



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

James J. Golden
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
RREF II-TFC WYNWOOD, LLC
FOR
WYNWOOD SUBDIVISION
Permit No. WP4-14-0233**

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 RREF II-TFC Wynwood, LLC, regarding the Wynwood Subdivision, Chesterfield County, 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.
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" means VWP General Permit WP4 with authorization number WP4-14-0233 authorizing wetland impacts from the development of Wynwood Subdivision and issued to RREF II-TFC Wynwood, LLC.
12. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution.
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."

14. "Property" or "Parcel" means the 220.79 acre parcel of land located at the intersection of Otterdale Road and Woolridge Road in Chesterfield County, Virginia. The Property is owned and being developed by RREF II-TFC, Wynwood LLC.
15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
16. "Regulations" means the VWP Permit Program Regulations, 9 VAC 25-210 *et seq.*
17. "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.
18. "RREF" means RREF II-TFC Wynwood, LLC, a Virginia limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. RREF 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.
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. "USACE" means the United States Army Corps of Engineers.
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "VWP" means Virginia Water Protection.
27. "VWP 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.

28. “Wynwood” means the construction site of the Wynwood Subdivision located at the intersection of Otterdale Road and Woolridge Road in Chesterfield County.
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.

SECTION C: Findings of Fact and Conclusions of Law

1. On May 2, 2014 DEQ, issued VWP Permit coverage to Chesterfield Development, Inc. under authorization number WP4-14-0233 (Permit) to construct a residential development community on a 220.79-acre parcel in Chesterfield, VA. Under the Permit, DEQ authorized permanent impacts to no more than; 1) 0.453 acre of forested wetlands; 2) 0.081 acre of permanent conversion of forested wetlands to emergent wetlands; and, 3) 1,341 linear feet (0.153 acre) of stream channel.
2. Due to a change in ownership, the Permit was transferred to RREF II-TFC Wynwood, LLC on December 12, 2014. The Permit expires on May 1, 2021.
3. On June 20 2017, DEQ staff conducted a compliance inspection at the Wynwood Subdivision project. DEQ staff observed the following:
 - a. Approximately 524 lf of stream channel and 13,715 square feet of wetland impacts as the result of failed erosion and sedimentation controls in five areas that were not authorized by the Permit.
 - b. An oil sheen and smell of fuel was observed at the Wynwood property in an area of abandoned equipment and trash within the limits of an unnamed tributary to Blackman Creek, reported to have been left from previous ownership of the property. No cleanup or notifications of an oil discharge were reported to DEQ.
 - c. Erosion and sedimentation controls were not installed or maintained in good working order in several areas throughout the project, resulting in sedimentation impacts to surface waters. Approximately 219 lf of silt fence was not being maintained.
 - d. Temporary impacts, unstable slopes, and collapsed stream banks were not being restored to original contours, stabilized, and allowed to re-establish with wetland vegetation within 30 days of completion of purposeful work in three areas of the project site.
 - e. Culverts at Impact Area K were not countersunk and not maintaining low flow conditions, disrupting the movement of aquatic life.

- f. Approximately 25% of the project site was missing wetland boundary flagging to delineate non-impacted surface waters within 50 feet of permitted activities.
 - g. DEQ did not receive documentation of the purchase of compensatory mitigation bank credits for the project, although construction activities in impact areas had commenced.
 - h. DEQ did not receive the 10-day notification of construction commencement, although construction activities in permitted impact areas had commenced construction.
4. On June 27, 2017, RREF received the inspection report and by July 17, 2017, corrective measures had been taken to rectify the violations .
5. By letter dated July 18, 2017, consultants for RREF documented corrective actions that had taken place and attached a Corrective Action Plan.
6. On September 6, 2017, DEQ issued Notice of Violation (NOV) No. 17-000442 to RREF for the violations observed during the June 20, 2017 inspection. The NOV cited the violations described above.
7. On October 3, 2017, representatives of RREF met with DEQ staff in response to the NOV. At the meeting, representatives of RREF and DEQ staff discussed corrective actions to bring RREF back into compliance with the Permit and the corrective actions already taken by RREF. RREF reported that they:
 - a. Removed the sediment from the 524 lf of stream and the 13,715 square feet of impacted wetland.
 - b. Removed the abandoned equipment and trash within the limits of the UT to Blackman Creek that had caused the oil sheen.
 - c. Re-installed the failing silt fence.
 - d. Would restore the temporary disturbances to streams and stream banks to their original contours.
 - e. Would address the hydrologic flow that had been interrupted during low flow conditions at Impact Area K when the culverts were not properly installed.
 - f. Would complete the installation of the missing wetland boundary flagging at the project site for delineating non-impacted surface waters within 50 feet of permitted activities.
 - g. Would provide the documentation of the purchase of compensatory mitigation bank credits.
 - h. Would provide the 10-day notification of start of construction.
8. On February 12, 2018, RREF applied for the re-verification of the U.S. Army Corps of Engineers' Norfolk District State Program General Permit (17-SPGP-01) in order to continue construction activities at the project site.

9. On February 23, 2018, DEQ notified RREF by email that the requested 17-SPGP-01 would not be processed until all compliance issues cited in the September 6, 2017 NOV and related impacts were corrected at the Wynwood Subdivision.
10. On June 29, 2018, in response to historic rainfall levels in late 2017 through 2018, RREF prepared and implemented a new corrective action plan dated June 29, 2018, that included extensive measures to ensure erosion control.
11. On July 5, 2018, DEQ notified RREF that the re-verification of the 17-SPGP-01 was completed. The permit was effective as of July 5, 2018 and would remain in effect until May 31, 2022. All the violations cited in the September 6, 2017 NOV had been corrected.
12. On May 15, 2019, DEQ staff conducted a compliance inspection at the project site and observed the following:
 - a. Approximately 200 lf of stream channel downstream of Impact Area S had an accumulation of sediment.
 - b. Unstable stream banks at Impact Area M, leaving state waters at risk for secondary impacts due to failure to install and maintain erosion and sediment controls or other best management practices.
 - c. Sediment passing through, around, and over the silt fencing at Impact Area F, which had not been installed or maintained, resulting in sedimentation impacts to surface waters.
 - d. Culverts at Impact Area F did not appear to have been countersunk to allow and maintain low-flow conditions in the stream channel.
13. RREF received notification of the May 15 inspection results on June 6, 2019, and responded by implementing corrective measures and installing additional measures over and above the approved plan requirements on the advice of their consultant. On June 14, 2019, RREF provided DEQ with documentation of the corrections. DEQ requested that RREF submit an As-Built survey of the corrections by June 28, 2019. RREF submitted the As-Built on June 24, 2019, and on June 27, 2019 the Department requested a photograph of the corrections installed.
14. On July 1, 2019, DEQ issued NOV No. 1906-001082 to RREF for the violations observed on the May 15, 2019 inspection
15. On July 2, 2019, RREF reported that all of the violations cited in the July 1, 2019 NOV had been corrected by June 24, 2019. Due to photos and documentation provided by RREF, DEQ returned all the violations cited in the July 1, 2019 NOV to compliance by June 14, 2019.
16. Coverage Letter of VWP General Permit Authorization No. WP4-14-0233 states, "The project shall result in permanent impacts to no more than 0.453 acre of forested wetlands, the permanent conversion impact to 0.081 acre of forested wetlands to emergent wetlands and 1,341 linear feet (0.153 acre) of stream channel. In addition, the project shall result in

107 linear feet (0.012 acre) of stream channel. Impacts shall be as depicted on the drawing by Ecosystem Services entitled "Wynwood Subdivision Overall Impact Map" dated February 13, 2014.

17. Va. Code § 62.1-44.15:20(A) states in part "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: ... 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."
18. 9 VAC 25-210-50.A of the VWP Permit Regulations states in part "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; ... 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 such waters...."
19. Part I.C.14 of the Permit states, "The permittee shall employ measures to prevent spills of fuels or lubricants into state waters." VA. Code § 62.1-44.5(A) & Va. Code § 62.1-44.34:18(A) & (B) of the VWP Permit Regulations state that it is unlawful to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances except in compliance with a certificate, land-disturbance approval or permit issued by the Board; and failure to comply with the Va. Code that states the discharge of oil into or upon state waters, lands, or storm drain systems is prohibited; and failure to comply with the Va. Code that states any person causing a discharge of oil into or upon state waters, lands, or storm drain systems shall take steps immediately to contain and clean up such discharge or threat of discharge.
20. Part I.C.5 of the Permit states "Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or for mining activities covered by this general permit, the standards issued by the Virginia Department of Mines, Minerals and Energy that are effective as those in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed."
21. Part I.C.6 of the Permit states "Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas

shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.”

22. Part I.C.11 of the Permit states “Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their original contours within 30 days following the construction at that stream segment, and the banks seeded or planted with the same vegetation cover type originally present along the streams banks, including supplemental erosion control grasses if necessary, except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list.”
23. Part I.C.2 of the Permit states “No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. The requirement to countersink does not apply to extensions or maintenance of existing culverts that are not countersunk, floodplain culverts being placed above ordinary high water, culverts being placed on bedrock, or culverts required to be placed on slopes 5.0% or greater. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows and the structure or discharge must withstand expected high flows.”
24. Part I.C.10 of the Permit states “All non-impacted surface waters and compensatory mitigation areas within 50 feet of permitted activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.”
25. Part II.A.4 of the Permit states “For compensation involving the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage or of the fund contribution has been submitted to and received by DEQ.”
26. Part II.E.2 of the Permit 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.”

27. Based on the results of the site inspections, review of the permit file, and the October 3, 2017, meeting, the Board concludes that RREF has violated Permit condition Part I.C.5, Part I.C.6, Part I.C.11, Part I.C.2, Part I.C.10, Part II.A.4, Part II.E.2, Va. Code § 62.1-44.15:20.A; 9 VAC 25-210-50.A, Va. Code §62.1-44.5(A), and Va. Code §62.1-44.34.18(A) & (B) as described in paragraphs C(3) through C(11), and C(17) through C(22).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders RREF and RREF agrees to:

1. Pay a civil charge of \$ 47,059 within 60 days of the effective date of the Order in settlement of the violations cited in 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

RREF 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of RREF for good cause shown by RREF, 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, RREF admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. RREF 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. RREF 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 RREF 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. RREF 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. RREF shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. RREF 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 RREF. Nevertheless, RREF 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 RREF has completed all of the requirements of the Order;
- b. RREF 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 RREF.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve RREF 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 RREF 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 RREF 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 RREF to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of RREF

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, RREF voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2020.

James J. Golden
Department of Environmental Quality
Piedmont Regional Director

RREF II-TFC Wynwood, LLC voluntarily agrees to the issuance of this Order.

Date: 9-29-20 By: _____, DIRECTOR
(Person) (Title)

RREF II-TFC Wynwood, LLC
TONY DEL GRIPPO

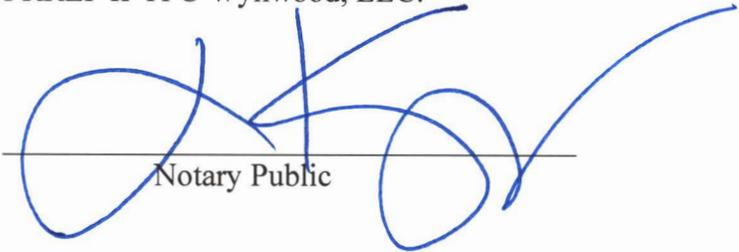
Commonwealth of ~~Virginia~~ FLORIDA

City/County of MIAMI-DADE

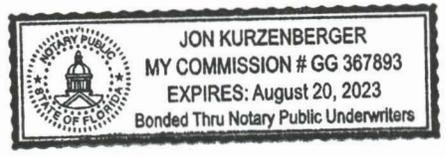
The foregoing document was signed and acknowledged before me this 29th day of

SEPTEMBER, 2020, by TONY DEL GRIPPO who is

DIRECTOR of RREF II-TFC Wynwood, LLC.



Notary Public



Registration No.

My commission expires: _____

Notary seal: