COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Secretary of Natural Resources

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Director

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Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - SPECIAL ORDER BY CONSENT
ISSUED TO
Galberry Corporation
FOR
Jolliff Woods Section V- Willow Lakes Subdivision
Permit No. 07-1998

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 Galberry Corporation 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. "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. "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.

6. "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.

7. "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.

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

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

10. "Permit" means Virginia Water Protection Individual Permit No. 07-1998, which was issued to Galberry Corporation on January 23, 2009.

11. "Pollutant" means any substance, radioactive material, or heat which cause or contributes to, or may cause or contribute to pollution.

12. "Preservation" means the protection of resources in perpetuity through the implementation of appropriate legal and physical mechanisms.

13. "Property" means the approximately 100 acre parcel owned by Galberry Corporation., and developed as Jolliff Woods Section V- Willow Lakes Subdivision consisting of 136 lots, located north of Willow Road and west of Lake Shore Drive in Chesapeake, Virginia.

14. "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. 9 VAC 25-210-10.

15. "Surface water" means all state waters that are not ground waters as defined in § 62.1-255 of the Code of Virginia.

16. "USACE" means the U.S. Army Corps of Engineers.

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

18. "VAC" means the Virginia Administrative Code.

19. "Virginia Water Protection permit" or "VWP permit" means an individual or general permit issued by authority of the Board 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).

20. "Galberry" means Galberry Corporation, a company authorized to do business in Virginia, and its affiliates, partners, subsidiaries, and parents. Galberry Corporation is a "person" within the meaning of Va. Code § 62.1-44.3 and 9 VAC 25-210-10.

21. "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. Galberry Corporation owns the Property. The Property consists of uplands and nontidal wetlands which flow into Goose Creek and the Western Branch of the Elizabeth River. Goose Creek and the Western Branch of the Elizabeth River are surface waters under Va. Code § 62.1-255.

2. On February 1, 2008 DEQ staff inspected the Property. DEQ staff observed unpermitted impacts to forested wetlands on the Property including:

   a. Three forested wetland areas totaling 0.29 acres cleared of vegetation, grubbed of stumps and graded, located in an area that was to be preserved under a previous USACE enforcement action effective March 18, 2007.

   b. Four forested wetland areas totaling 0.05 acres cleared of vegetation and partially filled and graded for road construction and stormwater outfalls.

3. On August 26, 2008, DEQ received correspondence from Galberry confirming the location and quantity of the seven unpermitted impact areas.

4. Va. Code § 62.1-44.15:20 states that except in compliance with VWP permit, it is unlawful to excavate in a wetland, or conduct the following activities in a wetland: (b) filling or dumping...(d) new activities that cause significant alteration or degradation of existing wetland acreage or functions. Similarly, 9 VAC 25-210-50 (A) 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.

5. DEQ issued Notice of Violation No. W2008-09-T-003 dated September 25, 2008 to Galberry Corporation for the unauthorized filling of wetlands, discharge of pollutants, and the significant alteration and degradation of existing wetland

acreage and functions on the Property.

6. On September 30, 2008 DEQ enforcement staff visited the Property and observed the seven impact areas. DEQ staff observed an additional eighth unpermitted forested wetland impact area of approximately 390 sq. ft. (0.01 acres) as a result of fill material and the discharge of pollutants.

7. DEQ enforcement staff met with representatives from Galberry on October 1, 2008 to discuss the NOV and on October 10, 2008 DEQ Staff met Kimley-Horn, consultants for Galberry, on the Property to observe the seven unpermitted impact areas and the additional eighth unpermitted impact area observed by DEQ staff on the September 30, 2008 site visit. DEQ staff confirmed the additional unauthorized impact area. Kimley-Horn provided a draft Restoration Plan dated October 8, 2008 for the original seven unpermitted impact areas.

8. On October 21, 2008 Kimley-Horn provided an updated site map with revised impact area acreages and including the additional impact area observed on the September 30, 2008 and October 10, 2008 site visits. The revised map showed that 0.35 acres of forested wetland were impacted by the unauthorized discharge of pollutants and fill material.

9. On January 23, 2009 DEQ issued the Permit to Galberry for the development on the Property. The Permit authorized the impacts referenced in C.2.b., above (approximately 0.05 acres), as outfalls associated with road construction. The Permit did not address the impacts referenced in C.2.a., above (approximately 0.29 acres), or the additional unauthorized impact area (referenced in C.6, above, approximately 0.01 acres) observed on the September 30, 2008 site visit.

10. Based on the above observations, the Board concludes that Galberry has violated Va. Code § 62.1-44.15:20, and 9 VAC 25-210-50(A) for the unauthorized filling of wetlands, discharge of pollutants, and the significant alteration and degradation of existing wetland acreage and functions.

11. In order for Galberry to return to compliance, DEQ staff and representatives of Galberry have agreed to the Schedule of Compliance, which is incorporated as the Appendix of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d), the Board orders Galberry, and Galberry agrees to:

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

2. Pay a civil charge of $23,400.00 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

Galberry shall include its Federal Employer Identification Number [54-1202773] 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 the Order with the consent of Galberry for good cause shown by Galberry, or on its own motion 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, Galberry admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Galberry 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. Galberry declares it 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 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 enforce this Order.

6. Failure by Galberry 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. Galberry 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. Galberry shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Galberry 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.

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 Galberry. Notwithstanding the foregoing, Galberry agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until in effect until:

   (a) Galberry 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

   (b) the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Galberry.

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

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, Galberry voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2009.

_____
Frank Daniel, Regional Director
Department of Environmental Quality

Galberry Corporation voluntarily agrees to the issuance of this Order.

Date: 13 Oct. 09 By: Emil A. Viola, PRESIDENT
(Person) (Title)
Galberry Corporation

Commonwealth of Virginia
City/~~County~~ of Chesapeake

The foregoing document was signed and acknowledged before me this 13th day of October, 2009 by Emil A. Viola, who is President of Galberry Corporation, on behalf of the company.

Beverly M. White
Notary Public

197446
Registration No.

My commission expires: 7-31-2013

Notary seal:

BEVERLY M. WHITE
NOTARY PUBLIC
REG. #197446
MY COMMISSION EXPIRES 7-31-13
COMMONWEALTH OF VIRGINIA

APPENDIX

Galberry shall:

1. Within 30 days of the effective date of this Order, submit an approvable Corrective Action Plan (CAP) and implementation schedule for the restoration of state waters on the Property that have been impacted without a VWP Permit. Restoration shall include the approximately 0.30 acres of forested wetlands impact areas not addressed by VWP Permit No. 07-1998, as described in sections C.2.a., C.6., and C.7. of this Order. In addition to restoration, the CAP will include 1:1 compensation for functional losses of wetlands for these approximately 0.30 acres of forested wetlands. The CAP must meet the requirements to achieve no net loss of existing wetland acreage and functions in accordance with 9 VAC 25-210-116. Galberry shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.

2. Within 60 days of DEQ approval of the CAP, implement the CAP 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. Galberry shall complete the CAP in accordance with its terms.

3. Mail all submittals and reports required by this Appendix to:

   Francis L. Daniel, Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Boulevard
   Virginia Beach, VA 23462