COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
SNYDER & SCHNEIDER PROPERTY DEVELOPMENT, LLC
FOR
CUTALONG
VWP Permit No. 07-0860

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 Snyder & Schneider Property Development, LLC, regarding Cutalong, for the purpose of resolving certain violations of State Water Control Law, 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. "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. "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.

5. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

6. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.

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

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

11. "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.

12. "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.

13. "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.

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." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

15. "Property" or "Parcel" means the tract of land at the intersection of Routes 652 and 208 and north and south of Contrary Creek in Louisa County, Virginia, owned by Snyder.

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

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. 9 VAC 25-210-10.

18. "Snyder" means Snyder & Schneider Property Development LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Snyder is a "person" within the meaning of Va. Code § 62.1-44.3].

19. "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.

20. "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.

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

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

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

24. "VAC" means the Virginia Administrative Code.

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. The Property located in Louisa County is a residential development and is owned by Snyder. DEQ issued Individual Permit Number 07-0860 on October 16, 2008, for impacts to surface waters associated with this development.

2. On April 11, 2013, Department staff conducted an inspection of the Property and a file review in order to determine compliance with the requirements of the State Water Control Law and the Regulations. DEQ made the following observations:

    a. Impacts in the form of a discharge of fill material and that were not authorized by the Permit were taken to surface waters totaling approximately 150 linear feet.

    Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit discharge of fill material into surface waters without a Permit issued by the Director.

    b. Based on a construction monitoring report dated November 8, 2012, work was initiated in permitted impact areas prior to October 10, 2012, and no photographic monitoring of the pre-construction conditions was conducted.

Permit No. 07-0860 Part I.M.1 requires that the permittee conduct photographic monitoring of pre-construction conditions in permitted permanent and temporary impact areas covered by the Permit.

c. Compensation for permanent wetland and stream impacts includes the onsite creation of 1.12 acres of wetlands and preservation of 39.9 acres of wetlands, 15,900 linear feet of stream channel, and 79.5 acres of associated buffers. As of the date of the inspection, no work had commenced on the compensatory wetland creation site and no proof of recordation of preservation areas had been received.

   Va. Code § 62.1-44.15:21.B and 9 VAC 25-210-116.A requires 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.

   Permit No. 07-0860 Part I.O.4 requires that all work in permitted impact areas shall cease if compensation site construction has not commenced within 180 calendar days of beginning a construction activity in any permitted impact area.

3. On June 18, 2013, DEQ issued NOV No. W2013-06-N-0005 to Snyder for the violation of Va. Code § 62.1-44.15:20, 9 VAC 25-210-50, Permit No. 07-0860, Part I.M.1and I.O.4, Va. Code § 62.1-44.15:21.B and 9 VAC 25-210-116.A

4. On August 13, 2013, Department staff met with representatives of Snyder to discuss the aforementioned violations.

5. On August 27, 2013, Snyder submitted a written response to the NOV.

6. On March 31, 2014, Department staff conducted an inspection of the Property and a file review in order to determine compliance with the requirements of the State Water Control Law and the Regulations. DEQ made the following observations:

   a. Impacts in the form of a discharge of fill material and that were not authorized by the Permit were taken to surface waters totaling approximately .4 acre of palustrine forested wetlands (PFO).

      Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit discharge of fill material into surface waters without a Permit issued by the Director.

   b. The 6th Event (2nd Semiannual) Construction Monitoring Report: April 2014, dated April 2014 and received April 11, 2014, noted an unauthorized impact to PFO at impact area 35B in the amount of 0.01 acre.

      Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit discharge of fill material into surface waters without a Permit issued by the Director.

   c. Culverts associated with impact area 5B were not countersunk a minimum of 6 inches.

      Permit No. 07-860 Part I.F.5. requires that, at crossings of streams, pipes and culverts less than 24 inches in diameter shall be countersunk a minimum of three inches, and pipes and

culverts greater than 24 inches in diameter shall be countersunk a minimum of six inches to provide for the re-establishment of a natural stream bottom and to maintain a low flow channel.

d. Avoided jurisdictional areas of Blackwater Creek had not been flagged in the vicinity of project activities at impact area 15B.

Permit No. 07-0860, Part I.C.20 requires that all non-impacted surface water and any required upland buffers that are within the project or right-of-way limits, and that are within fifty feet of any project areas, shall be clearly flagged or demarcated for the life of the construction activity within that area. The permittee shall notify all contractors and subcontractors that no activities are to occur in these marked areas.

e. Construction monitoring was not conducted for the period August 2013 through March 2014.

Permit No. 07-0860, Part I.M.8 requires that Construction Monitoring Reports shall be submitted to DEQ semiannually.

Permit No. 07-0860, Part I.M.4. requires that photographic monitoring during construction activities in each permitted impact area shall be required quarterly.

f. Compensation for permanent wetland and stream impacts includes the onsite creation of 1.12 acres of wetlands and preservation of 39.9 acres of wetlands, 15,900 linear feet of stream channel, and 79.5 acres of associated buffers. As of the date of the inspection, no work had commenced on the compensatory wetland creation site and no proof of recordation of preservation areas had been received.

Va. Code § 62.1-44.15:21.B and 9 VAC 25-210-116.A requires 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.

Permit No. 07-0860 Part I.O.4 requires that all work in permitted impact areas shall cease if compensation site construction has not commenced within 180 calendar days of beginning a construction activity in any permitted impact area.

7. On May 13, 2014, DEQ issued NOV No. W2014-05-N-0009 to Snyder for the violation of Va. Code § 62.1-44.15:20, 9 VAC 25-210-50, Permit No. 07-0860, Part I.F.5, I.C.20, I.M.8, I.M.4, and I.O.4, Va. Code § 62.1-44.15:21.B and 9 VAC 25-210-116.A.

8. On June 4, 2014, Snyder submitted a written response to the NOV.

9. On October 9, 2014, Snyder submitted revised impact totals documenting unpermitted impacts of 0.011 acre PFO, 0.231 PFO conversion to Palustrine Emergent (PEM), and 179 lf of stream impacts. DEQ has reviewed and accepts these revised impact totals.

10. Based on the results of the April 11, 2013, inspection and file review, the August 13, 2013, meeting, the documentation submitted on August 27, 2013, the March 31, 2014, inspection and

file review, and the documentation submitted on June 4, 2014, and October 9, 2014, the Board concludes that Snyder has violated Va. Code § 62.1-44.15:20, Va. Code § 62.1-44.15:21.B, 9 VAC 25-210-50, 9 VAC 25-210-116.A, Permit No. 07-0860, Part I.M.1 and I.O.4, as described in paragraph C(2), above.

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

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

2. Pay a civil charge of $20,000.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within **90 days** of execution of this Order	$5,000 or balance
Within **180 days** of execution of this Order	$5,000 or balance
Within **270 days** of execution of this Order	$5,000 or balance
Within **360 days** of execution of this Order	$5,000

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Snyder. Within 15 days of receipt of such letter, Snyder shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

4. 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

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

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

b. Snyder 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 Snyder.

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

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, Snyder voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2015.

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

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Snyder & Schneider Property Development, LLC voluntarily agrees to the issuance of this Order.

Date: 5-1-15 By: Jeffrey A Snyder PRESIDENT
(Person) (Title)
Snyder & Schneider Property Development, LLC

Commonwealth of Virginia
City/County of LOUISA

The foregoing document was signed and acknowledged before me this 1st day of May, 2015, by Jeffrey A Snyder who is President of Snyder & Schneider Property Development, LLC, on behalf of the company.

Amy R. Thomas
Notary Public

281019
Registration No.

My commission expires: 9/30/2016

Notary seal:

Amy R Thomas
Commonwealth of Virginia
Notary Public
Commission No. 281019
My Commission Expires 9/30/2016

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Snyder shall implement the Corrective Action Plan (CAP) received on August 29, 2013, and approved by DEQ on February 11, 2014, for the restoration of the 150 linear feet of state waters on the Property that have been impacted without a Permit. Snyder shall complete the CAP in accordance with its terms and 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.

2. No later than April 30, 2015, Snyder shall submit an approvable compensation plan to compensate for all impacts taken at the project site. Specifically, permitted impacts consist of 0.36 acres of PFO, 0.483 PFO conversion and 223 lf of stream and unpermitted impacts consisting of 0.011 acres of PFO, 0.231 PFO conversion, and 29 lf of stream. Compensation shall be provided at a 2:1 ratio for PFO impacts, 1:1 for PFO conversion impacts, and stream compensation sufficient to replace 252 lf of stream channel impact. Any credits purchased shall be from a DEQ-approved mitigation bank that is authorized and approved by DEQ to sell credits in the area in which the impacts occurred and has credits available (as released by DEQ) to achieve no net loss of existing wetland acreage and no net loss of function in all surface waters in accordance with 9 VAC 25-210-116. Upon DEQ approval, said compensation plan shall be an enforceable part of this Order.

3. No later than April 30, 2015, Snyder shall submit a final approvable compensation plan for future permitted impacts not identified in Paragraph 2 that meets no net loss requirements in accordance with 9 VAC 25-210-116. Snyder shall respond to any DEQ Notice of Deficiency regarding the final compensation plan within 14 calendar days. Within 60 days of DEQ approval of the compensation plan, Snyder shall submit a complete permit modification request to include said compensation plan within the Permit. The compensation plan shall be an enforceable part of this Order until such time as it is incorporated into the Permit at which time the Permit shall be the controlling document.

4. If the performance criteria specified in the Final CAP/Compensation Plans are not achieved at the end of the applicable monitoring period, then Snyder 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, Snyder shall submit to DEQ for review and approval an alternative CAP/Compensation Plan within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP/Compensation Plan shall then be implemented by Snyder in accordance with the schedule set forth in the alternative CAP/Compensation Plan.

5. If the performance criteria specified in the Final CAP/Compensation Plans or any alternative CAP/Compensation Plan 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 Snyder 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/Compensation Plan or, as applicable, any previously submitted alternate CAP/Compensation Plan. Snyder shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the

notice. Snyder 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.

6. No later than April 30, 2015, Snyder shall submit a plan to address all culverts that are not countersunk in accordance with Permit specifications.

7. Unless otherwise specified in this Order, Snyder 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