*Commonwealth of Virginia*

*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

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# STATE WATER CONTROL BOARD
# ENFORCEMENT ACTION - ORDER BY CONSENT
# ISSUED TO
# MID ATLANTIC STEEL ERECTORS, INC.
# FOR
# 12321, 12401, 12405, 12407, 12413, and 12419 GENITO ROAD, CHESTERFIELD COUNTY, VA 23112
# Unpermitted Activity

## 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 Mid Atlantic Steel Erectors, Inc. ("Mid Atlantic Steel"), regarding 12321, 12401, 12405, 12407, 12413, and 12419 Genito Road, Chesterfield County, Virginia 23112, for the purpose of resolving certain violations of State Water Control Law and the associated regulations.

## SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "BMP" means best management practice.

2. "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.

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. "Mid Atlantic Steel" means Mid Atlantic Steel Erectors, Inc., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Mid Atlantic Steel is a "person" within the meaning of Va. Code § 62.1-44.3.

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

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. "Property" or "Parcel" means the tract of land at 12321, 12401, 12405, 12407, 12413, and 12419 Genito Road, in Chesterfield County, Virginia, owned by Deerhill Properties, LLC.

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

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

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. "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. "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.

27. "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. Mid Atlantic Steel owns and operates a steel erection, crane rental, and heavy equipment hauling business at the Property in the County of Chesterfield, Virginia.

2. On December 5, 2017, Mid Atlantic Steel submitted a Joint Permit Application ("JPA") for construction of their facility expansion at the Property (JPA No. WP4-17-2047). According to their JPA, permanent impacts of 0.26 acre to palustrine forested ("PFO") wetlands and 106 linear feet of stream were anticipated with the project plans due to construction of BMPs. The BMPs included a stormwater basin in the southeast corner of the site within PFO wetlands.

3. In December 2017, DEQ requested further detail regarding project maps, drawings, and the summary, and the permit fee. In February 2018, Balzer & Assoc., Inc. ("Balzer"), on behalf of Mid Atlantic Steel, responded and requested until the beginning of March to provide the information due to a lack of consensus on the design of the BMPs affecting the wetlands and stream. With no response received, on April 6, 2018, DEQ sent a notice that the JPA would be administratively withdrawn if the information was not received by April 20th. On April 20, 2018, Balzer sent the requested information on behalf of Mid Atlantic.

4. Unbeknownst to DEQ at the time, construction of the stormwater basin within PFO wetlands was begun on April 11, 2018 and completed on April 20, 2018.

5. On May 2, 2018, DEQ staff requested additional information in order to process the JPA. On July 2, 2018, Balzer, on behalf of Mid Atlantic Steel, requested withdrawal of the JPA pending completion of the design work for the site.

6. At no time did Mid Atlantic Steel inform DEQ of the wetland impacts or activities occurring at the Property that resulted in such impacts.

7. In January of 2020, it came to the attention of DEQ through aerial imagery that construction activities had begun and that an inspection was needed. On February 13, 2020, DEQ conducted an inspection of the project site. The Inspection Report made the following observations:

    (a) 0.25 acre PFO wetland and 40 linear feet of stream were impacted by unauthorized activities; and
    (b) erosion was present immediately upstream of the new stormwater basin.

The unauthorized activity was the construction of a stormwater basin in the southeast corner of the site and what appeared to be erosion in an inlet in the northeast corner of the stormwater basin where the stream from the VDOT BMP fed into the basin.

As a result of the inspection, the following corrective action was recommended: (1) provide an as-built survey showing the current limits of disturbance, (2) provide a compensatory mitigation plan, (3) provide a timeline of construction, (4) provide a narrative of the need for a stormwater basin, and (5) provide the pre and post development stormwater calculations.

8. Mid Atlantic Steel provided an as-built impact map, a compensatory mitigation plan, a timeline, and a narrative on March 3, 2020, and the pre and post development stormwater calculations on March 11, 2020.

9. The timeline disclosed by Mid Atlantic Steel confirmed that construction of the stormwater basin began on April 11, 2018 and was completed on April 20, 2018.

10. Email correspondence between Mid Atlantic Steel and DEQ in early March of 2020 and an as-built impact map of the relevant area revealed that the as-built impacts were to 0.22 acre of PFO wetlands with no stream impacts taken.

11. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit excavation in a wetland or the filling of surface waters without a Permit issued by the Director.

12. Mid Atlantic Steel has never been issued a Permit for the above activities.

13. On March 10, 2020, DEQ issued a Notice of Violation (NOV No. 2002-001391) for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 (A).

14. On May 15, 2020, Department staff met with representatives of Mid Atlantic Steel by phone to discuss the violations, including Mid Atlantic Steel's response to the corrective action recommendations dated March 3, 2020 and Mid Atlantic Steel's plans for future development the site.

15. During the conversation on May 15, 2020, Mid Atlantic Steel disclosed that plans for future development will likely require further impacts to wetlands due to an increase in the size of the stormwater basin, with the basin ultimately impacting 0.26 acres of palustrine forested wetlands. At the time of the discussion, it was undetermined when these impacts would be taken, but confirmed that a permit would be required before any further impacts could occur.

16. Based on the results of the February 13, 2020 inspection, the documentation submitted on March 3, 2020, March 11, 2020, and March 16, 2020, and the May 15, 2020 meeting, the Board concludes that Mid Atlantic Steel has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50, as described in the above paragraphs.

17. On June 22, 2020, Mid Atlantic Steel provided DEQ with a Bill of Sale for 0.44 wetland mitigation credits to meet the mitigation requirements for the impacts taken as of the date of this Order. With this purchase, the unauthorized impacts described above have been adequately mitigated, and no further corrective action is required.

**SECTION D: Agreement and Order**

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

1. Pay a civil charge of $25,518.50 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

Mid Atlantic Steel shall include its Federal Employer Identification Number (FEIN) **[(xx-xxxxxxx)]** 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, Mid Atlantic Steel 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 Mid Atlantic Steel for good cause shown by Mid Atlantic Steel, 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. 2002-001391 dated March 10, 2020. 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, Mid Atlantic Steel admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Mid Atlantic Steel 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. Mid Atlantic Steel 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 Mid Atlantic Steel 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. Mid Atlantic Steel 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. Mid Atlantic Steel shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mid Atlantic Steel 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 Mid Atlantic Steel. Nevertheless, Mid Atlantic Steel 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 Mid Atlantic Steel has completed all of the requirements of the Order;

    b. Mid Atlantic Steel 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 Mid Atlantic Steel.

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

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, Mid Atlantic Steel voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3rd day of December, 2020.

James J. Golden, Regional Director
Department of Environmental Quality

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Mid Atlantic Steel Erectors, Inc. voluntarily agrees to the issuance of this Order.

Date: 09/16/2020 By: _____, Vice President
Vernon L. Fridley, Jr. (Person) (Title)
Mid Atlantic Steel Erectors, Inc.

Commonwealth of Virginia
City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 16th day of September, 2020, by Vernon L. Fridley, Jr. who is Vice-President of Mid Atlantic Steel Erectors, Inc., on behalf of the corporation.

Jennifer Yetman
Notary Public

7848702
Registration No.

My commission expires: 09.30.2023

Notary seal:

JENNIFER YETMAN
NOTARY PUBLIC
REG # 7848702
MY COMMISSION EXPIRES 9/30/2023
COMMONWEALTH OF VIRGINIA