COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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L. Preston Bryant, Jr
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO MR. R.L. BOWMAN

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Mr. R.L. Bowman, for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

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

2. "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.

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.

5. "Order" means this document, also known as a Consent Special Order.

6. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

7. "Property" means the 155.1 acre tract of land comprised of six adjacent parcels on Strawberry Plains Road (Route 681) in Isle of Wight County, Virginia owned by Mr. R.L. Bowman.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Bowman owns a 155.1 acre tract of land comprised of five adjacent parcels in Isle of Wight County, Virginia. The Property contains wetlands that are part of Rattlesnake Swamp, a tributary to the Blackwater River.

2. Mr. Michael A. Schwinn, US Army Corps of Engineers (ACOE) sent a letter dated March 10, 2006 to R. L. and Edythe Bowman confirming the existence of non-tidal wetlands on the Property, including three vernal ponds.

3. The Property was logged during the summer of 2005. A Virginia Department of Forestry (DOF) harvest inspection report dated August 2, 2005 documents that logging operations on the Property commenced July 20, 2005. According to both Mr. Bowman and Gasburg Land and Timber Company, Inc. (the contracted logging firm), timber harvesting concluded in late August or early September of 2005.

4. During a Property site visit on March 22, 2006, Gasberg Land and Timber, Inc. representatives told DEQ staff they had constructed access roads to the five parcels on the Property, from Strawberry Plains Road (Route 681). Gasburg Land and Timber, Inc. representatives also stated that these roads were cut at Mr. Bowman's request after most of the logging had been completed and that the roads were not used for timber harvesting purposes.

5. Based on the Property wetland delineation confirmed by ACOE on March 9, 2006, four access roads on the Property were constructed in wetlands.

6. During the March 22, 2006 Property site visit DEQ staff observed the following:

    a. Woody debris had been piled adjacent to the roads, constituting fill in a wetland.

    b. An existing road running through wetlands along the eastern portion of the property was utilized during timber harvesting, but not been constructed or maintained in accordance with Best Management Practices (BMPs) required to exempt silviculture operations in wetlands from VWP permitting requirements.

c. Vegetation removal, grading, soil compaction, and hydrology restriction associated with construction of the roads had altered the structure and function of the wetland, and altered the physical and biological properties of the wetland.

7. In a letter dated March 10, 2006 to Ms. Scharlene Floyd, Mr. Hylton J.G. Haynes, DOF, stated that the five access roads on the Property were not constructed in accordance with Mandatory BMPs. The existing logging road was road was 8-10 feet too wide to conform to BMPs. Mr. Haynes stated in the letter that Mr. Gerald Judge, formerly the Southampton County Forester, did not note that there was any wetland-like or jurisdictional wetland area to be found on the tract at the time of his initial inspection on July 21, 2005. Mr. Haynes also stated that during his own inspection on March 10, 2006, he observed that a log landing was located "in the area of concern". BMPs require that well-drained sites be used for log landings.

8. The construction of the four access roads, the log landing, and the widening of the existing logging road on the Property do not meet the silviculture activity exemption provided for in the Virginia Water Protection Program Regulation at 9-VAC-25-210-60.

9. Activities associated with construction and widening of the roads resulted in approximately 1.4 acres of wetland impacts. Mr. Bowman does not have a permit from DEQ to impact wetlands on the Property.

10. Virginia Code §62.1-44.15:5 states that without a permit it is unlawful to conduct the following activities in a wetland: (ii) filling or dumping, (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions. Mr. Bowman violated §62.1-44.15:5 by filling and altering approximately 1.4 acres of wetlands on the Property during the construction of roads through the wetlands without a permit from the DEQ, and by placing fill material in wetlands adjacent to these roads.

11. The Virginia Water Protection Program Regulation at 9 VAC 25-210-50 states that except in compliance with a permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical, or biological properties of surface waters (including wetlands). Mr. Bowman has violated 9 VAC 25-210-50 by failing to obtain a permit for the construction of roads that alter the physical and biological properties of wetlands on the Property.

12. On April 18, 2006 DEQ issued NOV No. 06-04-TRO-001 to Mr. Bowman, advising of the above listed facts and applicable regulatory citations.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Mr. Bowman, and Mr. Bowman agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Mr. Bowman, and Mr. Bowman voluntarily agrees, to pay a civil charge of $7,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall include Mr. Bowman's social security number. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Bowman, for good cause shown by Mr. Bowman, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Mr. Bowman by DEQ on April 18, 2006. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order only, Mr. Bowman admits the jurisdictional allegations in the Order, but does not admit the Findings of Fact or Conclusions of Law contained herein.

4. Mr. Bowman declares he has received fair and due process under the Administrative Process Act, Va. Code §2.2-4000 *et seq.*, and the State Water Control Law and 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 enforce this Order.

5. Failure by Mr. Bowman 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.

6. 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.

7. Mr. Bowman 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. Mr. Bowman shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mr. Bowman shall notify the DEQ Regional Director in writing 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 within 24 hours 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.

8. This Order is binding on Mr. Bowman, his successors in interest, designees and assigns, jointly and severally.

9. This Order shall become effective upon execution by both the Director or his designee and Mr. Bowman. Notwithstanding the foregoing, Mr. Bowman agrees to be bound by any compliance date which precedes the effective date of this Order.

10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Mr. Bowman.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Bowman from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. By his signature below, Mr. Bowman voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2006.

_____
Francis L. Daniel

Mr. R.L. Bowman voluntarily agrees to the issuance of this Order.

By: R L Bowman

Date: 10/18/2006

Commonwealth of Virginia
~~City~~/County of Isle of Wight

The foregoing document was signed and acknowledged before me this 18 day of October, 2006, by R. L. Bowman

Joanna A. Parker
Notary Public

My commission expires: Nov 30, 2010.

APPENDIX A

Mr. Bowman shall:

1. Mail all submittals and reports required by this Appendix A to:
   Francis L. Daniel, Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Blvd.
   Virginia Beach, VA 23462

2. By December 31, 2006, re-grade to the original contours of the land all soil and woody debris piled alongside all roads which are located within wetlands on the property, and submit a registration statement confirming completion of this work.

3. By December 31, 2006, submit to DEQ a restoration plan and implementation schedule for the areas impacted by the construction of the four access roads as described in Section C.6 of this Order.

4. Upon approval by DEQ, implement the restoration plan in accordance with the schedule. All components of the plan shall be completed within 60 days of DEQ approval.