



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

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO DR. LAWRENCE V. PHILLIPS FOR THE HIGHLANDS

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 Dr. Lawrence Phillips, regarding the Highlands, 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. "Dr. Phillips" means Dr. Lawrence V Phillips, currently a resident of Loudoun County, Virginia. Dr. Phillips is a "person" within the meaning of Va. Code § 62.1-44.3.

5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
6. "NRO" means the Northern Regional office of DEQ, located in Woodbridge, Virginia.
7. "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.
8. "PEM" means palustrine emergent wetlands.
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. "Permittee" means Dr. Lawrence V. Phillips, the person who holds Permit No. WP4-03-1536.
11. "PFO" means palustrine forested wetlands.
12. "Property" means the Highlands development located along Sunny Ridge Road, approximately 1.3 miles off of Woodgrove Road (Route 719) in Loudoun County Virginia, owned by Dr. Phillips.
13. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
14. "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.
15. "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.
16. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.

19. "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.
20. "WL" means "Warning Letter" a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The Property consists of single family homes on 3+ acre lots, including roads, drain fields, and associated infrastructure. It is located on Sunny Ridge Road, approximately 1.3 miles off of Woodgrove Road (Route 719) in Loudoun County, Virginia.
2. Permit No. WP4-03-1536 issued on October 28, 2003, to Dr. Phillips, authorizes the permanent impacts to 0.837 acres of surface waters, including 0.45 acre of PFO wetlands, 0.31 acre of PEM wetlands, and 0.077 acre (1,408 linear feet) of stream channel, and temporary impacts to 0.001 acre (5 linear feet) of stream channel.
3. The required compensatory mitigation for the above impacts consisted of the purchase of 1.21 credits from the Cedar Run Wetland Mitigation Bank in Prince William County, Virginia, and the preservation of 1.07 acres of forested stream buffer along 630 linear feet of stream channel, and enhancement of 1.62 acres of planting woody species along 870 linear feet of unforested stream buffer, in accordance with the Permit, and the Final Wetland Mitigation Plan Map dated October 10, 2003.
4. Dr. Phillips sold the Property in May 2004, however Dr. Phillips did not file for a transfer of permit ownership with DEQ.
5. On May 21, 2008 DEQ Staff conducted an inspection of the Property. Based on this inspection, a written request was made to obtain a Mitigation Monitoring Report (MMR) to determine the success of the required compensation.
6. On October 9, 2008, a request for a Continuation of Coverage for the Permit and a stream buffer preservation and enhancement Corrective Action Plan (CAP) was submitted to DEQ by Dr. Phillips' consultant.
7. As a result of this submittal, DEQ completed a file review to determine compliance with Permit No. WP4-03-1536. DEQ Staff observed that the proof of recorded restrictive covenants and plats, proof of purchase of the required 1.21 mitigation bank credits from the Cedar Run Mitigation Bank, and restoration monitoring reports to demonstrate the progress and success of restoration activity had not been submitted.

- a. 9 VAC 25-210-116 states that compensatory 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.
 - b. Permit No. WP4-03-1536 Part II.A.3.b states that the final compensatory mitigation plan shall include protection of state waters within the project boundary in perpetuity.
 - c. Permit No. WP4-03-1536 Part II.A.2 requires that for compensation involving the purchase or use of mitigation bank credits, the Permittee shall submit documentation within 60 days of VWP general permit authorization that the USACE has debited the required credits from the Mitigation Bank Ledger.
 - d. Permit No. WP4-03-1536 Part II.C.3 requires in relevant part that all monitoring reports be submitted by November 30th of the monitoring year.
 - e. Permit No. WP4-03-1536 Part II.A.3 states that the final compensatory mitigation plan as approved by the board shall be an enforceable requirement of the VWP General Permit.
8. On December 22, 2009 DEQ sent Warning Letter No. W2009-12-N-1006 to Dr. Phillips for failing to provide documentation to DEQ that restrictive covenants and plats had been recorded, for failing to provide documentation to DEQ to show that 1.21 mitigation bank credits had been purchased, and for failing to submit an MMR to DEQ.
 9. On January 11, 2010, Dr. Phillips responded to the Warning Letter stating that he no longer owned the property, did not perform any construction or cause any impacts to wetlands on the Property, and acknowledging that it appeared that the compensation requirements in C(3) above had not been completed.
 10. On January 25, 2010, DEQ issued NOV No. W2010-01-N-0011 for the violation cited in C(7) above.
 11. On February 4, 2010, a response to the Notice of Violation was received by DEQ.
 12. On February 23, 2010, and April 15, 2010, DEQ met with Counsels representing Dr. Phillips, to discuss the aforementioned violations, and possible proposals for compensation.
 13. Based on the February 23, 2010, and April 15, 2010, meetings, and responses submitted by Dr. Phillips, the Board concludes that Dr. Phillips has violated Permit No. WP4-03-1536 Parts II.A.3, II.A.2, II.C.3, II.A.3b, and 9 VAC 25-210-116.
 14. In order for Dr. Phillips to return to compliance, DEQ staff and Dr. Phillips 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 Dr. Phillips, and Dr. Phillips agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Dr. Phillips for good cause shown by Dr. Phillips, 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, Dr. Phillips admits to 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. Dr. Phillips 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. Dr. Phillips declares he 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 Dr. Phillips 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. Dr. Phillips 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 occurrence. Dr. Phillips shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on its part. Dr. Phillips 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 Dr. Phillips intends 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, their 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 Dr. Phillips. Nevertheless, Dr. Phillips 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 Dr. Phillips has completed all of the requirements of the Order;
 - b. Dr. Phillips 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 Dr. Phillips.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Dr. Phillips 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 Dr. Phillips 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, Dr. Phillips voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of December, 2011.



Thomas A. Faha Regional Director
Department of Environmental Quality

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Dr. Phillips voluntarily agrees to the issuance of this Order.

Date: 8/16/2011 By: Lawrence V. Phillips
(Dr. Lawrence V. Phillips)

Commonwealth of Virginia

~~City~~/County of Loudoun

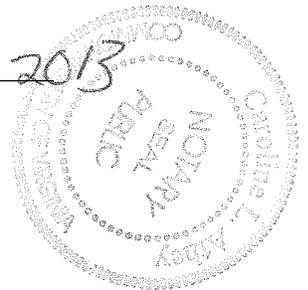
The foregoing document was signed and acknowledged before me this 16th day of August, 2011, by Lawrence V. Phillips.

Carolyn D. Atty
Notary Public

302161
Registration No.

My commission expires: 31st July 2013

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Dr. Lawrence V. Phillips shall:

1. Provide compensation for permitted impacts to approximately 0.76 acres of wetland impacts by purchasing 1.21 credits from a DEQ approved wetland mitigation bank located within the same U.S. Geologic Survey Hydrologic Unit Code (HUC) as the Property or an adjacent HUC located within the Potomac River watershed. Proof of said purchase shall be submitted to DEQ within 30 days of the execution of this Order.
2. Provide compensation for stream impacts by purchasing 38 stream credits from a DEQ approved stream mitigation bank located within the same HUC as the Property or an adjacent HUC located within the Potomac River watershed. Proof of said purchase shall be submitted to DEQ within 30 days of the execution of this Order.
3. Unless otherwise specified in this Order, Dr. Lawrence Phillips 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