



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

L. Preston Bryant, Jr.
Secretary of Natural Resources

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David K. Paylor
Director

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO Mr. Norman Woods

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and 8(d), between the State Water Control Board and Mr. Norman Woods for the purpose of resolving certain violations of environmental law 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.
4. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.
5. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a 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.

6. "Order" means this document, also known as a Consent Special Order, including Appendix A to this document.
7. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution.
8. "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.
9. "Site" means the property located in Montgomery County and identified on tax maps as ID number 070-A-5.
10. "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.
11. "Surface water" means all state waters that are not ground water as defined in §62.1-255 of the Code of Virginia.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VWP" means the Virginia Water Protection Permit.
14. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Norman Woods, a person pursuant to 9 VAC 25-210-10, owns the Site which contains a wetland and other waters of the State on it.
2. DEQ staff conducted an inspection on June 20, 2005, and observed that stream channel grading activities were occurring at the site. The site was re-inspected with the U.S. Army Corps of Engineers staff (USACE) on June 23, 2005. It appeared to DEQ staff that Mr. Woods construction activities were done with the intentions to develop a commercial catfish farm (Project).
3. Based upon the information gathered in the two June 2005 inspections, impacts to a stream channel, identified as Falls Hollow (a State water) (U.S. Geological Survey map, Ironto Quadrangle), have exceeded 500 linear feet to the perennial stream. As much as 1,000 linear feet of stream impact has occurred due to stream excavation, and as much as 400 linear feet of stream channel has been filled. Total stream impact is estimated to be 1,400 linear feet due to on-site grading activities.

4. Wetland impacts have also occurred at the site. Activities include both Wetland excavation and filling, but these impacts could not be fully quantified due to the extent of land-disturbing activities that have occurred at the site. It is evident however, that portions of the emergent Wetland have been filled with earthen material to depths ranging between 2 to 4 feet.
5. During the second June inspection, DEQ and USACE representatives requested that Mr. Woods obtain a competent professional to assist him in developing a stream channel restoration plan. Mr. Woods was also requested to implement erosion and sediment control measures on graded portions of the project, including installing silt fence around the perimeter of disturbed areas, installing a check dam in an excavated area into which stream flow had been diverted in order to act as a rudimentary and temporary sediment trap, and completing grading in upland areas so permanent seeding could be established on all graded areas as soon possible. Mr. Woods was also advised that he should contact Montgomery County for information on their requirements for obtaining a land-disturbance permit for the project.
6. No regional, general, or nationwide permit has been issued by U.S. Army Corps of Engineers for the Wetland project, and no VWP Permit application was submitted to DEQ prior to initiating work at the Site and in the State waters.
7. DEQ noted the violations referenced in paragraphs 2, 3, and 4 above in a Notice of Violation, NOV No.05-07-WCRO-002, issued to Mr. Woods on July 13, 2005.
8. Mr. Woods has operated without a VWP permit and caused an unlawful discharge into state waters of wastes, noxious or deleterious substances; altered the physical properties of state waters to the detriment of animal or aquatic life, or detrimental to the uses of such waters for other uses. Mr. Woods also undertook the following specific activities in the Wetland: Undertook a new activity to cause draining that significantly altered or degraded existing acreage and functions; Filled or dumped substances that caused significant alteration of or degradation of the existing Wetland acreage or function; Excavated in the Wetland; all in violation of Virginia Code § 62.1-44.15.20 and State Regulation 9 VAC 25-210-50.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Mr. Norman Woods, and Mr. Woods agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders and Mr. Woods agrees to pay a civil charge of \$10,000 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 payable to the "Treasurer of Virginia", delivered to:

Department of Environmental Quality
Receipts Control
Post Office Box 1104
Richmond, Virginia 23218

The payment check must include a notation that it is tendered for payment of a civil charge pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Woods, for good cause shown by Mr. Woods, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Mr. Woods by DEQ on July 13, 2005. 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 Wetland as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Mr. Woods admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Woods 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. Woods declares he has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 enforce this Order.
6. Failure by Mr. Woods 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. Woods 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 occurrence. Mr. Woods shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Woods shall notify the DEQ Regional Director in writing 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 within 24 hours of learning of any condition above, which Mr. Woods intends 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, their 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. Woods. Notwithstanding the foregoing, Mr. Woods agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until terminated by either the Board or the Director, in his or its sole discretion upon 30 days written notice to Mr. Woods. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Woods from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By his signature below, Mr. Norman Woods voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28th day of APRIL, 2008.

FOR Steven A. Dutch
David K. Paylor, Director
Department of Environmental Quality

Mr. Norman Woods voluntarily agrees to the issuance of this Order.

By: Norman V. Woods
Date: Oct - 9 - 2008

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 9th day of
October, 2008, by NORMAN V. Woods
(names)

Wanda L. Bowman
Notary Public

My commission expires: December 31, 2009



Appendix A

In addition to the foregoing, the Board orders, and Mr. Woods agrees to implement, the following terms and conditions of this Appendix:

1. By **November 17, 2005**, Mr. Woods shall submit an approvable Corrective Action Plan (CAP) to DEQ/WCRO for the restoration of the Site. Upon the CAP's approval by DEQ, the terms of the CAP shall become incorporated into and enforceable under this Order.
 - a. The CAP at a minimum shall address specifically and in detail the stream realignment, removal of fill materials, final grading, and non-wetland area seeding of the site.
 - b. The CAP shall also address the following restoration aspects of the Wetland: the ecological integrity, restoration of the natural structure, incorporation of design(s) for self-sustainability including monitoring, restoring native species and avoiding the introduction of non-native species, and the use of natural remedies and bioengineering techniques.
2. By **May 1, 2009**, perform a wetlands delineation of the Site (property located in Montgomery County and identified on tax maps as ID number 070-A-5).
3. By **June 1, 2009**, submit the results of the delineation to DEQ BRRO.
4. By **June 1, 2009**, all CAP activities shall be completed.

Norman Wood
April 25-09