



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO BR – 1998, L.L.C. BROOK RIDGE APARTMENTS

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and BR-1998, L.L.C., 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. "Va. Code" means the Code of Virginia (1950), as amended.
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.
5. "Order" means this document, also known as a Consent Special Order.

6. "BR" means BR – 1998, L.L.C., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Brook Ridge" means the Brook Ridge Apartments located at 5613 Crenshaw Road in Richmond, Virginia and owned by BR.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. BR owns and operates the Brook Ridge Apartment complex in Richmond, Virginia. The complex includes a pump station that allows BR to discharge into Henrico County's collection system.
2. On February 21, 2006, a pump failed in the pump station and caused a discharge of sewage to enter a tributary of Chickahominy Creek. DEQ staff inspected the complex that day and discovered that the second pump required in the pump station had broken down, was removed and never replaced. Sludge and grey bacterial growth were observed in the stream by Department staff. Observation of the stream and the property surrounding the area indicated that the discharge had been ongoing for some time.
3. BR was instructed by DEQ and the County to quickly repair the existing pump and lines. On March 8, 2006, the pump station repair was completed. A pump truck was hired to keep the pump station from overflowing during the repairs.
4. On March 14, 2006, the Department issued an NOV to BR citing it for an unpermitted discharge of sewage from the Brook Ridge Apartment pump station to State Waters and for failure to report the discharge.
5. The Department met with BR on March 28, 2006, to review the pump station repairs required by DEQ and the County. The 3 horsepower (HP) pump was replaced by two - 5 HP pumps along with a new control panel box with alarms.

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 BR, and BR voluntarily agrees, to pay a civil charge of \$15,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for BR. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of BR, for good cause shown by BR, 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 BR by DEQ on March 14, 2006. 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 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, BR admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. BR 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. BR declares it 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 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 enforce this Order.
6. Failure by BR 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. BR 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. BR shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BR 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 BR 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 BR. Notwithstanding the foregoing, BR 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. BR 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
 - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to BR.

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

12. By its signature below, BR voluntarily agrees to the issuance of this Order.

December 15,

And it is so ORDERED this day of ~~August~~, 2006.

Gerard Seeley Jr.
Gerard Seeley Jr., Regional Director
Piedmont Regional Office
Department of Environmental Quality

BR voluntarily agrees to the issuance of this Order.

By: [Signature]
Assistant Secretary
Date: August 24, 2006

Commonwealth of Virginia ~~Virginia~~ New York
City/County of New York

The foregoing document was signed and acknowledged before me this 24th day of August, 2006, by Ben J. Fackelson, who is
(name)
Asst. Secretary of BR-1998, L.L.C., on behalf of the limited liability company.
(title)

[Signature]
Notary Public

My commission expires: 11/8/09

