LeSeur does not have a VWP Permit for the above activities.

4. On March 13, 2012, DEQ issued NOV No. 12-03-BRRO-L-004 for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.

5. On March 22, 2012, Department staff met with Mr. LeSeur to discuss the violations. During the meeting, Mr. LeSeur explained that he believed that he had obtained all necessary permits and that he did not know that wetlands were present in the impacted area.

6. Based on the results of the February 29, 20121 inspection and the March 22, 2012 meeting, the Board concludes that Mr. LeSeur has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50, as described in paragraphs C(2) through C(5), above.

7. In order for Mr. LeSeur to complete his return to compliance, DEQ staff and Mr. LeSeur 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 Mr. LeSeur, and Mr. LeSeur agrees to:

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

2. Pay a civil charge of $2,730.00 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

Mr. LeSeur 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 Mr. LeSeur for good cause shown by Mr. LeSeur, 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, Mr. LeSeur admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Mr. LeSeur 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. Mr. LeSeur 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 Mr. LeSeur 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. Mr. LeSeur 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 his control and not due to a lack of good faith or diligence on his part. Mr. LeSeur shall demonstrate that such circumstances were beyond his control and not due to a lack of good faith or diligence on his

part. Mr. LeSeur 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 Mr. LeSeur.

11. This Order shall continue in effect until:

a. The Director or his designee terminates the Order after Mr. LeSeur has completed all of the requirements of the Order;

b. Mr. LeSeur 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

c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Mr. LeSeur.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. LeSeur 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 Mr. LeSeur 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 his signature below, Mr. LeSeur voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2012.

_____
Robert J. Weld, Regional Director
Department of Environmental Quality

Mr. David LeSeur voluntarily agrees to the issuance of this Order.

Date: 4-9-2012 By: David LeSeur
David LeSeur

Commonwealth of Virginia
City/County of Buckingham

The foregoing document was signed and acknowledged before me this 9th day of April, 2012, by David LeSeur.

Rebecca J. Lightfoot
Notary Public

7159845
Registration No.

My commission expires: 4-30-12

Notary seal:

REBECCA J. LIGHTFOOT
NOTARY PUBLIC
REG #7159845
COMMONWEALTH OF VIRGINIA

# APPENDIX A
# SCHEDULE OF COMPLIANCE

1. Mr. LeSeur shall immediately cease impacts to state waters and shall not resume such impacts unless authorization from DEQ is granted via a Permit

2. No later than thirty days after the effective date of this Order, Mr. LeSeur shall submit an approvable Corrective Action Plan ("CAP") that meets the requirements of 9 VAC 25-210-116 for the restoration of state waters on the Site that have been impacted without a Permit. The CAP must 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. Mr. LeSeur shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.

3. Upon DEQ approval of the CAP, Mr. LeSeur shall begin implementation of the Corrective Action Plan in accordance with the schedule contained therein. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. Mr. LeSeur 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 applicable monitoring period, then Mr. LeSeur 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, Mr. LeSeur 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 Mr. LeSeur 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 Mr. LeSeur 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. Mr. LeSeur shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Mr. LeSeur shall purchase mitigation back credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.

4. Unless otherwise specified in this Order, Mr. LeSeur shall submit all requirements of Appendix A of this Order to:

Robert Steele
Enforcement Specialist Sr.
VA DEQ – Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019
(540) 562-6777 (phone)
(540) 562-6725 (fax)
Robert.Steele@deq.virginia.gov (email)