



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
SOUTHEASTERN PROPERTY MANAGEMENT LLC
FOR
21423 BAILEY DRIVE, CARROLLTON, VA 23214
Exceeding Authorized Activity
VWP General Permit Authorization No. WP4-22-1098**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the Department of Environmental Quality (Department or DEQ) and Southeastern Property Management LLC, for 21423 Bailey Drive, Carrollton, VA 23214 for the purpose of resolving certain violations of State Water Control Law and the applicable WP4-22-1098 permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the terms have the meanings assigned to them in Va. Code § 62.1-44.2 *et seq.* and 9 VAC 25-21-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. Southeastern Property Management LLC ("Southeastern") is a business entity authorized to do business in Virginia and references to Southeastern include its affiliates, partners, and subsidiaries. Southeastern is a "person" within the meaning of Va. Code § 62.1-44.3.
2. On June 2, 2022, the Department granted coverage to Southeastern under Virginia Water Protection General Permit WP4 ("Permit") Authorization number WP4-22-1098 ("Permit Authorization") for permanent impacts to 0.14 acres non-tidal forested wetlands associated with construction of a single-family home at 21423 Bailey Drive, Carrollton, VA 23214 ("Property"). General Permit WP4 was effective August 2, 2016 and expires August 1, 2026.

3. The Permit Authorization required purchase of 0.28 wetland mitigation credits as compensation for the 0.14 acres permanent wetland impacts. On January 25, 2023, Southeastern purchased the 0.28 acres wetland mitigation credits for the 0.14 authorized permanent wetland impacts.
4. On or about September 12, 2024, DEQ received a report of potential unauthorized filling (impacts) to wetlands at 21423 Bailey Drive, Carrollton, VA 23214 ("Property") and an adjacent property.
5. On September 13, 2024, DEQ staff conducted an inspection of the Property for compliance with the requirements of the State Water Control Law and the Regulations and the Permit and Permit Authorization. The DEQ inspection observed approximately 0.15 acres of unauthorized impacts to non-tidal forested wetlands on the Property and adjacent property, and:
 - a. No wetland flagging required by the Permit.
 - b. No documentation required by the Permit indicating that monthly inspections had been conducted and results documented on the "Monthly VWP Permit Checklist Form", or other manner of documentation, to be kept on site at the Property.
 - c. No indications in DEQ files that Southeastern had notified DEQ as required by the Permit of the additional 0.15 acres of unauthorized impacts to wetlands at the Property and adjacent property.
6. Southeastern did not have authorization for impacts to an additional 0.15 acres of wetlands at the Property and adjacent property.
7. On September 19, 2024, DEQ issued Notice of Violation (NOV) No. 2409-002639 to Southeastern for the unauthorized impacts to additional 0.15 acres wetlands on the Property and adjacent property, no wetland flagging, no documentation of monthly inspections, and no notification to DEQ of the additional 0.15 acres of unauthorized impacts to wetlands at the Property and adjacent property.
8. The discharge of fill material to the wetlands without a Permit is a violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
9. Permit Part I.B.10 requires all non-impacted surface waters and compensation areas within 50 feet of authorized activities and within the project or right-of-way limits to 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 permitted shall notify contractors that no activities are to occur in these marked surface waters.
10. Permit Part II.B.1.b requires that site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within the impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under the Permit. Observations shall be recorded on the inspection form provided by the Department. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.
 11. Permit Part II.E.7 requires that the permittee shall notify the Department no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage or impacts, and a description of the impacts.
 12. On October 18, 2024, by telephone, Southeastern acknowledged the unauthorized impacts to wetlands on the Property and adjacent property and provided that the intention of Southeastern was to purchase 0.3 acres wetland credits as 2:1 compensation for the unauthorized 0.15 acres impacts to wetlands on the Property and adjacent property. Subsequently, between October 18, 2024 and December 3, 2024, Southeastern reported that Southeastern had been unable to purchase the wetland mitigation credits.
 13. Based on the results of September 13, 2024 inspection, the Department concludes that Southeastern has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50, Permit Part I.B.10, Permit Part II.B.1.b, and Permit Part II.E.7 as described in paragraphs C(3) through (13), above.
 14. In order for Southeastern to return to compliance, DEQ staff and representatives of Southeastern 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 Department orders Southeastern, and Southeastern agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$5,851 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

Southeastern 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, Southeastern shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of Southeastern for good cause shown by Southeastern, 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. 2409-002639 dated September 19, 2024. This Order shall not preclude the Department 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, Southeastern admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Southeastern consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order. Southeastern 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 Department to modify, rewrite, amend, or enforce this Order.

5. Failure by Southeastern to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department 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.
6. 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.
7. Southeastern 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. Southeastern shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Southeastern 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.

8. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and Southeastern. Nevertheless, Southeastern agrees to be bound by any compliance date which precedes the effective date of this Order.

10. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Southeastern has completed all of the requirements of the Order;
- b. Southeastern 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 Department terminates the Order in his or its sole discretion upon 30 days' written notice to Southeastern.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Southeastern from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. Any plans, reports, schedules or specifications attached hereto or submitted by Southeastern 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.
12. The undersigned representative of Southeastern certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Southeastern to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Southeastern.
13. 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.
14. By its signature below, Southeastern voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20 ____.

Craig R. Nicol, Regional Director
Department of Environmental Quality

Southeastern Property Management LLC voluntarily agrees to the issuance of this Order.

Date: 12/27/2024 By: [Signature], President
(Person) (Title)
Southeastern Property Management LLC

Commonwealth of Virginia
City/County of Isle of Wight

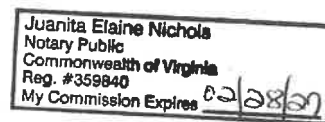
The foregoing document was signed and acknowledged before me this 27th day of
December, 2024 by Tyrone Melvin Jr. who is
President of Southeastern Property Management, on behalf of the
LLC.

[Signature]
Notary Public

359840
Registration No.

My commission expires: 02/28/27

Notary seal:



APPENDIX A VWPP SCHEDULE OF COMPLIANCE

1. By February 1, 2025, Southeastern shall purchase 0.30 acres wetland mitigation credits as 2:1 compensation for the unauthorized impacts to 0.15 acres wetlands on the Property and adjacent property.

OR

2. By February 1, 2025, Southeastern shall submit an approvable Corrective Action Plan (CAP) for the restoration of state waters at the Facility that have been impacted without a Permit that meets the requirements of 9 VAC 25-210-116. The CAP must be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters in accordance with 9 VAC 25-210-116. Southeastern shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.
3. Upon DEQ approval of the CAP, Southeastern shall begin implementation of the Corrective Action Plan in accordance with the schedule contained therein. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ. Southeastern shall complete the CAP in accordance with its terms.
 - a. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then Southeastern shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, Southeastern shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by Southeastern in accordance with the schedule set forth in the alternative CAP.
 - b. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then Southeastern shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. Southeastern shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. Southeastern shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.

4. If required in accordance with the DEQ approved CAP prepared under Paragraph 2b of this Appendix A, not later than February 1, 2025 Southeastern shall submit proof of purchase of the specified wetland credits from a DEQ-approved mitigation bank or in-lieu fee fund 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.
5. Unless otherwise specified in this Order, Southeastern shall submit all requirements of Appendix B of this Order to:

VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, VA 23462

