



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

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Doug Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

Maria R. Nold  
Regional Director

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO BUNDICK WELL AND PUMP COMPANY

#### Unpermitted Facility

#### **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 Bundick Well and Pump Company, regarding the Bundick Southern Septage Lagoon, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

#### **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. "Bundick" means Bundick Well and Pump Company, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Bundick 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 discharge of a pollutant. 9 VAC 25-31-10.

6. "Facility" or "Lagoon" means the Bundick Southern Septage Lagoon, located near Painter, Virginia.
7. "Industrial waste water" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business or from the development of any natural resources as defined by §62.1-44.3 of the State Water Control Law.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "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.
10. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
11. "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.
12. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means Virginia Administrative Code.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Bundick owns the Lagoon property, an unlined, earthen-bermed lagoon that was originally permitted by the Virginia Department of Health ("VDH") to receive 1,006,300 gallons of septage annually located near Painter, Virginia. VDH subsequently required that Bundick cease using the Lagoon as a septage disposal facility by January 1, 2008.
2. On July 8, 2011, VDH staff observed a Bundick driver pumping the contents of a truck through a pipe into the Lagoon.
3. On July 18, 2011, DEQ staff met with Bundick representatives to discuss the observations noted on July 8, 2011. Reportedly, the Bundick driver pumped 16,000 gallons of wash water from the Kingston Tomato Packing Shed ("Kingston TPS") in Westover, Maryland into the Lagoon.
4. On July 22, 2011, DEQ staff conducted an inspection of the Lagoon and observed that the pipe used to pump the contents of the truck into the Lagoon on July 8, 2011 had been removed.

5. The wash water from the Kingston TPS is an industrial waste water as defined by §62.1-44.3 of the State Water Control Law.
6. DEQ has not issued a permit to Bundick to operate the Lagoon as a waste handling or treatment facility.
7. On September 26, 2011, TRO issued Notice of Violation No. W2011-09-T-001 to Bundick for operating a facility that has the potential to discharge industrial wastes to state waters without a permit by the Board.
8. Va. Code § 62.1-44.16(1) states that: "Any owner who erects, constructs, opens, reopens, expands or employs new processes in or operates any establishment from which there is a potential or actual discharge of industrial wastes or other wastes to state waters shall first provide facilities approved by the Board for the treatment of control of such industrial wastes or other wastes."
9. On October 6, 2011, DEQ staff met with Bundick personnel to discuss the NOV. During the meeting, Bundick indicated that it had ceased discharging industrial waste wash water into the Lagoon and was transporting it to the Pocomoke Sewage Treatment Plant for disposal.
10. Based on the results of the July 8, 2011 VDH observation, the July 22, 2011 inspection, the October 6, 2011 meeting and the information provided by Bundick, the Board concludes that Bundick has violated the Va. Code by operating an establishment from which there is a potential discharge of industrial wastes to state waters without a permit, as described in paragraphs C(2) and C(4), above.
11. As noted above, Bundick has ceased pumping industrial waste wash water into the Lagoon and removed the pipe observed during the July 8, 2011 inspection to ensure discharges from the pipe do not occur.

**SECTION D: Agreement and Order**

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

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$10,982.00 within 30 days of the effective date of this 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 shall be delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104

Richmond, Virginia 23218

Bundick 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 the Order with the consent of Bundick, for good cause shown by Bundick, 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 the purposes of this Order and subsequent actions with respect to this Order only, Bundick admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Bundick 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. Bundick 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 Bundick 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. Bundick 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. Bundick shall show that such circumstances

were beyond its control and not due to a lack of good faith or diligence on its part. Bundick 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 Bundick 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 Bundick. Nevertheless, Bundick 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 Bundick has completed all of the requirements of the Order;
  - b. Bundick 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 Bundick.

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

And it is so ORDERED this 25 day of June, 2012.

  
Regional Director  
Department of Environmental Quality

Bundick Well and Pump Company voluntarily agrees to the issuance of this Order.

Date: 2-24-12 By: Daniel W. Bundick V.P.  
(Person) (Title)  
Bundick Well and Pump Company

Commonwealth of Virginia  
City/County of Accomack

The foregoing document was signed and acknowledged before me this 24 day of February, 2012, by Daniel W. Bundick who is Vice President of Bundick Well and Pump Company, on behalf of the corporation.



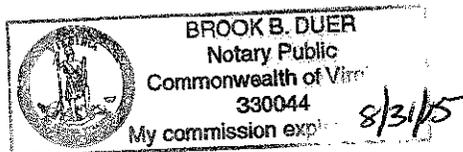
Notary Public

330044

Registration No.

My commission expires: 8/31/2015

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

Bundick shall:

1. Within 30 days of the effective date of this Order, install controls to vehicular access on the road to the Lagoon to deter illegal disposal of waste waters into the Lagoon. Vehicular access shall be at a minimum limited by a gate which shall be securable and equipped with locks.
2. Within 45 days of the effective date of this Order, submit to DEQ documentation that vehicle access control on the access road to the Lagoon has been installed as described in Paragraph 1 of this Appendix A.
3. Submit all requirements of Appendix A of this Order to:

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