



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Whispering Winds, LLC
FOR
Whispering Winds Mobile Home Park
AND
Oak Shades Mobile Home Park
REGARDING
Unpermitted Groundwater Withdrawal**

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 Whispering Winds, LLC, regarding the Whispering Winds Mobile Home Park and the Oak Shades Mobil Home Park, for the purpose of resolving certain violations of the Virginia Groundwater 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 Groundwater 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. "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. "Draft permit" means a prepared document indicating the board's tentative decision relative to a permit action.

5. "Director" means the Director of the Department of Environmental Quality.
6. "Facilities" means the Whispering Winds Mobile Home Park located at 7100 Whispering Winds Drive, Price George VA 23875 and Oak Shades Mobile Home Park located at 6200 Oak Shades Park Drive, Disputanta VA 23842.
7. "Groundwater" 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.
8. "Groundwater Management Area" means a geographically defined groundwater area in which the board has deemed the levels, supply or quality of groundwater to be adverse to public welfare, health and safety.
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 a groundwater withdrawal permit issued under the Ground Water Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.
12. "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 the Commonwealth or any other state or country. 9 VAC 25-610-10.
13. "Regulations" means the Ground Water Withdrawal Regulations, 9 VAC 25-610-10 *et seq.*
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "Well" means any artificial opening or artificially altered natural opening, however made, by which groundwater is sought or through which groundwater flows under natural pressure or is intended to be withdrawn.
17. "Withdrawal system" means (i) one or more wells or withdrawal points located on the same or contiguous properties under common ownership for which the withdrawal is applied to the same beneficial use, or (ii) two or more connected wells or withdrawal

points which are under common ownership but are not necessarily located on contiguous properties.

SECTION C: Findings of Fact and Conclusions of Law

1. Whispering Winds, LLC is a limited liability company authorized to do business in Virginia. Whispering Winds, LLC is a “person” within the meaning of Va. Code § 62.1-44.3.
2. Both Facilities are located in the Eastern Virginia Groundwater Management Area. Whispering Winds Mobile Home Park operates a withdrawal system consisting of three wells (one is inactive) and Oak Shades Mobile Home Park operates a withdrawal system consisting of one well.
3. On March 14, 2012, July 10, 2012, October 7, 2013, June 16, 2014 and October 10, 2015 The Department received Quarterly Ground Water Withdrawal Reports for the Facilities. Those reports indicated that groundwater had been withdrawn in the following volumes:

Facility	Month/ Year	Volume (Gallons per Month)
Oak Shades	January 2012	316,130
Oak Shades	February 2012	370,590
Oak Shades	March 2012	329,530
Oak Shades	April 2012	329,530
Oak Shades	May 2012	458,730
Oak Shades	June 2012	304,950
Oak Shades	February 2014	433,120
Oak Shades	April 2014	314,290
Oak Shades	September 2014	310,860
Whispering Winds	June 2012	476,220
Whispering Winds	November 2012	311,300
Whispering Winds	December 2012	316,590
Whispering Winds	September 2013	310,150

4. Va. Code § 62.1-258 states that, “It shall be unlawful in a groundwater management area for any person to withdraw, attempt to withdraw, or allow the withdrawal of any groundwater, other than in accordance with a groundwater withdrawal permit or as provided in § 62.1-259, subsections C, D and F of § 62.1-260, and subsection C of § 62.1-261.”
5. 9 VAC 25-610-40(A) states that, “No person shall withdraw, attempt to withdraw, or allow the withdrawal of groundwater within a groundwater management area, except

as authorized pursuant to a groundwater withdrawal permit, or as excluded in 9VAC25-610-50.”

6. Whispering Winds, LLC has not been issued a Permit or qualified for an exclusion pursuant to 9VAC25-610-50 in order to operate the groundwater withdrawal system at the Facilities.
7. On August 04, 2015, DEQ issued NOV No. 15-02-OWS-002 for the observations in C(2) and C(3) above, for the unpermitted withdrawal of groundwater in a groundwater management area.
8. Whispering Winds, LLC has submitted permit applications and paid the permit fee for the Facilities.
9. Based on the results of the file review, groundwater withdrawal data, and discussions with Whispering Winds, LLC, the Board concludes that Whispering Winds, LLC has violated Va. Code § 62.1-258 and 9 VAC 25-610-40(A) as described in paragraphs C(2) through C(6) above.
10. In order for Whispering Winds, LLC to return to compliance, DEQ staff and representatives of Whispering Winds, LLC have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

By virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Whispering Winds, LLC and Whispering Winds, LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$1,250 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

Whispering Winds, LLC 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 refers collection of

moneys due under this Order to the Department of Law, Whispering Winds, LLC shall be liable for attorneys' fees equal to 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Whispering Winds, LLC for good cause shown by Whispering Winds, LLC, 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 NOV# 15-02-OWS-001. 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, Whispering Winds, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Whispering Winds, LLC 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. Whispering Winds, LLC 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 Whispering Winds, LLC 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. Whispering Winds, LLC 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. Whispering Winds, LLC shall

demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Whispering Winds, LLC shall notify the Groundwater Withdrawal Program Manager 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 Whispering Winds, LLC.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Whispering Winds, LLC has completed all of the requirements of the Order;
 - b. Whispering Winds, LLC 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 Whispering Winds, LLC.

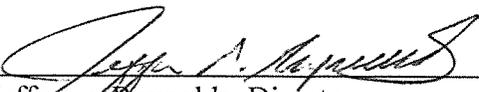
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Whispering Winds, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Whispering Winds, LLC 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 Whispering Winds, LLC 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 Whispering Winds, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Whispering Winds, LLC.
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, Whispering Winds, LLC voluntarily agrees to the issuance of this Order.

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And it is so ORDERED this 20th day of November, 2015



Jefferson Reynolds, Director
Division of Enforcement
Department of Environmental Quality

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Whispering Winds, LLC voluntarily agrees to the issuance of this Order.

Date: 9/16/2015 By: Rick Bealert, Assistant Property Manager
Rick Bealert (Title)

Commonwealth of Virginia
City/County of Colonial Heights

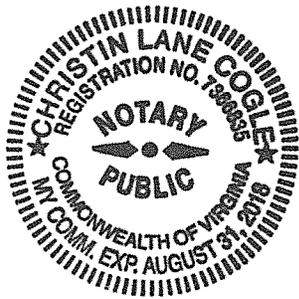
The foregoing document was signed and acknowledged before me this 16 day of September, 2015, by Rick Bealert who is Assistant Property Manager of Whispering Winds, LLC on behalf of the company.
(Title)

Christin Lane Cogley
Notary Public

7360835
Registration No.

My commission expires: 8/31/18

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Whispering Winds, LLC 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:

- 1 Take all reasonable and practicable steps necessary to secure a Virginia Department of Health waterworks operation permit, or equivalent, for the Facilities in accordance with 12 VAC 5-590-10 *et seq.*
- 2 Comply with all conditions of the Draft Permit dated September 1, 2015 (Permit Number: GW0004801) regarding operation of the withdrawal system at the Whispering Winds Mobile Home Park.
- 3 Comply with all conditions of the Draft Permit dated September 1, 2015 (Permit Number: GW0009600) regarding operation of the withdrawal system at the Oak Shades Mobile Home Park.
- 4 **DEQ Contact**

Unless otherwise specified in this Order, Whispering Winds, LLC shall submit all requirements of this Order to:

Department of Environmental Quality
Groundwater Permitting and Characterization Program
Attn: Groundwater Withdrawal Program Manager
PO Box 1105
Richmond VA 23218