



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

Piedmont Regional Office
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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WILTON DEVELOPMENT CORPORATION
FOR
GLENSIDE WOODS DEVELOPMENT, SECTION III
HENRICO, VIRGINIA
Permit No. WP4-05-2643**

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 Wilton Development Corporation, regarding Glenside Woods Development, Section III, Henrico, Virginia, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and 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.



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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. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
7. "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.
8. "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.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "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.
11. "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.
12. "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.
13. "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.

14. "Property" or "Parcel" means the tract of land at Glenside Woods Development, Section III, Henrico County, Virginia, recorded in the Henrico County Circuit Court Clerk's Office in Deed Book 3730 at page 2377 and in Deed Book 3992 at page 345, previously owned and developed by Wilton.
15. "PRO" means the Piedmont Regional Office of DEQ, located in Glenn Allen, Virginia.
16. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
17. "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.
18. "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.
19. "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.
20. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
21. "USACE" means the United States Army Corps of Engineers.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "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.
25. "Wilton" means Wilton Development Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Wilton is a "person" within the meaning of Va. Code § 62.1-44.3.

SECTION C: Findings of Fact and Conclusions of Law

1. Wilton previously owned and developed the Property in Henrico County, Virginia.
2. On February 27, 2006 DEQ issued permit WP4-05-2643 to Wilton. The permit authorized impacts to 0.32 acres of palustrine forested wetlands. The permit required the purchase of 0.64 acres of wetland credits from the Willis River Mitigation Bank located in Buckingham County, Virginia. The permit also required notification of construction to DEQ, submitted prior to commencement of activities in permitted impact areas and construction monitoring reports submitted to DEQ in association with the permitted activities.
3. The USACE authorized Wilton under Individual Permit 05-V2643. The permit required the purchase of 0.64 wetland credits and the preservation of 3.53 acres of onsite wetlands and 0.36 acres of onsite upland buffer. Wilton has placed a deed restriction on those areas it still owns on the Property in accordance with USACE permit preservation requirements.
4. On February 3, 2011, DEQ staff reviewed the file for permit WP4-05-2643 and found notice of project completion but no record of documentation that mitigation bank credits were purchased; no record of a notification of construction submitted prior to commencement of activities in permitted impact areas; and no record of construction monitoring reports submitted in association with the permitted activities.
5. On February 3, 2011, DEQ requested from Wilton and Wilton's consultant, proof of purchase of 0.64 wetland credits.
6. On February 9, 2011, the manager of the Willis River Bank stated the Willis River Bank ledger showed no record of purchase of 0.64 wetland credits by Wilton.
7. On February 11, 2011, USACE requested from Wilton proof of the required deed restriction under Individual Permit 05-V2643. USACE also noted that the USACE had no record of the purchase of 0.64 wetland credits by Wilton.
8. WP4-05-2643, Part II.A.5 states, "the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage has been submitted to and received by DEQ."
9. WP4-05-2643, Part II.E.2 states "DEQ shall be notified in writing at least 10 days prior to the start of construction activities at the first permitted site authorized by this VWP general permit authorization so that inspections of the project can be planned, if deemed necessary by DEQ. The notification shall include a projected schedule for initiation and completion of work at each permitted impact area."

10. WP4-05-2643, Part II.D.1 states, “[c]onstruction activities authorized by this permit that are within impact areas shall be monitored and documented.” Part II.D. 1-3 describes the methods and schedule of photographic monitoring that should be included in the reports.
11. WP4-05-2643, 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. . .,” and describes the required contents of the reports.
12. Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.A of the Virginia Water Protection (“VWP”) Permit Regulations state that except in compliance with a permit no person shall dredge, fill or discharge any pollutant into or adjacent to surface waters, excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: filling or dumping.
13. 9 VAC 25-690-100 states that “any applicant whose application has been accepted by the Board shall be subject to the . . . requirements [of the permit].
14. On February 23, 2011, DEQ issued NOV No. 11-02-PRO-700 for the violation of permit WP4-05-2643, Part II.A.5, Part II.E.2, Part II.D. 1-3, Part II.E.3; Va. Code § 62.1-44.15:20; 9 VAC 25-210-50; and 9 VAC 25-690-100.
15. On March 2, 2011, Department staff met with representatives of Wilton to discuss the violations. Wilton stated that it had not purchased the mitigation credits. Wilton did not show evidence of submitting to DEQ a construction notice or construction monitoring reports. Wilton stated it could not afford to pay for the mitigation credits or a civil charge, and was referred to the DEQ Office of Financial Assurance to assess Wilton’s financial status.
16. On May 26, 2011, Wilton submitted further documentation to DEQ staff in regards to Wilton’s financial status.
17. On June 22, 2011, the Office of Financial Assurance completed its review of all the financial information submitted by Wilton including the additional information submitted at the meeting on May 26, 2011 and found that Wilton could not currently afford to pay as the related companies were also in financial distress, and Wilton could not collect from these companies.
18. Based on the results of the review of the permit file, the March 2, 2011, and May 26, 2011 meetings, and lack of contrary documentation submitted by Wilton, the Board concludes that Wilton has violated permit WP4-05-2643 permit conditions Part II.A.5, Part II.E.2, Part II.D. 1-3, Part II.E.3, and Va. Code § 62.1-44.15:20; 9 VAC 25-210-50; and 9 VAC 25-660-100, as described in paragraphs C(2) through C(17), above.

19. In order for Wilton to complete its return to compliance, DEQ staff and representatives of Wilton 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 Wilton, and Wilton agrees to:

1. 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 Wilton for good cause shown by Wilton, 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, Wilton admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Wilton 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. Wilton declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it 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 Wilton 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. Wilton 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. Wilton shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Wilton 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 Wilton. Nevertheless, Wilton 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 Wilton has completed all of the requirements of the Order;
 - b. Wilton 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 Wilton.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Wilton 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 Wilton 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. The undersigned representative of Wilton certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Wilton to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of Wilton
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, Wilton voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 11th day of APRIL, 2012.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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Wilton Development Corporation voluntarily agrees to the issuance of this Order.

Date: 1/10/12 By: Henry L. Wilton, Pres.
(Person) (Title)
Wilton Development Corporation

Commonwealth of Virginia

City/County of NENKILCO

The foregoing document was signed and acknowledged before me this 10th day of

January, 2012, by Henry L. Wilton who is

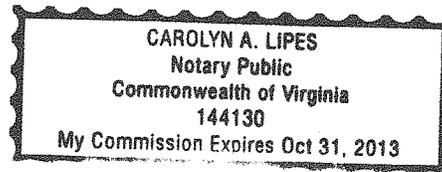
President of Wilton Development Corporation, on behalf of the corporation.

Carolyn A. Lipes
Notary Public

144130
Registration No.

My commission expires: 10/31/13

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. No later than January 31, 2012, Wilton shall file a deed restriction, with the Clerk of the Circuit Court of Henrico County, on 21.460 acres, which includes 6.69 acres of wetlands, located adjacent to Glendale Estates Subdivision, Henrico County, Virginia. Such deed restriction shall be placed on Parcel ID 850-688-8868, deed book 3942, page 1972. Wilton shall send a copy of the filed deed restriction to the contact listed below.

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

Gina Pisoni
Enforcement Specialist
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5156
804-527-5106 (fax)
Gina.Pisoni@deq.virginia.gov