



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Secretary of Natural Resources

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Director

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

JOHN C. HOLLAND ENTERPRISES, INC.

FOR

**JOHN C. HOLLAND ENTERPRISES, INC., INDUSTRIAL LANDFILL
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 John C. Holland Enterprises, Inc., regarding the John C. Holland Enterprises, Inc., Industrial Landfill and adjacent property, for the purpose of resolving certain violations of 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 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. "JCH Enterprises" means John C. Holland Enterprises, Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. JCH Enterprises is a "person" within the meaning of Va. Code § 62.1-44.3.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "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.
8. "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).
9. "Property", "Parcel" or "Site" means the John C. Holland Enterprises, Inc., Industrial Landfill located at 4801 Nansemond Parkway, Suffolk, Virginia, identified as Suffolk Tax map #20*37 and 20*37A and the adjacent property identified as Suffolk Tax map #20*36*C.
10. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 et seq.
11. "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.
12. "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.
13. "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.
14. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
15. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "VWP" means Virginia Water Protection Permit as defined in 9 VAC 25-210-10.
19. "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. JCH Enterprises operates an industrial landfill located on the parcels of land identified as Suffolk Tax map #20*37 and 20*37A ("Landfill"). Rhonda M. Holland owns the parcels containing the Landfill as well as the adjacent parcel to the east of the Landfill property line, identified as Suffolk Tax map #20*36*C ("Adjacent Property"). The Adjacent Property contains nontidal forested wetlands, which are surface waters of the Commonwealth.
2. On June 29 and 30, 2017, DEQ staff conducted compliance inspections of the Property to assess potential unauthorized impacts to surface waters regulated under the State Water Control Law and the Regulations.
3. During this inspection and subsequent records review DEQ staff observed the following:
 - a. Approximately three (3) acres of nontidal forested wetlands located outside of the eastern property line of the Landfill on the Adjacent Property were impacted by earthen and gravel fill material, as well as a small structure, concrete pad and electrical generator, as a result of an expansion of landfill operations onto the Adjacent Property.
4. A review of DEQ files indicated that neither Rhonda M. Holland as property owner, nor JCH Enterprises as operator has a Permit for the activities listed in C(3)(a).
5. Va. Code § 62.1-44.5 states "A. 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 or functions...”

6. 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.”
7. 9 VAC 25-210-50(A) states “ 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.”
8. On August 4, 2017, DEQ issued NOV Number 1708-000463 for the violations in C(3) - (7), above.
9. On August 8, 2017, JCH Enterprises confirmed receipt of the NOV and requested a meeting via email. On October 16, 2017, Department staff met with representatives of JCH Enterprises to discuss the violations.
10. Based on the results of June 29 and 30, 2017, inspections, and the October 16, 2017 meeting, the Board concludes that JCH Enterprises has violated Va. Code § 62.1-44.5, Va. Code § 62.1-44.15:20(A), and 9 VAC 25-210-50(A), as described in paragraphs C(3) – C(7), above.
11. In order for JCH Enterprises to return to compliance, DEQ staff and representatives of JCH Enterprises have agreed to the Schedule of Compliance requiring Restoration, Compensatory Mitigation, or a combination thereof, 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 JCH Enterprises, and JCH Enterprises agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$50,948 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

JCH Enterprises 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, JCH Enterprises shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

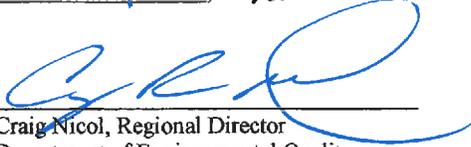
1. The Board may modify, rewrite, or amend this Order with the consent of JCH Enterprises for good cause shown by JCH Enterprises, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 1708-000463, dated August 4, 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, JCH Enterprises admits to 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. JCH Enterprises 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. JCH Enterprises declares it has received fair and due process under the Administrative Process Act 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 modify, rewrite, amend, or enforce this Order.
6. Failure by JCH Enterprises 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. JCH Enterprises 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. JCH Enterprises shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. JCH Enterprises 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 JCH Enterprises. Nevertheless, JCH Enterprises 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 JCH Enterprises has completed all of the requirements of the Order;
 - b. JCH Enterprises 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 JCH Enterprises.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve JCH Enterprises 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 JCH Enterprises 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 JCH Enterprises or an authorized representative of JCH Enterprises.
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, JCH Enterprises voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 13 day of April, 2018, 201~~7~~.



Craig Nicol, Regional Director
Department of Environmental Quality

Consent Order
John C. Holland Enterprises, Inc.
VWPP Unpermitted
Page 8 of 9

JCH Enterprises voluntarily agrees to the issuance of this Order.

Date: 12-8-2017 By: John C. Holland, President
(Person) (Title)
John C. Holland Enterprises, Inc.

Commonwealth of Virginia
City/County of Suffolk

The foregoing document was signed and acknowledged before me this 8 day of December, 2017, by Rhonda M. Holland who is President of John C. Holland Enterprises, on behalf of the company.

Susan H. Outlan
Notary Public

7666991

Registration No.

My commission expires: 11/30/2019

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. No later than 60 days from the effective date of this Order, JCH Enterprises shall submit an approvable Corrective Action Plan ("CAP") for the restoration of wetlands 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. JCH Enterprises shall respond to any DEQ comments regarding the CAP within 14 calendar days of receipt.
2. Upon DEQ approval of the CAP, JCH Enterprises shall begin implementation of the CAP in accordance with the schedule contained therein. Any changes to the approved CAP or schedule shall not be initiated without advance notice to and approval by DEQ. JCH Enterprises shall complete the CAP in accordance with its terms.
 - a. Monitoring reports are due to DEQ within 60 days following the end of the applicable monitoring period.
 - b. If the performance criteria specified in the approved CAP are not achieved at the end of the applicable monitoring period, then JCH Enterprises shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why the criteria could not be achieved. JCH Enterprises shall submit to DEQ for review and approval a revised CAP as part of the applicable monitoring report to achieve the performance criteria. Upon DEQ approval, the revised CAP shall then be implemented by JCH Enterprises in accordance with the schedule set forth in the revised CAP to meet performance criteria.
 - c. If the performance criteria specified in the approved CAP or any revised 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 JCH Enterprises 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 unrestored wetlands on the Property impacted without a Permit required in the most recent approved revised CAP. JCH Enterprises shall respond to any DEQ comments to the proposal within 30 days of the comments. JCH Enterprises 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, JCH Enterprises shall submit all requirements of Appendix A of this Order to:

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