COMMONWEALTH of VIRGINIA

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

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
RIVERTON ASSOCIATES, LLC
FOR
WINTERFIELD DEVELOPMENT
POWHATAN COUNTY, VIRGINIA

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 Riverton Associates, LLC., regarding Winterfield Development, Powhatan County, Virginia, 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "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.

5. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

6. "E&S" means erosion and sedimentation.

7. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.

8. "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.

9. "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.

10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

11. "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.

12. "Permit" means general permit WP4-05-1512 issued by DEQ to Riverton, on January 25, 2007, 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.

13. "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.

14. "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.

15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

16. "Property" or "Parcel" means the 101 acre tract of land located at the intersection of Robius Road (SR 711) and Winterfield Road (SR 714) in Powhatan County, Virginia owned and developed by Riverton.

17. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*

18. "Riverton" means Riverton Associates, LLC., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Riverton is a "person" within the meaning of Va. Code § 62.1-44.3.

19. "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.

20. "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.

21. "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.

22. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.

23. "SWMP" means storm water management pond.

24. "USACE" means the United States Army Corps of Engineers.

25. "Va. Code" means the Code of Virginia (1950), as amended.

26. "VAC" means the Virginia Administrative Code.

27. "VWP" means Virginia Water Protection.

28. "VWPP" 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.

29. "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.

30. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Riverton owns and developed the Property in Powhatan County, Virginia.

2. On January 25, 2007, DEQ issued the Permit to Riverton for wetland and stream impacts associated with the development of Winterfield Development. The Permit authorized permanent impacts to 358.07 linear feet of stream channel, 0.26 acres of palustrine forested wetlands ("PFO") and temporary impacts to 26.2 linear feet of stream channel associated with Roberts Branch. The Permit required the purchase of 0.26 acres of PFO wetland credits, on-site preservation of 2.19 acres of PFO, on-site preservation of 6.12 acres of PFO buffers, on-site preservation of 3,824 linear feet of stream and associated buffers, and on-site restoration of 80 linear feet of stream channel. The Permit expired on January 24, 2012.

3. On February 5, 2007, Riverton purchased 0.26 wetland credits in accordance with the Permit.

4. On June 26, 2013, DEQ staff conducted a file review and found the following:

   a) There was no record of documentation that any restoration or preservation in accordance with the Permit was performed.

      VWP Permit WP4-05-1512 cover page states, "[p]ermanent impacts to 0.26 acres of forested wetlands will be compensated for at a 2:1 mitigation to impact ratio through: a) the purchase of 0.26 acre of PFO wetland credits from the James River Mitigation Landbank in Goochland County, Virginia; b) the on-site preservation of 2.19 acres of PFO wetlands; and c) the on-site preservation of 6.12 acres of PFO wetland buffers... . Permanent impacts to streams will be compensated for through: a) the on-site restoration of 80 linear feet of stream channel; and b) the on-site preservation of 3,824 linear feet of stream and associated buffers."

      VWP Permit WP4-05-1512 Part II.A.11 states, "[t]he final wetland or stream compensation plan(s) shall include a mechanism for protection in perpetuity of the compensation sites(s) to include all state waters within the compensation site boundary or boundaries. Such protections shall be in place within 120 days of final

compensation plan approval. The restrictions, protections, or preservations, or similar instrument, shall state that no activity will be performed on the property in any area designated as a compensation area with the exception of maintenance or corrective action measures authorized by the board. Unless specifically authorized by the board through the issuance of a VWP individual or general permit, or waiver thereof, this restriction applies to ditching, land clearing or the discharge of dredge or fill material. Such instrument shall contain the specific phrase "ditching, land clearing or discharge of dredge or fill material" in the limitations placed on the use of these areas. The protective instrument shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands. Proof of recordation shall be submitted within 120 days of plat approval."

VWP Permit WP4-05-1512 Part II. A.12 states, "[a]ll work in impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board."

b) There was no record of construction monitoring reports submitted in association with the permitted activities. Construction and associated wetland impacts had begun at the Property.

VWP Permit WP4-05-1512, Part II.D.1 states, "[c]onstruction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall document the pre-construction conditions, activities during construction, and post-construction conditions." Parts II.D.1-3 describe the methods and schedule of photographic monitoring that should be included in the reports.

VWP Permit WP4-05-1512, Part II. E.3 states [c]onstruction monitoring reports shall be submitted to DEQ not later than the 10th day of the month following the month in which the monitoring event specified in Part II.D takes place, unless otherwise specified below."

5. Va. Code §62.1-44.15:20 (A) states, "[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."

6. 9 VAC 25-210-50 (A) states, "[e]xcept 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 surface 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; 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."

7. VWP Permit WP4-05-1512 Part III.Q states, "[e]xcept in compliance with this VWP general 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; 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."

8. On August 26, 2013, DEQ issued NOV No. 13-08-PRO-701 for the violations described in paragraph C (4) above.

9. On November 12, 2013, DEQ staff met with representatives of Riverton to discuss the violations.

10. On August 15, 2014, DEQ staff met with representatives of Riverton to discuss the impacts taken to date and compensation required. It was discussed that 120 linear feet of stream channel impacts had been taken under the Permit and had not been mitigated.

11. On December 9, 2014, and December 10, 2014, DEQ staff did a site visit at the Property and determined 0.10 acre of additional wetland impacts had been taken under the Permit. DEQ staff also found 137 linear feet of additional stream impacts had been taken under the Permit, and as a result, the total stream impacts that had not been mitigated for was 258 linear feet of stream channel. Thus, Riverton has 0.16 acre of wetland credits left to purchase and 258 linear feet of stream credits to purchase.

12. Based on the results of the site inspections, review of the permit file and meetings, the Board concludes that Riverton has violated the Permit conditions listed above, Va. Code § 62.1-44.15:20(A) and 9 VAC 25-210-50(A) as described above.

13. In order for Riverton to return to compliance, DEQ staff and representatives of Riverton 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 Riverton and Riverton agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $42,415.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
December 20, 2015	$7,070 or balance
March 20, 2016	$7,070 or balance
June 20, 2016	$7,070 or balance
September 20, 2016	$7,070 or balance
December 20, 2016	$7,070 or balance
March 20, 2017	$7,065

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

Riverton 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, Riverton 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 Riverton for good cause shown by Riverton, 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. 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, Riverton admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Riverton 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. Riverton declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and they waive 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 Riverton 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. Riverton 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. Riverton shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Riverton 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 Riverton. Nevertheless, Riverton 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 Riverton has completed all of the requirements of the Order;

    b. Riverton 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 Riverton.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Riverton 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 Riverton 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 Riverton or an authorized representative of Riverton.

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, Riverton voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 4th day of DECEMBER, 2015.

Michael P. Murphy, Regional Director
Department of Environmental Quality

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Riverton Associates, LLC., voluntarily agrees to the issuance of this Order.

Date: 10/07/15 By: _____, MGR
(Person) (Title)
Riverton Associates, LLC.

Commonwealth of Virginia

City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 7th day of October, 2015, by George B Sowers, III who is manager of Riverton Associates, LLC., on behalf of the company.

Kelly Anne McGuire
Notary Public

7121305
Registration No.

My commission expires: 6-30-2019

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

Riverton agrees to the following:

1. Within 30 days of the effective date of this Order, Riverton shall purchase 0.16 acre of PFO wetland credits from a DEQ-approved wetland mitigation bank in the same or adjacent hydrologic unit code as the impacted wetlands 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. Wetland credits shall be purchased in accordance with compensatory mitigation requirements found in Va. Code § 62.1-44.15:23.

2. Within 30 days of the effective date of this Order, Riverton shall purchase 176 linear feet of stream compensation credits from a DEQ –approved mitigation bank in the same or adjacent hydrologic unit code as the impacted streams to achieve no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116. Stream credits shall be purchased in accordance with compensatory mitigation requirements found in Va. Code § 62.1-44.15:23.

3. Riverton shall provide verification of the purchase of the wetland and stream credits within 30 days of the effective date of this Order.

4. Unless otherwise specified in this Order, Riverton shall submit all requirements of Appendix A of this Order to:

Frank Lupini
Enforcement Specialist
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5013
804-527-5106 (fax)
Frank.Lupini@deq.virginia.gov