



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Craig R. Nicol
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
DEPARTMENT OF THE NAVY
COMMANDER, NAVY REGION MID-ATLANTIC
FOR
P-461 SMALL ARMS RANGE FACILITY
AT
NAVAL WEAPONS STATION YORKTOWN
VWP INDIVIDUAL PERMIT 15-0232**

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 the Commander, Navy Region Mid-Atlantic, regarding the Naval Weapons Station Yorktown Small Arms Range, 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. "CNRMA" means Commander, Navy Region Mid-Atlantic, regional command responsible for the operation of the Naval Weapons Station in Yorktown. CNRMA is a "person" within the meaning of Va. Code § 62.1-44.3.
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. "Navy" means the United States Navy, a naval warfare branch of the United States Armed Forces.
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 Individual Permit number 15-0232 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 any substance, radioactive material, or heat which causes or contributed to, or may cause or contribute to pollution. 9 VAC 25-210-10.
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: (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.
12. "Property", "Parcel" or "Site" means the Naval Weapons Station Yorktown Small Arms Range, York County, Virginia.

13. "Regulations" 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. 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.
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 and 9 VAC 25-210-10.
17. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
18. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VWP" means Virginia Water Protection Permit as defined in 9 VAC 25-210-10.
22. "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 Department of the Navy owns the Property. CNRMA is responsible for operating the Property for the Navy. The Property contains nontidal forested wetlands and intermittent streams, which are surface waters of the Commonwealth.
2. On December 22, 2015, DEQ issued VWP Individual Permit number 15-0232, which authorized the Department of the Navy, CNRMA, to permanently impact the following state waters: 1,416 linear feet of stream; 1.458 acres of nontidal forested wetlands; 0.076

- acres of nontidal emergent wetlands; and permanently convert 0.831 acres of nontidal forested wetland to nontidal emergent wetlands, to construct the P-461 small arms range ("Range").
3. On July 11, 2016, and October 6, 2016, DEQ staff conducted inspections at the Range construction site ("Site"), to determine compliance with the permit conditions, State Water Control Law and the Regulations, in response to notifications from Navy environmental staff that sediment releases resulting from work at the Site had discharged outside the permitted impact areas into wetlands and streams.
 4. During these inspections and review of the notifications received, DEQ staff observed the following:
 - a. The majority of the Site had been completely denuded and lacked stabilization. Evidence of erosion was observed on denuded steep slopes. A significant amount of sediment from the Site was observed to have been deposited in stream channels at several locations beginning immediately below eroded slopes.
 - b. Approximately 3,100 linear feet of streams were impacted by sediment deposition.
 - c. Sediment from the Site filled approximately 0.5 acres of forested wetlands adjacent to the stream channels and elsewhere around the perimeter of the site.
 5. Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 states that except in compliance with a permit, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters.
 6. The Permit, Part I(A) states: "This permit authorizes the following impacts... (1) The permanent impact to 1.458 acres of nontidal forested wetlands and 0.076 acres of nontidal emergent wetlands. (2) The permanent conversion of 0.831 acres of nontidal forested wetland to nontidal emergent wetlands. (3) The permanent impact to 1,416 linear feet of streams. (4) This permit does not authorize any temporary surface water impacts.
 7. The Permit, Part I(C)(1) states: "The activities authorized by this permit shall be executed in such a manner that any impacts to stream beneficial uses are minimized..."
 8. The Permit, Part I(C)(9) states: "All construction, construction access, and demolition activities associated with this project shall be accomplished in a manner that minimizes construction materials or waste materials from entering surface waters, unless authorized by this permit."
 9. The Permit, Part II(A) states: "The permittee shall comply with all conditions of the VWP permit. Nothing in the VWP permit regulations shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for

enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.

10. The Permit, Part II(C) states: "The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.
11. The Permit, Part II(Q) states: "Except in compliance with this VWP permit, it shall be unlawful for the permittee 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, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; 4) On or 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; d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.
12. On October 31, 2016, DEQ issued NOV TR16-1102 for the violations in C(4) - (10), above.
13. On December 8, 2016, January 26, 2017, April 21, 2017, and May 12, 2017, CNRMA provided notification that additional sediment releases were observed.
14. On May 17, 2017, representatives of DEQ and CNRMA met at the Property to visit the Site and discuss the NOV.
15. On May 19, 2017, and June 22, 2017, CNRMA provided additional notifications that more sediment releases were observed.
16. Based on the results of July 11, 2016, and October 6, 2016, inspections, the May 17, 2017, Site visit, and notifications received from CNRMA, the Board concludes that the Department of the Navy, CNRMA, has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50; the Permit, Parts I(A); I(C)(1); I(C)(9); II(A); II(C); and II(Q) as described in paragraphs above.
17. In order for Department of the Navy, CNRMA to return to compliance, DEQ staff and representatives of Department of the Navy, CNRMA 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 the Department of the Navy, CNRMA, and Department of the Navy, CNRMA agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Department of the Navy, CNRMA for good cause shown by Department of the Navy, CNRMA, 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. TR16-1102, dated October 26, 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, Department of the Navy, CNRMA 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. Department of the Navy, CNRMA acknowledges that any civil action taken by the Board to enforce the terms of this Order will be in the Circuit Court of the City of Richmond. Department of the Navy, CNRMA does not waive any rights it may have to seek removal of such action to federal court pursuant to 28 U.S.C. § 1441 *et seq.*
5. Department of the Navy, CNRMA 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 Department of the Navy, CNRMA 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. Department of the Navy, CNRMA 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. Department of the Navy, CNRMA shall demonstrate that such circumstances were beyond its control and not due to a

lack of good faith or diligence on its part. Department of the Navy, CNRMA 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.

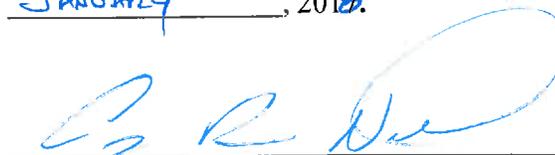
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement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

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Department of the Navy, CNRMA from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. In accordance with the Federal Anti-Deficiency Act, Title 31 United States Code § 1341, the obligations of the Department of the Navy, CNRMA under this section are expressly conditioned on the availability of Congressional appropriations, which the Department of the Navy, CNRMA agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, the Department of the Navy, CNRMA will promptly inform the DEQ Regional Director. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with Department of the Navy, CNRMA consent or in accordance with the Administrative Process Act.
13. Any plans, reports, schedules or specifications attached hereto or submitted by Department of the Navy, CNRMA 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.
14. Any documents to be submitted pursuant to this Order shall be submitted by Department of the Navy, CNRMA or an authorized representative of Department of the Navy, CNRMA.
15. 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.
16. By its signature below, Department of the Navy, CNRMA voluntarily agrees to the issuance of this Order.

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



Craig Nicol, Regional Director
Department of Environmental Quality

Consent Order
Department of the Navy, CNRMA
P-461 Small Arms Range Facility
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Department of the Navy, CNRMA voluntarily agrees to the issuance of this Order.

Date: 30 Oct 2017 By: Sean Heaney, Dir Env Programs
(Person) (Title)
Department of the Navy, CNRMA

Commonwealth of Virginia
City/County of Norfolk

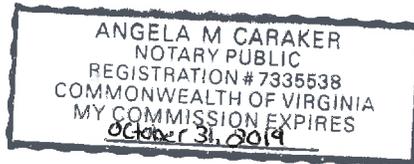
The foregoing document was signed and acknowledged before me this 30 day of October, 2017, by Sean Heaney in his personal capacity.

Angela M. Caraker
Notary Public

7335538
Registration No.

My commission expires: October 31, 2019

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. No later than 90 days from the execution of this Order, Department of the Navy, CNRMA shall submit an approvable Corrective Action Plan (“CAP”) for the restoration of state waters 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. CNRMA shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.
2. Upon DEQ approval of the CAP, Department of the Navy, CNRMA shall begin implementation of the Corrective Action Plan 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. Department of the Navy, CNRMA 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 Department of the Navy, CNRMA 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, Department of the Navy, CNRMA 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 Department of the Navy, CNRMA 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 Department of the Navy, CNRMA 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. Department of the Navy, CNRMA shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Department of the Navy, CNRMA 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, Department of the Navy, CNRMA shall submit all requirements of Appendix A of this Order to:

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