



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
TIDEWATER REGIONAL OFFICE

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Craig R. Nicol  
Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Alaron Farms, L.L.C. FOR The Matthews Property Unpermitted Activity

### 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 Alaron Farms, L.L.C., regarding the Matthews Property, for the purpose of resolving certain violations of the State Water Control Law and regulation.

### 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 (i) the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, or in certain circumstances preservation of aquatic resources or (ii) in certain circumstances an out-of-kind measure having a water quality, habitat, or other desirable benefit for the purposes of offsetting unavoidable adverse impacts to aquatic resources that remain after all appropriate and practicable avoidance and minimization has been achieved.
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. "Impacts" means results caused by those activities specified in § 62.1-44.15:20A of the Code of Virginia.
6. "Alaron" means Alaron Farms, L.L.C., a limited liability company authorized farming business in Virginia and its members, affiliates, partners, and subsidiaries. Alaron is a "person" within the meaning of Va. Code § 62.1-44.3.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "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.
9. "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).
10. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
11. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
12. "Property" means the property owned by Ms. Phyllis R. Matthews and located at 3882 Bridge Road in Suffolk, Virginia. The Property is the site of a former hog farm.
13. "Regulation" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*

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 Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. "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.
17. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VWP" means Virginia Water Protection Permit as defined in 9 VAC 25-210-10.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Alaron has a land lease on the Property. The Property is being managed agriculturally, with some movement and stockpiling of soils in preparation for later development and/or stabilization of soils for agricultural engineering purposes.
2. The western portion of the Property intersects with Knotts Creek, a tributary of the Nansemond River. Knotts Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
3. Knotts Creek is located in the James River Basin watershed. Knotts Creek is listed in DEQ's 305(b) report as impaired for shellfish and recreation uses. The causes of impairment are exceedances of Fecal Coliform and Enterococci bacteria.
4. On July 17, 2019, DEQ received information regarding discharge of sediment into wetlands on the Property. On July 19, 2019, DEQ staff inspected the Property and observed that recent rain had caused sediment from a soil stockpile to be discharged into surface waters, impacting approximately 0.19 acres. The impacts included approximately 250 linear feet (0.02 acre) of streambed and 7,500 square feet (0.17 acre) of non-tidal emergent wetlands. According to DEQ measurements, the sediment in surface water varied from approximately 1 inch to 6 inches in depth. DEQ files did not indicate VWP authorization for these impacts.

5. 9 VAC 25-210-50(A) states that: " Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; excavate in wetlands; or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions."
6. Va. Code § 62.1-44.5(A) states that "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage of functions..."
7. Va. Code § 62.1-44.15:20(A) states: "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. 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, or for other uses unless authorized by a certificate issued by the Board.
8. On August 15, 2019, DEQ issued NOV No. 1908-001135 for the unpermitted impacts to wetlands and streams, described in C(4) – C(7), above.
9. On August 28, 2019 by telephone, Alaron responded to the NOV. According to Alaron, the soil stockpile was in the process of being moved and stabilized when the locality required work to cease for a period of time. During that time, while Alaron staff were restricted access, subsequent rain caused the sediment from the soil stockpile to be discharged into the surface waters.

10. Based on the results of the July 19, 2019 inspection and subsequent file review, the Board concludes that Alaron has violated 9 VAC 25-31-50(A), Va. Code § 62.1-44.5(A), and Va. Code § 62.1-44.15:20(A), as described in paragraphs C(4) – C(7), above.
11. In order for Alaron to return to compliance, DEQ and representatives of Alaron 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 Alaron, and Alaron agrees to:

1. Perform the actions described in Appendix A of this Order, and
2. Pay a civil charge of \$17,063 within 30 days of the effective date of this 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

Alaron shall include its Federal Employer Identification Number (FEIN) 37-1437295 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, Alaron shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Alaron for good cause shown by Alaron, 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 and in NOV No. 1908-001135 dated August 15, 2019. 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, Alaron admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Alaron 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. Alaron 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 Alaron 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. Alaron 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. Alaron shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Alaron 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.

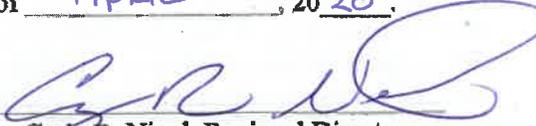
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement 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 Alaron. Nevertheless, Alaron 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 Alaron has completed all of the requirements of the Order;
  - b. Alaron 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 Alaron.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Alaron 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 Alaron 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. Any documents to be submitted pursuant to this Order shall be submitted by Alaron or an authorized representative of Alaron.
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, Alaron voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2 day of APRIL, 2020.

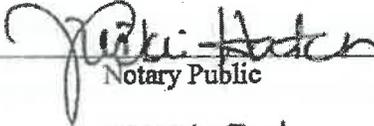
  
Craig R. Nicol, Regional Director  
Department of Environmental Quality

Alaron Farms, L.L.C. Farms, L.L.C. voluntarily agrees to the issuance of this Order.

Date: 1/30/2020 By: BEM  
(Person)  
ALARON Farms, L.L.C.

Commonwealth of Virginia  
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 30 day of  
Jan, 2020, by C. Boston Cutright who is  
Manager of ALARON Farms, L.L.C., on behalf of the company.

  
Notary Public  
7176311  
Registration No.

My commission expires: 7/31/2023

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

1. No later than 60 days after the effective date of this Order, Alaron shall submit an approvable Corrective Action Plan ("CAP") for the restoration of state waters on the Property that have been impacted without a Permit. 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, and as indicated by applicable monitoring according to the CAP. Alaron shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.
2. Upon DEQ approval of the CAP, Alaron shall begin implementation of 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. HKBC shall complete the CAP in accordance with its terms.
  - a. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then Alaron shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, Alaron shall 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 by Alaron in accordance with the schedule set forth in the alternative CAP.
  - b. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by December 31, 2023, or by the end of the last monitoring period, as specified in the Final CAP or any alternative CAP, and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then Alaron shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase compensation 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. Alaron shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Alaron shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.
3. Unless otherwise specified in this Order, Alaron shall submit all requirements of Appendix A of this Order to:

Enforcement  
DEQ – Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462

