VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY ENFORCEMENT ACTION - ORDER by CONSENT ISSUED to

Noble Development of Virginia, Corp.

For

10920 Braxton Ave Property

VWP Permit No.

Unpermitted

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15 for the purpose of resolving certain violations of the 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 in Va. Code § 62.1-44.2 *et seq.* and 9 VAC 25-21-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

Responsible Party	Noble Development of Virginia, Corp.		Permit No. or PReP No.	Unpermitted - Site No. 22-001696	
Violation Location	Street Address/Location		10920 Braxton Avenue		
	City	Glen Allen	VA	Zip code	23059
Inspection Date	10/12/2022 and 11/14/2022	State Waters Impacted	Chickahominy River, UT - James River Basin (Lower James River Subbasin)		
Request for Corrective Action		Warning Letter		Notice of Violation	03/06/2023
State Water Control Law § 62.1-44.15:20 and 9VAC25-210-10 states that except in compliance with a VWP permit it shall be unlawful to excavate, drain or significantly alter/degrade, fill/dump, flood/impound a wetland, or alter 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.					
The Responsible Party is a "person" within the meaning of Va. Code § 62.1-44.3.					
"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.					

Violation	Observation and Legal Requirements	Civil Charge		Subtotal
✔	Failure to obtain/exceeded coverage under an Individual Permit (IP) or a General Permit (GP) prior to commencing activity. Va. Code § 62.1-44.15:20; 9VAC25-210-50	$2,646 # of Violations	1	$2,646
✔	Unauthorized impacts to wetlands and/or streams (wetlands and streams assessed separately). Va. Code § 62.1-44.15:20; 9VAC25-210-50	$6,615 # of Violations	1	$6,615
	Failure to perform or complete compensatory mitigation. Not Applicable	$0 # of Violations		$0
	Failure to perform or complete corrective action relative to unsuccessful compensation. Not Applicable	$0 # of Violations		$0
	Failure to conduct compensation, construction, or water quality monitoring. Not Applicable	$0 # of Violations		$0
	Failure to submit preconstruction notice Not Applicable	$0 # of Violations		$0
	Failure to submit plans and specifications prior to commencing construction. Not Applicable	$0 # of Violations		$0
	Failure to comply with permit special conditions. Not Applicable	$0 # of Violations		$0

	Failure to submit a complete, final compensation plan. Not Applicable	$0 # of Violations		$0
	Record or reporting violations (not otherwise specified)	$0 # of Violations		$0
	Failure to report a discharge within 24 hours. Not Applicable	$0 # of Violations		$0
Violations and Frequency Subtotal				$9,261

	Aggravating Factors	Subtotal
CSO in another media within 36 months	0.00	$ 0.00
CSO in same media within 36 months	0.00	$ 0.00
Degree of Culpability	0.25	$ 2,315.25
Natural gas pipeline	0.00	$ 0.00
	Aggravating Factors Subtotal	$ 2,315.25
Civil Charge Subtotal and Aggravating Factor Subtotal		$ 11,576.25
Cooperativeness and Quick Settlement	-0.30	-$3,472.88
Economic Benefit of Noncompliance	No	
In accordance with 62.1-44.15(8e), the Responsible Party's ability to pay was evaluated and there is an ability to pay?	Yes	
	Total Civil Charge	$8,103.38

Based on the observations and legal requirements cited above, The Department concludes that the responsible Party has violated the VA. Code and Regulations as identified herein.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Department orders the Responsible Party and the Responsible Party agrees to:

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

☑ Pay the total civil charge of $8,103.38 in settlement of the violations cited in this consent order in accordance with the following:

☐ Within 30 days of the effective date of the consent order.

☑ In accordance with the following schedule:

Due Date	Amount Due
08/15/2023	$2,701.13
09/15/2023	$2,701.13
10/15/2023	$2,701.12

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

The Responsible Party 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, the Responsible Party shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of Responsible Party for good cause shown by Responsible Party, 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 Department 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 Party admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.

4. The Responsible Party 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. The Responsible Party 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 Department to modify, rewrite, amend, or enforce this Order.

6. Failure by the Responsible Party to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department 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 Party 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 Party shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Responsible Party 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 Party. Nevertheless, the Responsible Party 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 the Responsible Party has completed all of the requirements of the Order;
    b. The Responsible Party 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 Department terminates the Order in his or its sole discretion upon 30 days' written notice to the Responsible Party

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

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

DEQ Contact

Unless otherwise specified in this Order, the Responsible Party shall submit all requirements of Appendix A of this Order to:

DEQ-PRO Enforcement Matt Richardson 4949-A Cox Road Glen Allen, VA 23060 Matthew.Richardson@DEQ.Virginia.gov 804-659-2696

APPENDIX A
SCHEDULE OF COMPLIANCE

The Responsible Party shall take the following actions:

	Corrective action to be performed	Due Date
✔	Cease impacts to state waters and do not resume such impacts unless authorization from DEQ is granted via a Permit.	Immediately upon execution of this Order
	Complete a wetland delineation of the Property. The delineation shall be performed in accordance with the United States Army Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1, January 1987, Final Report, together with any applicable regional supplements	
	Request a wetland confirmation from the USACE and provide the confirmation results to DEQ within five days of receipt of the USACE confirmation.	
✔	Submit an approvable Corrective Action Plan (CAP) for the restoration of state waters on the Property that have been impacted without a Permit that meets the requirements of 9 VAC 25-210-116. The CAP must be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters in accordance with 9 VAC 25-210-116. Respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.	Within 7 days of the effective date of this Order
✔	Upon DEQ approval of the CAP, begin implementation of the Corrective Action Plan 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. Complete the CAP in accordance with its terms.	Immediately upon DEQ's approval of the CAP
✔	If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then advise DEQ in the applicable monitoring report for that monitoring period and describe why the criteria could not be achieved. If DEQ thereafter so directs, submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented in accordance with the schedule set forth in the alternative CAP.	Immediately upon notifification of DEQ
✔	If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. Respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. The purchase of mitigation bank credits or contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, shall be due within 30 days of DEQ approval.	Immediately upon notification by DEQ
	Submit proof of purchase of credits from a DEQ-approved mitigation bank or in-lieu fee fund that is authorized and approved by DEQ to sell credits in the area in which the impacts occurred and has credits available (as released by DEQ) to achieve no-net-loss of existing wetland acreage and no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116.	

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 Party voluntarily agrees to the issuance of this Order.

And it is so ORDERED.

DEQ Signee Name (Signature)

Date

DEQ Signee Name (Printed)

I hereby certify that I am the Responsible Party or duly appointed representative/officer of the Responsible Party and acknowledge that there are no material facts in dispute with respect to the violations as identified in this consent order.

Responsible Party Name (Signature)

5/18/23

Date

Terrance L. Jones

Responsible Party Name (Printed)