



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE
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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
NICHOLAS FRANK ANOIA
FOR
1173 HORN POINT ROAD PROPERTY
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 Nicholas Frank Anoia, regarding the 1173 Horn Point Road 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. “Mr. Anoya” or “Owner” means Mr. Nicholas Frank Anoya, currently a resident of Virginia Beach, Virginia. Mr. Anoya 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 1173 Horn Point Road, Virginia Beach, Virginia.
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. “USACE” or “ACOE” means the United States Army Corps of Engineers.
17. “Va. Code” means the Code of Virginia (1950), as amended.
18. “VAC” means the Virginia Administrative Code.
19. “VWP” means Virginia Water Protection Permit as defined in 9 VAC 25-210-10.
20. “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. Mr. Anoya owns the property located at 1173 Horn Point Road, Virginia Beach, Virginia (“Property”). The Property contains nontidal palustrine forested wetlands, which are surface waters of the Commonwealth.
2. On January 29, 2019, DEQ received notice from a concerned citizen regarding potential wetland impacts at the Property.
3. On February 21, 2019, DEQ VWP staff conducted a compliance inspection of the Property to assess potential unauthorized impacts to surface waters regulated under the State Water Control Law and the Regulations. During this inspection and subsequent records review DEQ staff observed the following:
 - a. A portion of the Property (“Area C”)¹ was cleared and filled with dirt, gravel, and crushed asphalt, which temporarily impacted 0.1 acres of forested wetlands.
 - b. Two portions of the Property (“Areas D and E”) were temporarily filled with construction debris and vehicles.
 - c. A review of DEQ records did not indicate that a Virginia Water Protection Permit (“VWPPP”) or USACE authorization had been issued for the fill material within Area C or Areas D and E, all of which contained emergent wetlands, on the Property.
4. 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

¹ See, Appendix B, PROPERTY MAP for an aerial view of the wetland impacts. This map was included in the written response to the NOV, received July 9, 2019, as described in C(9), below.

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.”

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. On March 20, 2019, DEQ issued Mr. Anoaia NOV No. 1901-000974 for the violations in C(3) - (6), above.
8. Mr. Anoaia confirmed receipt of the NOV and requested a meeting. On April 11, 2019, DEQ staff met with Mr. Anoaia and his consultants at TRO. In this meeting Mr. Anoaia described the steps he was taking to remove the sandy material, construction debris, and to restore Areas C, D, and E to functional wetlands. DEQ requested a written response to the NOV.
9. On July 9, 2019, Mr. Anoaia provided the written response to the NOV. According to Mr. Anoaia, the consultant found that there was one primary wetland impact area, Area C. DEQ wetland staff concurred that Area C needed to have the sandy material and construction debris removed from Area C, and that once removed, Area C is expected to fully restore naturally due to the surrounding natural seed bank. Mr. Anoaia has been

actively removing the impact material from Area C. The consultant also noted that since the NOV, Mr. Anoaia has been removing the sandy material and construction debris from their temporary piles in Areas D and E, and the land is naturally restoring to its pre-disturbed conditions.

10. Based on the results of February 21, 2019, inspection, the April 11, 2019, meeting, and the July 9, 2019, written response, the Board concludes that Mr. Anoaia has violated 9 VAC 25-210-50(A), Va. Code § 62.1-44.5, and Va. Code § 62.1-44.15:20(A), as described in paragraphs C(3) – C(6), above.
11. In order for Mr. Anoaia to return to compliance, DEQ staff and Mr. Anoaia 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 Mr. Anoaia, and Mr. Anoaia agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$6,825 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 30 day of execution of Order	\$2,325 or balance
October 1, 2020	\$1,500 or balance
January 1, 2021	\$1,500 or balance
April 1, 2021	\$1,500

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Mr. Anoaia. Within 15 days of receipt of such letter, Mr. Anoaia shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under 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

Mr. Anoaia 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, Mr. Anoaia 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. Anoaia for good cause shown by Mr. Anoaia, 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. 1901-000974, dated March 20, 2019. 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. Anoaia 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. Mr. Anoaia 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. Anoaia 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 Mr. Anoaia 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. Anoya 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. Mr. Anoya shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mr. Anoya 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. Anoya. Nevertheless, Mr. Anoya 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. Anoya has completed all of the requirements of the Order;
 - b. Mr. Anoya 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 Mr. Anoya.

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

And it is so ORDERED this 21 day of August, 2020.



Craig Nicol, Regional Director
Department of Environmental Quality

Mr. Nicholas Frank Anoa voluntarily agrees to the issuance of this Order.

Date: 6/29/2020 By: Nicholas Frank Anoa
(Person)
Nicholas Frank Anoa

Commonwealth of Virginia
City/County of Virginia Beach

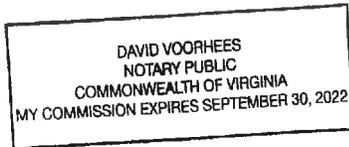
The foregoing document was signed and acknowledged before me this 29th day of
JUNE, 2020, by NICHOLAS FRANK ANOIA

David Voorhees
Notary Public

321635
Registration No.

My commission expires: September 30, 2022

Notary seal:



APPENDIX A

SCHEDULE OF COMPLIANCE

1. No later than 60 days from the effective date of this Order, Mr. Anoya shall submit an approvable Corrective Action Plan (“CAP”) for the restoration of wetlands in Area C, D and E, 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. Mr. Anoya shall respond to any DEQ comments regarding the CAP within 14 calendar days of receipt.
2. Upon DEQ approval of the CAP, Mr. Anoya 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. Mr. Anoya shall complete the CAP in accordance with its terms.
 - a. If the performance criteria specified in the approved CAP are not achieved at the end of the applicable monitoring period, then Mr. Anoya shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why the criteria could not be achieved. Mr. Anoya 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 Mr. Anoya in accordance with the schedule set forth in the revised CAP to meet performance criteria. Wetland restoration monitoring shall last for at least three years, with an option to petition for early termination if the performance criteria has been met.
 - b. If the performance criteria specified in the approved CAP or any revised CAP are not achieved by the end of the year five monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then Mr. Anoya 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. Mr. Anoya shall respond to any DEQ comments to the proposal within 30 days of the comments. Mr. Anoya 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, Mr. Anoya shall submit all requirements of Appendix A of this Order to:

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

APPENDIX B PROPERTY MAP

