



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Matthew J. Strickler
Secretary of Natural Resources

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Director

(804) 698-4000
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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MR. DeLOS G. WILLMORE
FOR
PINEBROOK II
VWP General Permit Authorization No. WP4-08-0542**

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 Mr. Delos Willmore regarding the Pinebrook II development for the purpose of resolving certain violations of State Water Control Law and the applicable permit and 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. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
7. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
8. "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.
9. "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.
10. "Mr. Willmore" means Mr. DeLos G. Willmore, permittee for this project. Mr. DeLos G. Willmore is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
13. "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.
14. "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.
15. "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.
16. "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: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) 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; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

17. "Property" or "Parcel" means the tract of land at 9914 Edenton Road in Partlow Virginia, in Spotsylvania County owned at the time of permit application by Shirley Willmore and SWG Pinebrook Estate, Inc., and sold in 2009 to Shirley Willmore LLC, a legal entity separate from Mr. Willmore, Shirley Willmore and SWG Pinebrook Estate, Inc.
18. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
19. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
21. "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 and 9 VAC 25-210-10.
22. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
23. "USACE" means the United States Army Corps of Engineers.
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "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. The Property was a proposed residential subdivision on an approximately 152 acre parcel in Partlow, Virginia, located in Spotsylvania County.
2. In the Joint Permit Application for the project, Mr. Willmore requested approval for the permanent impact of 0.062 acre (296 linear feet) of stream channel associated with tributaries to the Mattaponi (York) River watershed. The Reporting Only General Permit was issued on April 14, 2008 and expired on April 13, 2015.
3. The Property was sold to Shirley Willmore LLC in December 2009 to develop as a residential subdivision. Mr. Ballard, the managing director and member of Shirley Willmore LLC, contracted with engineers for road design and other engineering and permitting services for the subdivision; however, at the request of Mr. Ballard, the Permit was not transferred to Mr. Ballard or Shirley Willmore LLC.
4. In 2012 Mr. Ballard hired Mr. Willmore to assist with road construction and provided Mr. Willmore with plans approved by the Virginia Department of Transportation and Spotsylvania County.
5. Mr. Willmore's understanding was that Mr. Ballard and/or his engineers had obtained all necessary permits for the construction and began implementing the approved plans prepared by Mr. Ballard's engineers in 2013.
6. On February 10, 2014, Department staff conducted a project file review and inspected the Property for compliance with the requirements of the State Water Control Law and the Regulations. The DEQ inspector observed the following:
 - a. Authorized impacts to approximately 275 linear feet of stream channel had been taken.
 - b. Unauthorized impacts to approximately 283 linear feet of stream channel occurred as a result of piping and filling, and impacts to approximately 180 linear feet of stream channel occurred as a result of excavation and channelization, upstream and downstream of pipe locations.
 - c. Approximately 738 linear feet of stream channel impacts have been taken. Compensatory mitigation was not completed for these impacts.
 - d. A notice of plan change, indicating additional impacts would be taken beyond the permitted amount, was not submitted.
 - e. Pipes were not countersunk below the natural stream channel bed elevations.
 - f. Non-impact surface waters were not flagged.

7. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit dredging or filling of surface waters without a Permit issued by the Director.
8. Part I.A. 2 of the Permit states that any changes to the authorized permanent impacts to surface waters associated with the project shall require either a notice of planned change in accordance with 9 VAC 25-690-80 or another VWP permit application.
9. 9 VAC 25-210-116.A states in relevant part that compensatory mitigation for project impacts shall be sufficient to achieve no net loss of functions in all surface waters.
10. 9 VAC 25-690-50. A.1 states that an application for coverage for proposed, permanent nontidal wetland or open water impacts greater than one-tenth acre, or for proposed permanent nontidal stream bed impacts greater than 300 linear feet, shall include all information pursuant to 9 VAC 25-690-60 B. Compensatory mitigation may be required for all permanent impacts.
11. Part I.C.2 of the Permit states that no activity may substantially disrupt the movement of aquatic indigenous to the water body including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, floodplain culverts being placed above ordinary high water, culverts being placed on bedrock, or culverts required to be placed on slopes 5% or greater. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.
12. Part I.C.10 of the Permit states that all non-impacted surface waters and compensatory mitigation areas within 50 feet of permitted activities and within the project right-of-way limits shall be clearly flagged or marked for the life of construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.
13. On February 28, 2014 DEQ issued NOV No. W2014-02-N-0011 for the violation of Part I.A.2, Part III Q, Part I.C.2 and Part I.C.10, Va. Code § 62.1-44.15:20 , 9 VAC 25-210-50, and 9 VAC 25-690-50.
14. On March 26, 2014, Department staff met with Mr. Willmore and Mr. Ballard, the representative of the current landowner, who provided Mr. Willmore with the construction plans to be followed, to discuss the violations, including Mr. Willmore's response dated March 5, 2014.
15. On June 20, and July 31, 2014, DEQ staff conducted additional site visits. The unauthorized impacts observed on the February 10, 2014 inspection remained, pipes were still observed in surface waters, and the site had not been stabilized.

16. On January 9, 2015, and May 1, 2015, DEQ staff conducted an additional site visit. The unauthorized impacts observed on the February 10, 2014 inspection remained and pipes were still observed in surface waters; however, the site had been re-vegetated.
17. Based on the results of February 10, 2014, inspection, June 20, July 31, 2014, and January 9, and May 1, 2015, site visits, and the March 26, 2014 meeting, the Board concludes that Mr. Delos Willmore has violated Part I.A.2, Part III Q, Part I.C.2 and Part I.C.10 of the Permit, Va. Code § 62.1-44.15:20 , 9 VAC 25-210-50, 9 VAC 25-690-50 and 9 VAC 25-210-116.A, as described in paragraphs C(3) through C(9) above.
18. Mr. Willmore has cooperated with DEQ, hired an environmental consultant to develop a restoration plan and has diligently pursued access to the property from Mr. Ballard, which was not granted until Mr. Willmore hired local counsel to file a law suit.
19. In order for Mr. Willmore to return to compliance, DEQ staff and representatives of Mr. Willmore 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 Mr. Willmore and Mr. Willmore agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$20,930 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
May 21, 2018	\$5,232.50 or balance
August 20, 2018	\$5,232.50 or balance
November 20, 2018	\$5,232.50 or balance
February 20, 2019	\$5,232.50

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

Mr. Willmore shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the civil charge 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, Mr. Willmore 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 Mr. Willmore for good cause shown by Mr. Willmore, 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. W2014-02-N-0011 dated February 28, 2014. 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, Mr. Willmore admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Mr. Willmore 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. Willmore declares he has received fair and due process under the Administrative Process Act 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 modify, rewrite, amend, or enforce this Order.
6. Failure by Mr. Willmore 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. Willmore 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 his control and not due to a lack of good faith or diligence on its part. Mr. Willmore shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mr. Willmore 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.

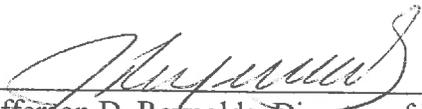
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement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

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Willmore from his 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 Mr. Willmore 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 Mr. Willmore or an authorized representative of Mr. Willmore.
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 his signature below, Mr. Willmore voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3 day of May, 2018.



Jefferson D. Reynolds, Director of Enforcement
Department of Environmental Quality

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Mr. DeLos G. Willmore voluntarily agrees to the issuance of this Order.

Date: 3-1-2018 By: De Los G. Willmore
(Person)
[Mr. DeLos G. Willmore]

Commonwealth of Virginia
City/County of PRINCE WILLIAM

The foregoing document was signed and acknowledged before me this 1st day of
March, 2018, by DeLos G. Willmore

[Signature]
Notary Public

365037
Registration No.

My commission expires: 8/31/2021

Notary seal:

ESTELA AMAYA-MORENO
NOTARY PUBLIC
REG. #365037
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES AUG. 31, 2021

APPENDIX A SCHEDULE OF COMPLIANCE

Mr. DeLos Willmore shall:

1. Immediately cease impacts to state waters and shall not resume such impacts unless authorization from DEQ is granted via a Permit.
2. No later than August 1, 2016, submit a Compensation Plan, for DEQ review and approval, for the compensation of 738 linear feet to account for authorized and unauthorized impacts of surface waters on the Property. Based on this total and permitting regulations (9 VAC 25-690-50), compensation for lost or reduced stream function and value is required for all previously taken and future impacts proposed. The Plan must be sufficient to achieve no net loss of surface waters in accordance with 9 VAC 25-210-116. Mr. DeLos G. Willmore shall respond to any DEQ Notice of Deficiency regarding the Plan within 14 calendar days.
3. Begin implementation of the Final Compensation Plan dated February 1, 2016, and Revised March 23, 2016, May 20, 2016, and July 7, 2016, (Final CAP) by July 30, 2018. Mr. DeLos G. Willmore shall complete the Final CAP by November 30, 2018, in accordance with its terms, and shall arrange for access to be granted to DEQ to the restoration site for the purpose of monitoring restoration progress.
4. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then Mr. DeLos G. Willmore 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, Mr. DeLos G. Willmore 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 Mr. DeLos G. Willmore in accordance with the schedule set forth in the alternative CAP.
5. 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 Mr. DeLos G. Willmore shall 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. Mr. DeLos G. Willmore shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Mr. DeLos G. Willmore 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.

6. Unless otherwise specified in this Order, Mr. Willmore shall submit all requirements of Appendix A of this Order to:

Carla Pool
Enforcement Adjudication Manager
VA DEQ – Central Office
P.O. Box 1105
Richmond, Virginia 23218
(804) 698-4150
Carla.Pool@deq.virginia.gov