



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Celebrate Virginia South L.L.C.
FOR
Celebrate Virginia! South
VWPP Permit No. 07-0245**

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 Celebrate Virginia South L.L.C., regarding Celebrate Virginia! South, 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. "Celebrate Virginia" means Celebrate Virginia South L.L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Celebrate Virginia is a "person" within the meaning of Va. Code § 62.1-44.3.

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. "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.
6. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
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. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "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.
13. "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.
14. "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.
15. "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.

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. "Site" or "Property" means the 371-acre commercial development known as Celebrate Virginia! South located west of Interstate 95, north of Fall Hill Avenue and River Road, and south and east of the Rappahannock River, in the City of Fredericksburg, Virginia, owned by Celebrate Virginia South L.L.C.
19. "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.
20. "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.
21. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
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.

SECTION C: Findings of Fact and Conclusions of Law

1. Celebrate Virginia owns the Celebrate Virginia! South Property located in the City of Fredericksburg, Virginia.
2. Virginia Water Protection (VWP) Individual Permit (IP) No. 07-0245 was authorized by DEQ on October 16, 2007, allowing for the total permanent impact of no more than 1.68 acres of state surface waters at the Site. The Permit was revised on June 25, 2009, August 24, 2016, and April 25, 2019, with the 2019 revision associated with the construction of a minor league baseball stadium at the Site.
3. On August 14, 2019, and September 12, 2019, DEQ staff conducted inspections of the Site and reviewed compliance files associated with the Site and Celebrate Virginia's Permit.
4. A review of files showed that Celebrate Virginia did not submit to DEQ a Construction Monitoring Report for January 1 through June 30 2019, by the submission deadline of July 30, 2019.
5. VWPP Permit No. 07-0245 Part I.G.4.a states: "Construction Monitoring Reports shall be submitted to DEQ semiannually. The reports shall be submitted 30 days after a six month monitoring period."
6. A review of files showed that Celebrate Virginia did not submit documentation of wetland and stream credit purchase to DEQ prior to initiating construction activities in impact areas.
7. VWPP Permit No. 07-0245 Part I.I.1 states: "The permittee shall submit documentation to DEQ prior to initiating work in Impact Area PG1, permitted under the Minor Modification approved on April 25, 2019, that 0.40 wetland credit was purchased and debited from the ledger of a DEQ approved mitigation bank, in-lieu fee fund, or a combination thereof to satisfy the requirement of Part I.H.1.b.

Additionally, VWPP Permit No. 07-0245 Part I.I.2 states: "The permittee shall submit documentation to DEQ prior to initiating work in Impact Area PG1, permitted under the Minor Modification approved on April 25, 2019, that 938 stream credits were purchased and debited from the ledger of a DEQ approved mitigation bank, in-lieu fee fund, or a combination thereof to satisfy the requirement of Part I.H.1.c.

8. During the Site inspections, DEQ staff observed unauthorized impacts to surface waters as follows:
 - a. The linear feet of stream impacts taken at location Impact Area PG1 exceeded the permitted quantity.
 - b. In a separate location, approximately 100 linear feet of previously restored stream bed was impacted due to failure of erosion and sediment (E&S) control measures.

9. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit dredging or filling of surface waters without a Permit issued by the Director. Celebrate Virginia does not have a Permit for the activities described above in paragraph C(8).
10. On September 25, 2019, DEQ issued NOV No. 1909-001154 to Celebrate Virginia for the noncompliance described above in paragraphs C(1) through C(9).
11. After receiving the NOV, Celebrate Virginia stated that it had ceased any further unauthorized impacts to surface waters, and initiated corrective actions to address noncompliance.
12. On October 9, 2019, Celebrate Virginia submitted a written response to the NOV and met with DEQ staff to discuss. Celebrate Virginia provided the following responses/explanations of the violations:
 - a. Celebrate Virginia confirmed that it did not submit a Construction Monitoring Report as specified. The permittee stated that confusion arose concerning the correct construction monitoring reporting schedule due to the different phases of project construction. Celebrate Virginia thought the reporting schedule would reset with the new phase of construction, and submitted a 10-day notification letter to DEQ on July 15, 2019, as would typically be submitted to DEQ as a pre-construction notification. However, since the new construction phase was a continuation of earlier project work under the Permit, the pre-existing semi-annual reporting schedule for construction monitoring should have been maintained via the submission of a Construction Monitoring Report instead of a 10-day notification letter.
 - b. Celebrate Virginia confirmed that it did not submit documentation of the purchase of wetland and stream credits to DEQ prior to initiating construction activities in impact areas.
 - c. Celebrate Virginia confirmed that construction activities at the Site and failure of E&S control measures resulted in approximately 100 linear feet of unauthorized impacts to a stream channel located in a stream restoration area. Celebrate Virginia provided photographic documentation showing that after it received the NOV, it initiated and completed work to remediate the impacts and restore the section of stream channel that was impacted in the restoration area.
 - d. Celebrate Virginia confirmed that the authorized impacts in location Impact Area PG1 were exceeded by five linear feet, and documentation was provided to DEQ to support this quantification.
13. On October 30, 2019, Celebrate Virginia submitted documentation requested in follow-up to the October 9th meeting, and submitted a CAP to DEQ outlining the steps that Celebrate Virginia intends to take to resolve any outstanding noncompliance. DEQ

approved the CAP on November 15, 2019. The information and/or documentation that was provided to DEQ by Celebrate Virginia to show resolution, or planned resolution, of the violations is as follows:

- a. Celebrate Virginia agreed to adhere to the pre-existing semi-annual reporting schedule for construction monitoring moving forward, and DEQ accepted Celebrate Virginia's documentation and written submission concerning this item; therefore no further corrective action is required.
- b. Celebrate Virginia provided documentation that it had sufficiently acquired the necessary credits prior to initiating work in the impact areas, and explained the lack of DEQ notification to be an administrative oversight. Since DEQ has now received the required documentation/proof of Celebrate Virginia having acquired the credits as needed and prior to working in impact areas, this item requires no further corrective action.
- c. A written summary of the restoration activities that were performed by Celebrate Virginia to address the 100 feet of unauthorized impacts in the stream restoration area was submitted to DEQ on October 30, 2019.

DEQ accepted/approved this submission, and as part of the CAP, Celebrate Virginia stated that it will perform a post-construction/final stabilization site inspection of the impacted stream channel located within the restoration area, and determine what, if any, additional corrective actions are required to stabilize the in-stream structures. DEQ staff is to be in attendance during this post-construction/final stabilization site inspection.

- d. Celebrate Virginia proposed to purchase of six (6) stream credits as compensation for the five feet of excess stream channel impacts at location Impact Area PG1.
14. Based on the results of the August 14, 2019 and September 12, 2019 Site inspections, associated review of files, the October 9, 2019 meeting and documentation submissions, and related correspondence between DEQ and representatives of Celebrate Virginia, the Board concludes that Celebrate Virginia has violated VWPP Permit No. 07-0245 Part I.G.4.a, Part I.I.1, Part I.I.2, Va. Code § 62.1-44.15:20, and the Regulations at 9 VAC 25-210-50 for unauthorized impacts to surface waters and for missing submissions to DEQ, as described above in paragraphs C(1) through C(13).
 15. In order for Celebrate Virginia to complete its return to compliance, DEQ staff and representatives of Celebrate Virginia 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 Celebrate Virginia, and Celebrate Virginia agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$8,225** 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, 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

Celebrate Virginia 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, Celebrate Virginia 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 Celebrate Virginia for good cause shown by Celebrate Virginia, 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. 1909-001154 dated September 25, 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, Celebrate Virginia admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Celebrate Virginia 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. Celebrate Virginia 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 Celebrate Virginia 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. Celebrate Virginia 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. Celebrate Virginia shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Celebrate Virginia 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 Celebrate Virginia.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Celebrate Virginia has completed all of the requirements of the Order;
 - b. Celebrate Virginia 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 Celebrate Virginia.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Celebrate Virginia 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 Celebrate Virginia 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 Celebrate Virginia 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 Celebrate Virginia to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Celebrate Virginia.
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, Celebrate Virginia voluntarily agrees to the issuance of this Order.

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

Thomas A. Faha, Regional Director
Department of Environmental Quality

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Celebrate Virginia South L.L.C. voluntarily agrees to the issuance of this Order.

Date: 3/16/20 By: [Signature], manager of Silver CPII, LLC
(Person) (Title)
manager of Celebrate Virginia South L.L.C.

Commonwealth of Virginia
City/County of Fredericksburg

The foregoing document was signed and acknowledged before me this 16 day of March, 2020, by B. Judson Hanaker, Jr who is manager of Silver CPII, LLC manager of Celebrate Virginia South L.L.C., on behalf of the company.

[Signature]
Notary Public

329916
Registration No.

My commission expires: 07/31/21

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Celebrate Virginia shall:

1. Within 30 days of the effective date of this Order, submit to DEQ a proof of purchase (bill of sale) of six (6) stream credits for the five linear feet of unpermitted impacts to stream channel at location Impact Area PG1 from a DEQ-approved mitigation bank that is authorized and approved by DEQ to sell credits in the area in which the impacts occurred and has credits available (as released by DEQ) 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.
2. By July 15, 2020, conduct a post-construction/final stabilization site inspection, jointly with DEQ staff, of the impacted stream channel located within the stream restoration area. Subsequent documentation shall be submitted to DEQ within 10 days of the site inspection, which shall include a site inspection summary and a description of any additional corrective actions that are deemed necessary to stabilize the in-stream structures, if applicable.

If additional corrective actions are identified as being necessary, then Celebrate Virginia shall perform Item No. 3 listed below; otherwise, if the site inspection demonstrates that the in-stream structures are stabilized and not in need of repair/maintenance/replacement, then no further action shall be required.

3. If required in accordance with Item No. 2 listed above, within 30 days of the submission deadline for Item No. 2, submit to DEQ a corrective action plan and schedule listing the steps Celebrate Virginia intends to take repair and permanently stabilize the stream restoration area. Celebrate Virginia shall respond to DEQ's comments on the plan and schedule within 10 days, or a later date if approved by DEQ in writing. Once notified by DEQ that the plan is acceptable, Celebrate Virginia shall implement said plan and schedule, which will become enforceable pursuant to this Order.
4. Unless otherwise specified in this Order, Celebrate Virginia shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attention: Enforcement
13901 Crown Court
Woodbridge, VA 22193