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

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WILLOW POND II, LLC
FOR
WILLOW POND
(PERMIT NO. 05-0529)

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 Willow Pond II, LLC, regarding Willow Pond, for the purpose of resolving certain violations of State Water Control Law and 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. "Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.

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

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

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. "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.

9. "Property" or "Parcel" means the tract of land at the Southwest side of Glenn Drive, beginning 400 feet south of its intersection with Sterling Boulevard in Loudoun County, Virginia, owned by Willow Pond II, LLC.

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

11. "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.

12. "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.

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

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

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

16. "VAC" means the Virginia Administrative Code.

17. "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.

18. "Willow Pond" means Willow Pond II, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Willow Pond is a "person" within the meaning of Va. Code § 62.1-44.3.

SECTION C: Findings of Fact and Conclusions of Law

1. Willow Pond owns the Property in Loudoun County Virginia. The Willow Pond project consists of the construction of an office building pad with associated infrastructure on a 6.3 acre parcel.

2. Permit No. 05-0529 was issued to Willow Pond on December 28, 2005, for the total impact of 0.78 acre of surface waters, consisting of 0.57 acre of palustrine emergent wetland, 0.18 acre (520 linear feet) of perennial stream channel and 0.03 acre (200 linear feet) of intermittent stream channel.

3. Compensation for the wetland impacts were to be provided through the on-site creation of 1.16 acre of wetlands, consisting of 0.86 acre of palustrine forested wetland, 0.14 acre of palustrine scrub-shrub wetland and 0.16 acre of palustrine emergent wetland. Compensation for perennial stream channel impacts was to be provided through the relocation of the channel using natural channel design and a 0.29 acre upland forested buffer. Compensation for impacts to the intermittent stream channel was to be provided through a contribution of $25,200.00 to the Virginia Aquatic Resources Trust Fund.

4. On April 28, 2010, based on a file review and inspection conducted on April 20, 2010, DEQ issued NOV No. W2010-04-N-0011 citing incomplete wetland and stream compensation.

5. On January 18, 2011, DEQ issued a Letter of Agreement to Willow Pond to resolve the April 28, 2010, Notice of Violation. The Letter of Agreement required Willow Pond to modify the Permit to require compensation construction and planting activities to be completed by June 1, 2012. The Permit modification was approved by DEQ on March 4, 2011.

6. DEQ staff conducted an inspection of the Property on June 28, 2012, and observed that the wetland and stream compensation had not been completed in accordance with the Willow Pond Indian Creek Stream Restoration Plan and the Permit.

7. 9 VAC 25-210-116.A 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.

8. Permit No. 05-0529, Part I.H.1 states that the final compensation plan as approved by DEQ-NRO shall be an enforceable requirement of the Permit. Any deviation from the approved plan must be submitted to and approved in advance of implementation by DEQ-NRO.

9. Virginia Water Protection Permit Number 05-0529, Part I.H.10 states that the permittee shall compensate for the permanent impact of 0.57 acre of PEM through the on-site creation of 1.16 acre of wetlands, consisting of 0.86 acre of palustrine forested wetland, 0.14 acre of palustrine scrub-shrub wetland and 0.16 are of palustrine emergent wetland. The on-site mitigation activities shall be in accordance with the Willow Pond Indian Creek Stream Restoration plan dated February 2000. The compensation site shall be preserved in perpetuity.

10. Virginia Water Protection Permit Number 05-0529, Part I.H.21 states that the Permittee shall compensate for permanent impacts to 0.18 acre (520 linear feet) of perennial stream channel through the relocation of the channel using natural channel design and a 0.29 acre upland forested buffer. The on-site mitigation activities shall be in accordance with the Willow Pond Indian Creek Stream Restoration plan dated February 2000. The compensation shall be preserved in perpetuity.

11. Virginia Water Protection Permit Number 05-0529, Part I.H.10 states that compensation site construction and planting activities shall be completed by June 1, 2012.

12. On July 19, 2012, DEQ issued NOV No. W2012-07-N-0006 for the violation of 9VAC 25-210-116.A, Permit No. 05-0529, Part I.H.1, Part I.H.10, and Part I.H.21.

13. DEQ met with representatives from Willow Pond on August 13, 2012, to discuss the July 19, 2012 Notice of Violation.

14. Based on the results of June 28, 2012, inspection, the Board concludes that Willow Pond has violated 9 VAC 25-210-116.A, Virginia Water Protection Permit Number 05-0529, Part I.H.1, Part I.H.10, and Part I.H.21.as described in paragraph C(6) above.

15. In order for Willow Pond to return to compliance, DEQ staff and representatives of Willow Pond 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 Willow Pond and Willow Pond agrees to:

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

2. Pay a civil charge of $18,921.00 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

Willow Pond 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Willow Pond for good cause shown by Willow Pond, 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, Willow Pond admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

   b. Willow Pond 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 Willow Pond.

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

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, Willow Pond voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2013.

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

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Willow Pond II, LLC voluntarily agrees to the issuance of this Order.

Date: 4/8/13 By: _____, MANAGER
(Person) (Title)
[Willow Pond II, LLC]

Commonwealth of Virginia
City/County of LOUDOUN

The foregoing document was signed and acknowledged before me this 8th day of APRIL, 2013, by ERIC R. WELLS who is MANAGER of Willow Pond II, LLC, on behalf of the company.

Amy Jeanne Chillemi
Notary Public

7181723
Registration No.

My commission expires: 6-30-2016

Notary seal:

AMY JEANNE CHILLEMI
NOTARY PUBLIC
REG # 7181723
COMMISSION EXPIRES 6/30/2016
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

Willow Pond II, LLC shall:

1. Provide compensation by completing the following:

   a. Within 30 days of the execution of this Order, Willow Pond II, LLC shall submit proof of purchase of 0.57 wetland mitigation credits to compensate for impacts to 0.57 acre of palustrine emergent wetland, from a wetland mitigation bank that has released credits and is authorized by DEQ to sell credits in the area in which the impacts occurred.

   b. Within 30 days of the execution of this Order, Willow Pond II, LLC shall submit a draft declaration of restrictions for the 1.52 acres proposed for preservation in the February 11, 2013 submittal, to DEQ for review and approval to complete compensation for stream channel activity. Willow Pond shall respond to any Notice of Deficiency regarding the draft language within 30 calendar days. DEQ will notify Willow Pond of its approval of the draft declaration of restrictions. Once notified by DEQ proof of recordation of the DEQ approved declaration shall be submitted to DEQ within 60 days of notification of approval from DEQ.

2. Unless otherwise specified in this Order, Willow Pond shall submit all requirements of Appendix A of this Order to:

   Attention Enforcement
   VA DEQ Northern Regional Office
   13901 Crown Court
   Woodbridge, VA 22193