



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
HARBOR STATION COMMUNITIES, LLC
FOR THE
POTOMAC SHORES DEVELOPMENT PROJECT
VWP PERMIT No. 04-0271**

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 Harbor Station Communities, LLC, regarding the Potomac Shores Project, 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. "USACE" means U.S. Army Corps of Engineers.
2. "BMP" means Best Management Practices.
3. "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.
4. "CAP" means corrective action plan.
5. "Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "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.
9. "E&S" means Erosion and Sediment.
10. "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.
11. "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.
12. "Harbor Station" or "Permittee" means Harbor Station Communities, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Harbor Station Communities, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
13. "Impacts" means results caused by those activities specified in § 62.1-44.15:20 of the Code of Virginia.
14. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
15. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
16. "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.
17. "Permit" or "Virginia Water Protection Permit" means, VWP Individual Permit 04-0271 issued on February 16, 2005, and subsequent modifications through October 28, 2016, 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.
18. "PFO" means palustrine forested wetlands.
19. "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.

20. "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.
21. "Project Site" or "Property" means the Potomac Shores Development Project owned by Harbor Station Communities, LLC (Permittee) consists of the construction of a mixed-use development consisting of a golf course, residential units, elementary schools, a fire/rescue station and associated infrastructure and a water withdrawal from one intake structure located in Powell's Creek to provide supplemental irrigation for the golf course, on an approximately 1,800-acre parcel. The project is located within the eastern portion of the Cherry Hill Peninsula east of U.S. Route 1 (Jefferson Davis Highway) in Dumfries, Virginia (Prince William County).
22. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
23. "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.
24. "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.
25. "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 62.1-44.14:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
26. "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.

27. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
28. "Va. Code" means the Code of Virginia (1950), as amended.
29. "VAC" means the Virginia Administrative Code.
30. "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.
31. "WL" means warning letter,
32. "WSSI" means Wetland Studies and Solutions, Inc.

SECTION C: Findings of Fact and Conclusions of Law

1. Harbor Station owns the Property in Dumfries, Virginia, which is located in Prince William County.
2. The Permit authorized the total impact of 11.31 acres of surface waters, consisting of 8.00 acres of permanent impacts (including 2,543 linear feet of perennial stream channels and 9,790 linear feet of intermittent stream channels), and 3.31 acres of temporary impacts (including 64 linear feet of perennial stream channels, and 50 linear feet of intermittent stream channels).
3. On April 15, 2016, DEQ issued a WL, W2016-04-N-1022, to the Permittee, for additional impacts to 0.15 acre of palustrine forested wetlands, 0.036 acre of palustrine scrub-shrub wetlands, 0.007 acre of palustrine emergent wetlands and 225 linear feet of stream channel. In response to the observations, on March 23, 2016, a corrective action plan was submitted to DEQ, by WSSI, and approved by the Department on April 15, 2016. The approved corrective action plan (CAP) required restoration within 90 days. WSSI notified DEQ, via letter dated July 20, 2016, and report dated November 11, 2016, that the CAP for the unauthorized impacts identified in the Warning Letter Number W2016-04-N-1022 was completed.
4. On February 28, 2017, and March 13, 2017, DEQ staff conducted compliance site visits of the Project Site.
5. On February 28, 2017, and March 13, 2017, DEQ staff observed additional unauthorized fill material had been discharged into surface waters as the result of sediment discharge from construction and channel erosion. The report/ CAP on these impacts submitted by WSSI March 21, 2017, confirmed unauthorized impacts but did not quantify the area of affected surface waters. Based upon the site visits and a review of the file material, staff estimates the areas of impact from construction sediment deposition affected

approximately 500 linear feet of stream channel and 1.0 acre of wetlands. Portions of the impacted surface waters are located in compensatory preservation areas.

6. Part I.A.5 of the Permit states that “[a]ny additional impacts to surface waters, including wetlands, or any change to the type of wetland impacts, shall be subject to individual permit review or modification of this permit, and compensation may be required.”
7. 9 VAC 25-210-50 A states that “[e]xcept in compliance with a VWP 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, excavate in wetlands 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.”
8. Va. Code § 62.1-44.15:20.A states that “[e]xcept 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.”
9. As a result of the observations made during the site visits on February 28, 2017, and March 13, 2017, and a file review, on April 10, 2017, DEQ issued NOV No. 1704-000290, for the violations of the Permit Part I.A.5, 9 VAC 25-210-50 A, and Va. Code § 62.1-44.15:20.A.
10. On May 24, 2017, Department staff met with representatives of WSSI to discuss the violations. As a result of the meeting Department staff and WSSI met on-site on June 23, 2017, to observe and confirm the extent of surface water impacts resulting from sediment deposition. WSSI’s submitted a report based on the field observations, via letter dated September 18, 2017, which confirmed the unauthorized impacts to be 705 linear feet of stream channel and 0.70 acres of wetlands.
11. Based on the results of the February 28, 2017, and March 13, 2017, site visits, the May 24, 2017, meeting, and the documentation submitted by representatives of Harbor Station, the Board concludes that Harbor Station has violated Permit Part I.A.5, 9 VAC 25-210-50.A, and Va. Code § 62.1-44.15:20.A, as described in paragraph C(5) above.

12. In order for Harbor Station to complete its return to compliance, DEQ staff and representatives of Harbor Station 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 Harbor Station, and Harbor Station agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$45,500.00 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

Harbor Station 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, Harbor Station 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 Harbor Station for good cause shown by Harbor Station, 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. 1704-000290, dated April 10, 2017. 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, Harbor Station admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Harbor Station 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. Harbor Station 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 Harbor Station 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. Harbor Station 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. Harbor Station shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Harbor Station 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.

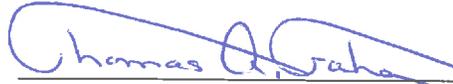
10. This Order shall become effective upon execution by both the Director or his designee and Harbor Station. Nevertheless, Harbor Station agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Harbor Station has completed all of the requirements of the Order;
 - b. Harbor Station 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 Harbor Station.

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

And it is so ORDERED this 21st day of September, 2018.



Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

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Harbor Station Communities, LLC voluntarily agrees to the issuance of this Order.

Date: 5/22/18 By: [Signature], Authorized Signatory
(Person) (Title)
Harbor Station Communities, LLC

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of _____, 2018, by _____ who is _____ of Harbor Station Communities, LLC, on behalf of the company.

SEE ATTACHED

Notary Public

Registration No.

My commission expires: _____

Notary seal:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of ORANGE)

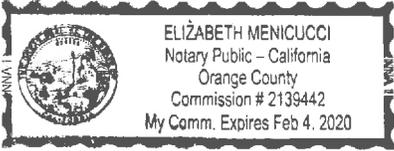
On MAY 22, 2018 before me, ELIZABETH MENICUCCI, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared BRUCE COOK
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s); or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Elizabeth Menicucci*
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

APPENDIX A

SCHEDULE OF COMPLIANCE

A. Harbor Station shall:

1. No later than 30 days from the execution of this Order submit to DEQ documentation of a compensatory credit purchase to mitigate for functional losses due to repeated discharges and restoration. The ratio of credit to loss is 0.5 : 1; and amounts to 163 stream credits and 0.08 wetland credits, to be secured from a DEQ approved mitigation bank that is authorized 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.
2. In addition to the credit purchase specified in paragraph 1 above, Harbor Station shall begin implementation of the CAP submitted to DEQ on September 30, 2017, (approved Final CAP), in accordance with the schedule contained therein. Any changes to the approved Final CAPs or schedule shall not be initiated without advance notice to and approval by DEQ. Harbor Station shall complete the CAP in accordance with its terms. Harbor Station shall provide the referenced supplemental monitoring report within 30 days of implementing CAP activities, and the post-CAP report detailing the completion of CAP objectives within 30 days after CAP completion. A supplemental monitoring CAP was submitted by Harbor Station on December 30, 2018.
 - a. If the performance criteria specified in the Final CAP are not achieved within one year after execution of this order then Harbor Station 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, Harbor Station 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 Harbor Station 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 the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then Harbor Station 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. Harbor Station shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Harbor Station 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.

B. Submissions:

Unless otherwise specified in this Order, Harbor Station shall submit all requirements of Appendix A of this Order to:

Enforcement
Virginia Department of Environmental Quality
Northern Regional Office
13901 Crown Court
Woodbridge, VA 22193