COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Doug Domenech
Secretary of Natural Resources

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Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
Mr. Kurt A. Lorenz

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. Kurt A. Lorenz 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. "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.

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

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. "Mr. Lorenz" means Mr. Kurt A. Lorenz, owner of the property at 1949 Centerville Turnpike South, Chesapeake, Virginia.

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

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

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

12. "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.

13. "Property" means the 21.18 acre parcel owned by Mr. Lorenz, located at 1949 Centerville Turnpike South, Chesapeake, Virginia.

14. "Restoration" means the reestablishment of a wetland or other aquatic resource in an area where it previously existed. Wetland restoration means the reestablishment of wetland hydrology and vegetation in an area where a wetland previously existed. Stream restoration means the process of converting an unstable, altered or degraded stream corridor, including adjacent areas and floodplains, to its natural conditions.

15. "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.

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

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

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

19. "VAC" means the Virginia Administrative Code.

20. "Virginia Water Protection permit" or "VWP permit" means an individual or general permit issued by the State Water Control Board under §62.1-44.15:20 of the Code of Virginia that authorizes activities otherwise unlawful under §62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's §401 certification.

21. "Wetland delineation" means a report that establishes the existence (location) and physical limits (size) of a wetland for the purposes of federal, state, and local regulations.

22. "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. Mr. Lorenz is a person pursuant to 9 VAC 25-210-10. The Property contains uplands as well as nontidal wetlands which are surface waters of the Commonwealth.

2. On January 4, 2008, while on a site visit at an adjacent property, DEQ staff noticed a large amount of land clearing activity on the Property. On closer inspection, the majority of the Property had been cleared, grubbed of stumps and graded. There was a small portion of predominantly young (5-7' tall) pines in the interior section of the Property. The cleared and grubbed trees had been consolidated into large woody debris piles, including one large pile on the western edge of the Property, and several smaller piles on the eastern side of the Property. Heavy machinery was present on the Property. Large track marks from the heavy machinery were observed throughout the Property. The frame of what appeared to be an approximately 20 feet x 40 feet "barn" on a concrete slab had been constructed in the northeastern section of the Property. The Property is accessed by an unpaved road off of Centerville Turnpike South, and is separated and set back from the road to the south by two residential lots.

3. Upon return from the site visit, a review of U.S. Fish & Wildlife Service "National Wetlands Inventory" maps depicted the majority of the Property as wetlands. Correspondence between DEQ and City of Chesapeake ("City") staff revealed that the 21.18 acre property is owned by Mr. Lorenz and was purchased in 2006. The City reported that a review of City files did not find a City land disturbance permit or building permits applied for or issued for the Property.

4. Mr. Lorenz does not have a VWP permit for the land clearing activity at the Property. DEQ staff notified USACE staff of the possible wetlands violations.

5. 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.

6. On January 17, 2008, DEQ issued Notice of Violation No. W2008-01-T-002 to Mr. Kurt Lorenz for unauthorized impacts to wetlands and discharge of pollutants.

7. USACE staff visited the property on January 23, 2008 and determined that current on-site and off-site evidence indicated that approximately the area west of the square that fronts Centerville Turnpike was wetlands prior to recent unauthorized land clearing activities. USACE staff submitted to DEQ an aerial view depicting this wetlands boundary for the Property as a draft wetlands determination. Based on this draft wetlands determination, approximately 10.8 acres of wetlands were impacted on the property.

8. On February 12, 2008 Mr. Lorenz met with DEQ staff to discuss the NOV. Mr. Lorenz noted that he had cleared the majority of the Property and had begun construction of a barn on the Property. He had intended to also build a house for his family and use the rest of the land for horse pasture. Mr. Lorenz has ceased all construction and site work since receiving the NOV.

9. Mr. Lorenz is in violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 for excavating, filling, and discharging a pollutant into surface waters without a VWP permit, which resulted in the significant alteration and degradation of approximately 10.8 acres of wetlands.

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. Lorenz, and Mr. Lorenz agrees, to perform the actions described in the Appendix of this Order. In addition, the Board orders Mr. Lorenz, and Mr. Lorenz voluntarily agrees, to pay a civil charge of $22,750.00 in settlement of the violations cited in this Order according to the following schedule:

a. Payment shall be made, at a minimum, in equal quarterly payments over ten (10) years, amounting to $568.75 each quarter for forty (40) quarters.

b. The first payment shall be due July 15, 2010. Subsequent quarterly payments shall be due on the following calendar quarter (October 15, January 15, April 15, July 15) for forty (40) quarters.

c. If the Department fails to receive a scheduled quarterly payment, the payment shall be deemed late. If any payment is late, the Department reserves the right to demand in writing fully payment of the balanced owed by Mr. Lorenz under this Order. Mr. Lorenz shall pay such balance within 15 days of receipt of a demand letter from the Department. Any allowance by the Department of a late payment by Mr. Lorenz shall not serve as a waiver of the Department's reserved right to accelerate payment of the balance.

d. Mr. Lorenz shall request in writing any adjustment to the payment schedule described above.

The payment shall note that it is being made pursuant to this Order. Payment shall be made by check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
P.O. Box 1104
Richmond, VA 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Lorenz, for good cause shown by Mr. Lorenz, 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. Lorenz by DEQ on January 17, 2008. 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 and subsequent actions with respect to this Order, Mr. Lorenz admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Mr. Lorenz 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. Mr. Lorenz 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 he 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 Mr. Lorenz 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. Mr. Lorenz 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. Lorenz shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Lorenz 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. This Order is binding on the parties hereto, their 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. Lorenz. Notwithstanding the foregoing, Mr. Lorenz 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. Lorenz. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Lorenz 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. Lorenz voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ___ day of _____, 2010.

_____
Francis L. Daniel
Regional Director

Mr. Kurt A. Lorenz voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

STATE OF NEW YORK
~~Commonwealth of Virginia~~
~~City/~~County of ORLEANS

The foregoing document was signed and acknowledged before me this 19th day of APRIL, 2010, by KURT A. LORENZ, owner of the
(name)
Property.

_____
Notary Public
BEVERLY BRENNAN
Notary Public, State of New York
Monroe Co. - Reg. No. 01BR5437185
Commission Expires Oct. 31, 2010

My commission expires: _____.

APPENDIX

Mr. Lorenz shall:

1. Within 30 days of the effective date of this Order submit an approvable Preservation and Restoration Plan and Implementation Schedule for the impacted wetland area on the Property.

2. Initiate the final approved Preservation and Restoration Plan and Implementation Schedule within 30 days of approval by DEQ staff.

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