



COMMONWEALTH of VIRGINIA

**DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE**

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
THE VISTAS APARTMENTS LIMITED PARTNERSHIP
AND
BRISBEN LAKEVIEW LIMITED PARTNERSHIP
FOR
IVY WALK APARTMENTS
Unpermitted Discharge**

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 The Vistas Apartments Limited Partnership and Brisben Lakeview Limited Partnership regarding the Ivy Walk Apartments, 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means the sewage pump station at Ivy Walk Apartments located at 4800 Burnt Oak Drive, in Chesterfield County Virginia, owned by The Vistas Apartments Limited Partnership and Brisben Lakeview Limited Partnership which pumps sewage and other municipal wastes, for the residents of Ivy Walk Apartments, to the Chesterfield County sewage collection system.
5. "Ivy Walk" means Ivy Walk Apartments located at 4800 Burnt Oak Drive, in Chesterfield County Virginia, owned by The Vistas Apartments Limited Partnership and Brisben Lakeview Limited Partnership.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "O&M" means operations and maintenance.
8. "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.
9. "Partnerships" means both The Vistas Apartments Limited Partnership and Brisben Lakeview Limited Partnership, limited partnerships authorized to do business in Virginia and their affiliates, partners, subsidiaries and parents. Partnerships are "persons" within the meaning of Va. Code § 62.1-44.3.
10. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . . 9 VAC 25-31-10.
11. "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 (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) 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; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

12. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
13. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "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.
16. "TMDL" means total maximum daily load.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "VPDES" means Virginia Pollutant Discharge Elimination System.
20. "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. Partnerships own and operate the Facility in Chesterfield County, Virginia. The Facility is located 100 feet from Falling Creek Reservoir.
2. Falling Creek Reservoir is located in the James River Basin (Lower James Subbasin). During the 2008 305(b)/303(d) Water Quality Assessment, Falling Creek Reservoir was assessed as impaired of the Recreation Use due to *E. coli*. The source of the impairment is unknown at this time. The Aquatic Life Use was fully supporting. The Fish Consumption Use was fully supporting with observed effects due to a Virginia Department of Health fish consumption advisory for kepone as well as fish tissue exceedances for polychlorinated biphenyls and mercury. The Wildlife Use was not assessed. The Reservoir is within the James River - City of Richmond Bacterial Total Maximum Daily Load plan area ("TMDL") due to the downstream Falling Creek Recreation Use impairment for *E. coli*. The Reservoir is also within the Chesapeake Bay TMDL for nutrients and total suspended solids. The water body is not proposed for designation as a Tier 3 water.
3. On June 17, 2010, DEQ staff received notification from Chesterfield County of an ongoing sewage pump station overflow at the Facility. Partnerships did not notify DEQ of the discharge.

4. On June 17, 2010, DEQ staff inspected the Facility and found evidence of an unpermitted discharge of 25,000 gallons of sewage which overflowed from the Facility into Falling Creek Reservoir. DEQ staff observed that the overflow path contained sewage debris. DEQ staff observed two large vacuum trucks operated by two contractor companies which were in the process of cleaning up the overflow. All of the areas of the overflow had not been treated, and the manager of Ivy Walk and the contractors were directed to do so by DEQ staff. Upon inspection, only one pump at the Facility was in operation and the second pump and standby pump were not operational.
5. By the end of June, 2010, repairs by a local contractor were completed to the two pumps at the Facility. At that time the Facility was again operational with two pumps, however, the backup generator had not been fixed and the standby pump had been sent to the manufacturer for assessment and repair.
6. On September 1, 2010, Partnerships signed a maintenance agreement for the Facility with a contractor.
7. At the end of September, 2010, the contractor was notified by Ivy Walk maintenance staff that the Facility had again experienced an unpermitted discharge of 10,000 gallons of raw sewage which overflowed from the Facility into Falling Creek Reservoir. The contractor subsequently reported the overflow to Chesterfield County staff who notified DEQ staff. Partnerships did not inform DEQ of the overflow.
8. The September 2010 overflow was caused by solids buildup in the Facility wet well. These solids included, in part, grease, plastics, and cloth, that encapsulated both pumps causing failure. The contractor found that the audible alarm was not operational and the visual pump failure alarm at the Facility functioned as designed but Ivy Walk maintenance staff had failed to see the alarm as Ivy Walk maintenance staff had not checked the pump station as often as required and instructed by DEQ staff and the contractor, resulting in the overflow. The Facility has on site an automated system that is capable of alerting maintenance personnel by phone or email when the Facility alarm goes off. This system, though required to be installed by Chesterfield County, was never completely installed.
9. After the September 2010 overflow, the contractor cleaned out the wet well and replaced the impellor, returning the two Facility pumps to proper operation. The contractor informed Ivy Walk maintenance staff that without ongoing solids removal the Facility could be expected to fail a third time in the near future.
10. On October 19, 2010, DEQ staff performed a follow up inspection at the Facility. DEQ staff observed that both sewage pumps were in operation but there was significant corrosion in the wet well. No floating debris was evident. DEQ staff observed that there was not an influent barscreen present at the Facility. At the time of DEQ staff inspection the backup generator was not in working order, and the high level alarm was not fully

operational as only the light worked and the audible alarm was not functional. DEQ staff observed evidence of another overflow, as there was sewage related debris down slope from the wet well at the Facility. DEQ staff instructed Ivy Walk maintenance staff to rake up the debris and apply lime.

11. By the end of October, 2010, the contractor was performing ongoing solids removal at the Facility.
12. On November 18, 2010 the backup generator at the Facility was repaired and covered under a maintenance agreement.
13. On December 6, 2010, PRO issued NOV No. W2010-11-PRO-201 to Partnerships for the unauthorized discharges described above.
14. Va. Code § 62.1-44.5(A) states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
15. Va. Code § 62.1-44.5(B) states that: “Any person in violation of the provisions of subsection A. . . shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours . . . the Director of the Department of Environmental Quality . . .”
Written notice to the Director of the Department of Environmental Quality shall follow initial notice . . .”
16. The Regulation, at 9 VAC 25-31-50, also states that “[e]xcept in compliance with a VPDES permit, or another permit, issued by the Board, it shall be unlawful to: (1) Discharge into state waters sewage, industrial wastes or other wastes, or any noxious or deleterious substances. . .”
17. On June 7, 2011, the contractor returned the repaired standby pump to the Facility.
18. On September 6, 2011, Partnerships confirmed that the automated alarm system for the Facility is in place and working. The alarm system alerts both the on-site property manager and the contractor that Partnerships has hired to maintain the Facility.
19. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
20. The Department has issued no permits or certificates to Partnerships.
21. Falling Creek Reservoir is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
22. Based on the results of the inspections on June 17, 2010 and October 19, 2010, and information from the contractor obtained by DEQ staff, the Board concludes that Partnerships have violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging

raw domestic sewage from the Facility, and failing to report such discharges as described in paragraphs C(1) through C(21), above.

23. In order for Partnerships to completely return to compliance, DEQ staff and representatives of Partnerships 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 Partnerships, and Partnerships agree to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$50,000 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
December 30, 2011	\$25,000
April 16, 2012	\$25,000

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Partnerships. Within 15 days of receipt of such letter, Partnerships shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
4. All payments 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

5. Partnerships shall include the 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 this Order with the consent of Partnerships for good cause shown by Partnerships, 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 purposes of this Order and subsequent actions with respect to this Order only, Partnerships admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Partnerships consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Partnerships declare they have received fair and due process under the Administrative Process Act and the State Water Control Law and they waive 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 Partnerships 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. Partnerships 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. Partnerships shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Partnerships 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 Partnerships 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, 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 Partnerships. Nevertheless, Partnerships agree to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. Partnerships petition the Director or his designee to terminate the Order after they have 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' written notice to Partnerships.

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

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 their signature below, Partnerships voluntarily agree to the issuance of this Order.

And it is so ORDERED this 11th day of APRIL, 2012.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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Consent Order
The Vistas Apartments, L.P. and
Brisben Lakeview, L.P.; Unpermitted Discharge
Page 10 of 12

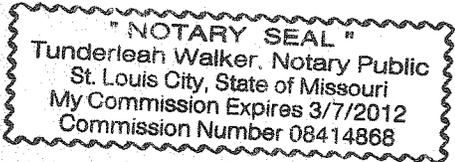
The Vistas Apartments Limited Partnership voluntarily agrees to the issuance of this Order.

Date: 12/14 /11 By: [Signature], for MUDCO 4, Inc., Sole Member
(Person)

of MBS GP 40, LLC, Sole General Partner for The Vistas Apartments Limited Partnership.

State Missouri
Commonwealth of Virginia
City/County of Saint Louis

The foregoing document was signed and acknowledged before me this 14 day of
December, 2011, by Hillary B. Zimmerman for
MUDCO 4, Inc., Sole Member of MBS GP 40, LLC, Sole General Partner, on behalf of The
Vistas Apartments Limited Partnership.



[Signature]
Notary Public

08414868
Registration No.

My commission expires: 3/7/12

Notary seal:

Consent Order
The Vistas Apartments, L.P. and
Brisben Lakeview, L.P.; Unpermitted Discharge
Page 11 of 12

Brisben Lakeview Limited Partnership voluntarily agrees to the issuance of this Order.

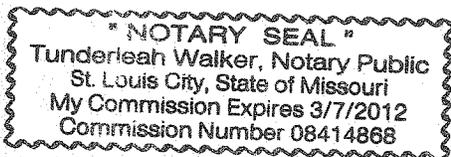
Date: 12/14 /11 By: [Signature], for MUDCO 4, Inc., Sole Member
(Person)

of MBS GP 24, LLC, Sole General Partner for Brisben Lakeview Limited Partnership.

State of Missouri
Commonwealth of ~~Virginia~~

City/County of Saint Louis

The foregoing document was signed and acknowledged before me this 14 day of
December, 20 11, by Hillary B. Zimmerman for
MUDCO 4, Inc., Sole Member of MBS GP 24, LLC, Sole General Partner, on behalf of Brisben
Lakeview Limited Partnership.



[Signature]
Notary Public

08414868

Registration No.

My commission expires: 3/7/12

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

1. Unpermitted Discharge/Spill

- a. On or before January 31, 2012, Partnerships shall submit to DEQ evidence of a separate account, containing \$8600 to pay for one year of a maintenance contract with a qualified contractor to continue ongoing solids removal and pump repairs as needed at the Facility. Partnerships shall submit monthly balance statements, until January 31, 2013, to DEQ showing that the necessary funds to pay for the balance of the one year maintenance contract are available in the account.

2. DEQ Contact

Unless otherwise specified in this Order, Partnerships shall submit all requirements of Appendix A of this Order to:

Gina Pisoni
Enforcement Specialist
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5156
804-527-5106 (fax)
Gina.Pisoni@deq.virginia.gov