



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO PRINCE GEORGE COUNTY

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 Prince George County, 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. "County" means Prince George County, the owner and operator of the Food Lion Water System.

7. "Facility" means the Food Lion Water System located at the juncture of State Route 156 and State Route 630 in Prince George County, Virginia.
8. "Regional Office" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "Permit" means Ground Water Withdrawal Permit.

SECTION C: Findings of Fact and Conclusions of Law

1. Prince George County owns and operates the Food Lion Water System (Facility) located in Prince George County, Virginia.
2. A Noncompliance Letter dated August 19, 1998, was mailed to Prince George County notifying them that the County had failed to apply for a permit for the Facility and that the Groundwater Management Act of 1992 required that anyone withdrawing ground water in a ground water management area in excess of 300,000 gallons per month must obtain a permit from DEQ.
3. In October 1998, the County submitted an application for the Permit.
4. On November 17, 1998, DEQ responded, stating that the application was incomplete and provided a 30-day deadline to submit a complete application.
5. DEQ records show that the DEQ staff further contacted the County regarding this matter by letter dated March 27, 2000.
6. A preapplication meeting was held with the County in May 2000 and by July 2000, the County submitted additional information.
7. On April 16, 2001, after a series of discussions with Central Office, DEQ mailed a letter to the County stating that the pump test data submitted was insufficient and that the County was required to submit an Aquifer Test Plan (ATP).
8. The County submitted to DEQ an ATP in June 2001. The County submitted a revised ATP in July 2001.
9. On August 13, 2001, DEQ sent a letter to the County conditionally approving the ATP.
10. The County delayed conducting the aquifer Test as approved by the ATP.
11. On February 23, 2005, DEQ issued a Notice of Violation (NOV) to the County. The NOV was issued for failure to submit a complete application for a Ground Water Withdrawal Permit and for withdrawing ground water from the Food Lion Water System without a Permit.

12. A meeting between Prince George County and DEQ was held on April 7, 2005, to discuss the issues cited in the NOV. At the meeting, the County submitted the aquifer test data to DEQ in order to complete the Permit application.
13. By memo dated May 25, 2005, Central Office stated that the information submitted by the County satisfied the technical evaluation criteria for permit issuance.
14. Upon receipt of an approvable Mitigation Plan from the County, the Department will proceed with the permit issuance process.

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 Prince George County, and Prince George County voluntarily agrees, to pay a civil charge of \$3,000 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 Prince George County. Payment shall be by check, certified check, money order, or cashiers check payable to "Treasurer of Virginia" and sent 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 Prince George County, for good cause shown by Prince George County, 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 Nov issued on February 23, 2005 as listed above in Section C. 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; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.

3. For purposes of this Order and subsequent actions with respect to this Order, Prince George County admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Prince George 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. Prince George County 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 Prince George 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. Prince George 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 occurrence. Prince George County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Prince George County 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

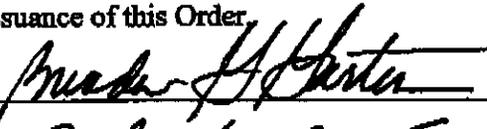
condition above, which the County intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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 Prince George County. Notwithstanding the foregoing, Prince George 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 the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Prince George County. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Prince George County 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, Prince George County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of September²⁹, 2005.


Robert G. Burnley, Director
Department of Environmental Quality

Prince George County voluntarily agrees to the issuance of this Order.

By: 
Date: July 6, 2005

Commonwealth of Virginia

City/County of Prince George

The foregoing document was signed and acknowledged before me this 6th day of

July, 2005, by Brenda Y. Gester, who is
(name)

County Administrator of Prince George County, on behalf of Prince George County.
(title)

[Signature]
Notary Public

My commission expires: January 31, 2009