



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
LARRY HIMELRIGHT
FOR
HOLIDAY PLANTATION
UNPERMITTED LAND-DISTURBING ACTIVITY
WARREN COUNTY, VIRGINIA**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Larry Himelright, regarding property located near the intersection of Browntown Road (Route 649) and the planned Holiday Court in Warren County, Virginia, 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 below:

1. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.
2. "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.

3. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means the discharge of a pollutant.
7. "Discharge of a pollutant" means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
9. "Himelright" means Mr. Larry Himelright, currently a resident of Strasburg, Virginia. Himelright is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "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.
13. "Registration Statement" means a registration statement for coverage under the 2014 State Permit.
14. "Site" means the property at the intersection of Browntown Road (Route 649) and the planned Holiday Court located in Warren County, Virginia, positioned at approximate latitude 38° 49' 39"N and longitude 78° 13' 53"W.

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. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
18. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
19. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
25. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.

26. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
27. "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of State Permit coverage has been provided where applicable. Va. Code § 62.1-44.15:24.
28. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. Himelright owns the Site located in Warren County, Virginia, which discharges stormwater associated with construction activity.
2. DEQ is the VSMP authority for Warren County, Virginia.
3. Himelright submitted an application for coverage under the 2014 Permit, which DEQ received on April 27, 2016. However, DEQ has not issued 2014 Permit coverage for the Site because Himelright did not include a stormwater management plan with the Permit application.
4. Warren County approved an Erosion and Sediment Control ("ESC") Plan for the Site on October 9, 2015. The plans were stamped by the engineer on December 17, 2013.
5. Warren County issued a Land Disturbing Permit under their ESC Program for the Site on August 14, 2013 and it was renewed on February 14, 2016.
6. During DEQ inspections of the Site on March 29, 2016 and April 6, 2016, DEQ staff observed that land-disturbing activities greater than one acre had occurred at the Site in areas subject to stormwater runoff. Himelright did not have 2014 Permit coverage or DEQ approval to begin land disturbance.

Virginia Code § 62.1-44.15:34(A) states: "A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance."

Virginia Code § 62.1-44.15:24 and -44.15:34 define “land-disturbing activity” and describe regulated land-disturbing activities (including exemptions), respectively.

7. As of November 4, 2016, DEQ has neither received nor approved a stormwater management plan for the Site.

Virginia Code § 62.1-44.15:34(A) states in part: “A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance.”

9 VAC 25-870-54(C) states: “A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority.”

8. During DEQ Site inspections on March 29, 2016 and April 6, 2016, the SWPPP was not available onsite and notice of the SWPPP’s location was not posted. According to Himelright, at the time of the inspections, a SWPPP was not developed for the Site.

9 VAC 25-870-54(A) states: “A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of this section.”

9 VAC 25-870-54(G) states: “The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP’s location must be posted near the main entrance at the construction site.”

9. During DEQ Site inspections on March 29, 2016 and April 6, 2016, DEQ staff observed that the ESC plan for the site was not implemented. The sediment trap was full of sediment and had not been maintained in accordance with the ESC plan. Silt fence had not been maintained in accordance with the ESC plan and rip rap was not installed in accordance with the ESC plan. Inlet protection included on the ESC plan was not installed.

9 VAC 25-870-54(B) states: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

10. On May 5, 2016, DEQ issued NOV No. 16-04-VRO-005 for the violations noted above.

11. On May 25, 2016, Department staff met with Himelright to discuss the violations in the NOV.
12. Based on the results of the March 29, 2016 and April 6, 2016 inspections, the Board concludes that Himelright violated Va. Code § 62.1-44.15:34 and 9 VAC 25-870-54 as described in paragraphs C(6)-(9) of this Order.
13. Himelright has submitted documentation that verifies that the violations as described in paragraph C(9), above, have been corrected.
14. In order for Himelright to return to compliance, DEQ staff and Himelright 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, 62.1-44.15:25, and 62.1-44.15:48, the Board orders Himelright and Himelright agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$9,969 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

Himelright shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Himelright 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 Himelright for good cause shown by Himelright, or on his 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 NOV No. 16-04-VRO-005, dated May 5, 2016. 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, Himelright admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Himelright 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. Himelright declares he 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 Himelright 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. Himelright 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 his part. Himelright shall demonstrate that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Himelright 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 Himelright. Nevertheless, Himelright 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 Himelright has completed all of the requirements of the Order;
 - b. Himelright 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 Himelright.

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

Mr. Larry Himelright voluntarily agrees to the issuance of this Order.

Date: July 9 2017 By: [Signature]
(Person)
Larry Himelright

Commonwealth of Virginia
City/County of Shenandoah

The foregoing document was signed and acknowledged before me this 9th day of
January, 2017, by Larry Himelright.

[Signature]
Notary Public

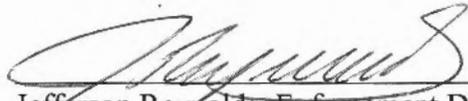
169433
Registration No.

My commission expires: 3/31/19

Notary seal:



And it is so ORDERED this 8 day of March, 2017.


Jefferson Reynolds, Enforcement Director
Department of Environmental Quality

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APPENDIX A SCHEDULE OF COMPLIANCE

1. Unpermitted Land-Disturbing Activity

- a. Immediately upon execution of this Order, Himelright shall cease all land disturbing activities at the Site until 2014 Permit coverage has been obtained for discharges of stormwater from construction activities. However, this requirement shall not apply to land-disturbing activities necessary for corrective measures required by this Order or the Virginia Erosion and Sediment Control Law and Regulations.
- b. Within 30 days of the effective date of this Order, Himelright shall submit the documents necessary to complete his Permit application to DEQ for coverage under the 2014 Permit for discharge of stormwater from land-disturbing activities at the Site.

2. Stormwater Management Plan

- a. Within 30 days of the effective date of this Order, Himelright shall submit to DEQ, for review and approval, a stormwater management plan for the Site consistent with the requirements of the VSMP Regulations.
- b. Himelright shall respond to any comments from DEQ regarding the stormwater management plan within 21 days from the date of the comments.
- c. Himelright shall install any permanent stormwater management facilities in accordance with the specifications in the approved stormwater management plan within 60 days of approval of the stormwater management plan.

3. SWPPP

- a. Within 30 days of the effective date of this Order, Himelright shall prepare a SWPPP in accordance with the requirements of Section II of the 2014 Permit and shall submit the SWPPP to DEQ for its review and approval.
- b. Himelright shall respond to any DEQ comments regarding its SWPPP within 21 days from the date of the DEQ comments.
- c. Upon DEQ approval, Himelright shall immediately implement the approved SWPPP at the Site.