



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

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
KING WILLIAM COUNTY
FOR
CENTRAL GARAGE WATER SYSTEM
Ground Water Withdrawal Permit No. GW0007400**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-268, between the State Water Control Board and King William County, regarding the Central Garage Water System, for the purpose of resolving certain violations of the Virginia Ground Water Management Act of 1992 (Va. Code § 62.1-254 *et seq.*) and its supporting regulations (9 VAC 25-610-10, *et seq.*).

SECTION B: Definitions:

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

1. "Act" means the Ground Water Management Act of 1992, Va. Code §§ 62.1-254, *et seq.*
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. "County" means the King William County, a political subdivision of the Commonwealth of Virginia. The County is a "person" within the meaning of Va. Code § 62.1-44.3.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.

6. "Facility" means the Central Garage Water System, a located at the intersection of Rt. 30 and Rt. 360 in King William County, Virginia.
7. "Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of the Commonwealth of Virginia, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs. 9 VAC 25-610-10.
8. "Ground Water Management Area" means any area declared by the Board to have met any of the conditions in 9 VAC 25-610-70 and the Board determines that the public welfare, safety and health require that regulatory efforts be initiated.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or an "Order by Consent," a type of Special Order under the State Water Control Law
11. "Permit" means Ground Water Withdrawal Permit No. GW0007400, which was issued under the State Water Control Law and the Regulation to King William County on November 1, 2009 and which expires on October 31, 2019, and means a certificate issued by the Board permitting the withdrawal of a specified quantity of ground water in a Ground Water Management Area.
12. "Permittee" means a person who currently has an effective ground water withdrawal permit issued by the board.
13. "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country. 9 VAC 25-610-10.
14. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia
15. "Regulations" means the Ground Water Withdrawal Regulations, 9 VAC 25-610-10 et seq.
16. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. The County owns and operates the Facility in King William County, Virginia. The County is located in the Eastern Virginia ground water management area as declared in 9

VAC 25-610-80. The County is subject to the Permit, which authorizes the County to withdraw and use 170,530,000 gallons per year from the Middle Potomac aquifer. The permitted withdrawal of ground water provides potable water to the high school, residents, and businesses within the service area.

2. DEQ has been working with the County to complete actions required by Part II-Special Conditions No. 8, 10, 11, and 14 of the Permit. The County did not comply with the Part II-Special Conditions No. 8, 10, 11, and 14 of the Permit as required. After a compliance review of the file, the County entered into a Letter of Agreement (LOA) with DEQ. The LOA was issued to the County on October 4, 2011. The LOA extended the due dates to complete the previously cited Special Conditions. The County did not comply with the schedule or complete the corrective actions as stated in the LOA.
3. Special Condition No. 8 of the Permit requires that the County install an observation well nest with real time data transmission equipment within 15 months of the effective date of the Permit, due February 1, 2011. The County had not provided documentation of the installation of the well nest and data transmission equipment. The LOA provided for the County to begin the well drilling and installation work at a site approved by DEQ to be completed by June 26, 2012.
4. Special Condition No. 10 of the Permit requires that the County submit to DEQ in an electronic format by January 10 of each year, due January 10, 2012, the recorded daily volume withdrawn from each production well in an Annual Daily Water Use Report for the preceding year.
5. Special Condition No. 11 of the Permit requires that within two years of the effective date of the Permit, due by November 1, 2011, the County properly permanently abandon the observation wells. The LOA provided for the due date of December 6, 2011.
6. Special Condition No. 14 of the Permit requires that the County submit, by October 10 of each year, due October 10, 2011, an annual report evaluating the per-connection use in each section or subdivision, compared with the projected use, and evaluate the effectiveness of all applicable Water Conservation & Management Plan elements in controlling irrigation or outdoor water use. The LOA extended the due date to January 1, 2012.
7. 9 VAC 15-610-130(A) and (F)(3) states that the permittee shall comply with all conditions of the permit and the permittee shall retain records of the monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit for a period of at least three years from the date of the expiration of a granted permit.
8. Va. Code § 62.1-258 states that it shall be unlawful in a ground water management area for any person to withdraw, attempt to withdraw, or allow the withdrawal of any ground water, other than in accordance with a Permit.

9. On February 16, 2012, DEQ issued Notice of Violation (NOV) No. 12-02-PRO-201 to the County for failure to comply with Special Conditions No. 10, 11, and 14.
10. DEQ met with the County on April 4, 2012 to discuss resolution of the NOV. The County agreed to pursue installation of the observation well nest at an approved location; agreed to submit the Annual Daily Water Use Report in an electronic format by the end of the month; and agreed to submit the annual report evaluating the effectiveness of the Water Conservation and Management Plan within approximately 30 days of the meeting. The County reported at the meeting, and DEQ confirmed, that the observation wells had been permanently abandoned on January 26, 2012.
11. The County failed to comply with Special Condition No. 8 by June 26, 2012 as agreed in the LOA, and the violation has therefore been included in this Order for resolution.
12. The County failed to comply with Special Condition No. 14 by October 10, 2012, as required by the Permit, and the violation has therefore been included in this Order for resolution.
13. Based on the results of DEQ file review, and the April 4, 2012 meeting, the Board concludes that the County has violated Permit Special Condition No. 8, 10, 11, and 14 of the Permit; 9 VAC 15-610-130; and Va. Code § 62.1-258, as described in paragraphs C(1) through C(8), and C(11) through C(12) above.
14. In order for the County to return to compliance, DEQ staff and representatives of the County 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 the County, and the County agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$21,674 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

The County 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the County for good cause shown by the County, 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, the County admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The County 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. The County declares it has received fair and due process under the Administrative Process Act and the Ground Water Management Act of 1992 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 the County 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. The County 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. The County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County 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 the County. Nevertheless, the County 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 the County has completed all of the requirements of the Order;
 - b. The County 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 the County.

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

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, King William County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17th day of JUNE, 2013.



Michael P. Murphy, Regional Director
Department of Environmental Quality

King William County voluntarily agrees to the issuance of this Order.

Date: 02/07/13 By: B.L.A., COUNTY ADMINISTRATOR
(Person) (Title)

Commonwealth of Virginia
City/County of King William

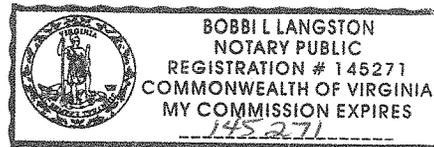
The foregoing document was signed and acknowledged before me this 7th day of February, 2013, by Trenton L. Funkhouser who is the County Administrator of King William County.

Bobbi L Langston
Notary Public

145271
Registration No.

My commission expires: 12/31/2015

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

The County shall, in accordance with the provisions of the State Water Control Law, the Ground Water Management Act of 1992, and the Ground Water Withdrawal Regulations, comply with the following regarding the withdrawal of ground water at the Central Garage Water System:

1. Install and make fully operational a nest of observation wells to be completed in the Lower Potomac, the Middle Potomac, and if present at the well nest location, the Aquia and the Chickahominy-Piny Point Aquifer as per Part II, Condition 8 of your Permit by not later than **June 28, 2013**.
2. Report daily groundwater withdrawals on the Electronic Daily Groundwater Withdrawal **Reporting Form C** starting December 1, 2012, as per Part II, Condition 10 of your Permit. The first Electronic Daily Groundwater Withdrawal Report shall be received in the Department by **January 10th**. In the event that no withdrawals are made during a single month, submittal of the daily report documenting that no withdrawals occurred is still required.
3. Submit by **January 10, 2013**, the annual report evaluating the per-connection use compared with the projected use, and evaluate the effectiveness of the Water Conservation & Management Plan in controlling outdoor water use as per Part II, Condition 14 of your Permit. If the per-connection use exceeds the projected per-connection use, the County shall then identify the cause for the excessive use and provide a schedule and plan, approved by DEQ, to reduce the per-connection use.

DEQ Contact

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

Cynthia Akers
Enforcement Specialist
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, VA 23060
(804) 5275079 - phone
(804) 527-5106 - fax
Cynthia.Akers@deq.virginia.gov