



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
BILLY E. CHUMBLEY
AND
VIRGINIA PRIDE CONTRACTORS
FOR THE
CHUMBLEY FAMILY SUBDIVISION
Unpermitted Activity**

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 Billy E. Chumbley, individual, and Virginia Pride Contractors, regarding the Chumbley Family Subdivision, 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" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
3. "Chumbley" means Mr. Billy E. Chumbley, individual, and owner of the property located at 4845 Mountain Pass Road, Botetourt County, Virginia.
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. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
8. "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.
9. "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.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
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. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
16. "Responsible Parties" means Chumbley and VPC, as defined in this Section.
17. "Site" means the Chumbley Family Subdivision located at 4845 Mountain Pass Road, Botetourt County, Virginia
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. "VPC" means Virginia Pride Contractors, a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. VPC is a "person" within the meaning of Va. Code § 62.1-44.3.

SECTION C: Findings of Fact and Conclusions of Law

1. On August 28, 2015, DEQ staff inspected the Site, located in Botetourt County, Virginia, for compliance with the requirements of the State Water Control Law and the Regulations. The Site is owned by Chumbley. The inspection was conducted in response to a citizen complaint.
2. Based upon observations made during the inspection and reviews of Botetourt County GIS, U.S. Geological Survey topographic mapping, and a plan entitled "Family Subdivision, Billy E. Chumley", DEQ staff observed that activities at the Site resulted in

a discharge of fill material to an unnamed tributary of Buffalo Creek with permanent and temporary stream impacts.

3. Buffalo Creek and its tributaries are located in the Roanoke/Yadkin River Basin and are surface waters located within the Commonwealth and are "state waters" under State Water Control Law.
4. The Department has issued no permits or certificates to the Responsible Parties that would authorize the discharge of fill material to state waters or allow permanent or temporary stream impacts. The Corps has verified to the DEQ that they also have no record of any permit activity for the Site.
5. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit alteration of 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.
6. On September 25, 2015, DEQ issued NOV No. NOV-15-09-BRRO-001 to Chumbley for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
7. On October 30, 2015, DEQ enforcement staff met with Chumbley, his environmental consultant, and the staff from Virginia Pride Contractors to discuss the NOV and the activities that have occurred at the Site. It was agreed that the Department would conduct an additional inspection to ascertain the current status of the Site and make a determination of the extent of permanent and temporary stream impacts.
8. On December 17, 2015, DEQ staff inspected the Site. DEQ staff observed that the total temporary stream impacts were 403 linear feet and the total permanent stream impacts are 127 feet. The 127 linear feet of permanent stream impacts is below the 300 feet mitigation threshold established by the regulatory program and the 530 linear feet of total stream impact is estimated to be approximately 2,650 sq. feet of stream impact (5 feet stream width, conservatively estimated). At the time of the inspection, all of the temporary stream impacts had been reseeded and stabilized with grass and all permanent stream impacts had been completed.
9. Based on the results of the August 28, 2015 and December 17, 2015 inspections and the October 30, 2015 meeting, the Board concludes that Responsible Parties have violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50, as described in paragraphs C(1), C(2), and C(8), above.
10. The Responsible Parties have submitted documentation that verifies and DEQ staff inspected the Site on December 17, 2015 and verified that the violations described in paragraphs C(1), C(2) and C(8), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Responsible Parties, and the Responsible Parties agree to pay a civil charge of **\$9,750** 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

Virginia Pride Contractors shall include its Federal Employer Identification Number (FEIN) 54-2096681 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, Virginia Pride Contractors 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 the Responsible Parties for good cause shown by the Responsible Parties, 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, the Responsible Parties admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Responsible Parties consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Responsible Parties declare they have received fair and due process under the Administrative Process Act and the State Water Control Law and they waive 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 the Responsible Parties 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. The Responsible Parties 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. The Responsible Parties shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. The Responsible Parties 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 the Responsible Parties.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after the Responsible Parties have completed all of the requirements of the Order;
- b. The Responsible Parties petition the Director or his designee to terminate the Order after they have 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 the Responsible Parties.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Responsible Parties from their 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 the Responsible Parties 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 representatives of the Responsible Parties certify that he or she is a responsible officer authorized to enter into the terms and conditions of this Order and to execute and legally bind the Responsible Parties to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Responsible Parties.
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, the Responsible Parties voluntarily agree to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2016.

Robert J. Weld, Regional Director
Department of Environmental Quality

Virginia Pride Contractors voluntarily agrees to the issuance of this Order.

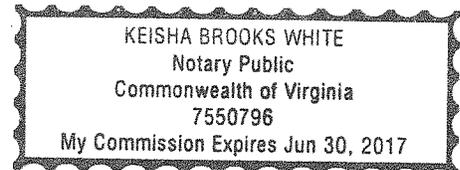
Date: _____ By: Billy E. Chumbley, President.
Billy E. Chumbley

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 16th day of May, 2016, by Billy E. Chumbley who is the President of Virginia Pride Contractors, on behalf of the company.

Keisha Brooks White
Notary Public

7550796
Registration No.



My commission expires: June 30, 2017 Notary seal:

Mr. Billy E. Chumbley voluntarily agrees to the issuance of this Order.

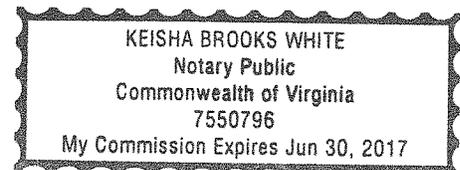
Date: 5-16-16 By: Billy E Chumbley
Billy E. Chumbley

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 16th day of May, 2016, by Billy E. Chumbley

Keisha Brooks White
Notary Public

7550796
Registration No.



My commission expires: June 30, 2017 Notary seal: