# *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*
*Street address:* 629 East Main Street, Richmond, Virginia 23219
*Mailing address:* P.O. Box 1105, Richmond, Virginia 23218
Fax: 804-698-4019 - TDD (804) 698-4021
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4020
1-800-592-5482


# STATE WATER CONTROL BOARD
# ENFORCEMENT ACTION - ORDER BY CONSENT
# ISSUED TO
# BEXLEY PROPERTIES, LLC.
# FOR
# BEXLEY MOBILE HOME PARK WATER SYSTEM
## 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 Bexley Properties, LLC., regarding the Bexley Mobile Home Park 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.* 9 VAC 25-600-10.

2. Beneficial use" includes, but is not limited to domestic (including public water supply), agricultural, commercial, and industrial uses.

3. "Bexley" means Bexley Properties, LLC., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Bexley Properties, LLC is a "person" within the meaning of Va. Code 62.1-44.3 and 9 VAC 25-610-10.

4. "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. 9 VAC 25-600-10.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183. 9 VAC 25-610-10.

6. "Director" means the Director of the Department of Environmental Quality. 9 VAC 25-610-10.

7. "Facility" means the Bexley Mobile Home Park Water System, a withdrawal system, located at 7413 Allstate Drive in Petersburg, Virginia used to serve a mobile home park consisting of 95 residential connections.

8. "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. 9 VAC 25-610-10.

9. "Groundwater Management Area" means any area declared by the Board to have met any of the conditions in 9 VAC 25-610-80 and the Board determines that the public welfare, safety and health require that regulatory efforts be initiated.

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 by the board permitting the withdrawal of a specified quantity of groundwater under specified conditions in a ground water management area. 9 VAC 25-610-10.

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 this Commonwealth or any other state or country. 9 VAC 25-610-10.

13. "Regulations" means the Groundwater 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. 9 VAC 25-610-10.

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. 9 VAC 25-610-

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

1. Bexley, owns and operates the Facility in Prince George County, Virginia. Prince George County is located in the Eastern Virginia groundwater management area as declared in 9 VAC 25-600-20.

2. On July 14, 2009, Bexley submitted a permit application. Ongoing discussions between the DEQ and Bexley have failed to result in a complete permit application.

3. On December 13, 2012, Bexley submitted groundwater withdrawal reports for the period of January 1, 2010, through June 30, 2012, which showed continual groundwater withdrawal activity in excess of 300,000 gallons per month during that period. The withdrawal activity showed that average daily withdrawal exceeded 10,000 gallons per day.

4. VA Code §§ 62.1-256 and 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 9 VAC 25-610-50.

5. 9 VAC 25-200-40(B) states that every nonexempt user whose average daily withdrawal during any single month exceeds 10,000 gallons per day shall file with the board by January 31 of each year a reporting form, as prescribed by the board, completed insofar as it pertains to his withdrawal for the calendar year preceding. On December 13, 2012 a meeting was held with Bexley, the Virginia Department of Health, and the DEQ concerning the permit application and the withdrawal system.

6. On December 19, 2013 another meeting was held with Bexley, and the DEQ concerning the submittal of a complete permit application, the withdrawal system, and the proposed Order that was mailed on October 25, 2013.

7. Based on the results of the meetings held December 13, 2012 and December 19, 2013, and the groundwater withdrawal reports submitted for 2010, 2011, and 2012, the Board concludes that Bexley has violated Va. Code §§ 62.1-258, 9 VAC 25-200-40(B) and 9 VAC 25-610-40(A) of the Regulations, as described in above.

8. In order for Bexley to return to compliance, DEQ staff and representatives of Bexley 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 **§** § 62.1-270, the Board orders **Bexley**, and **Bexley** agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $25,200 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

| Due Date | Amount |
|---|---|
| April 10, 2014 | $3,150 or balance |
| July 10, 2014 | $3,150 or balance |
| October 10, 2014 | $3,150 or balance |
| January 10, 2015 | $3,150 or balance |
| April 10, 2015 | $3,150 or balance |
| July 10, 2015 | $3,150 or balance |
| October 10, 2015 | $3,150 or balance |
| January 10, 2016 | $3,150 |

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 Bexley. Within 15 days of receipt of such letter, Bexley 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. Bexley 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 this Order with the consent of Bexley for good cause shown by Bexley, 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, Bexley, admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Bexley 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. Bexley 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, except that Bexley reserves its right to a hearing or other administrative proceeding authorized or required by law or to judicial review of any issue of fact or law contained in any subsequent amendments of this Order issued by the Board without the consent of Bexley.. 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 Bexley 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. Bexley 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. Bexley, shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Bexley, shall notify the DEQ Office of Water Supply 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 Office of Water Supply 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 Bexley. Nevertheless, Bexley 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 Bexley has completed all of the requirements of the Order;

    b. Bexley 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 Bexley.

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

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, Bexley voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ____ day of _____, 2014.

_____
Jeff Steers, Land Protection and Revitalization, Director
Department of Environmental Quality

Bexley Properties, LLC., voluntarily agrees to the issuance of this Order.

Date: 1/24/14 By: _____, Manager
(Person) (Title)
Bexley Properties, LLC.

Commonwealth of Virginia
City/County of Henrico

The foregoing document was signed and acknowledged before me this 27 day of January, 2014, by Andrew Reisinger who is manager of Bexley Properties, LLC., on behalf of the company.

_____
Notary Public

7513266
Registration No.

My commission expires: 4/30/16

Notary seal:

SARAH E. SWANN
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
REGISTRATION NUMBER 7513266
MY COMMISSION EXPIRES 04/30/2016

# APPENDIX A
# SCHEDULE OF COMPLIANCE

Bexley shall, in accordance with the provisions of the State Water Control Law, the Ground Water Management Act of 1992, and the Groundwater Withdrawal Regulations, comply with the following regarding the withdrawal of groundwater at the Bexley Mobile Home Park Water System:

**Withdrawal Limits, Reporting, Water Conservation:**

1. Bexley is authorized to withdraw 10,000,000 gallons per year from the withdrawal system.

2. Total pumpage from the withdrawal system shall not exceed 965,000 gallons in a calendar month

3. The groundwater withdrawal will be used to provide potable water to the 100 residential connections to the Facility. Other beneficial uses are not authorized.

4. The withdrawal of groundwater shall originate from the following wells and/or wells constructed as outlined in the approved Corrective Action Plan (CAP):

| Owner Well Name/# | DEQ Well# | Latitude | Longitude |
|---|---|---|---|
| #1 | 174-00025 | 37-04-29.7 N | 77-21-29.4 W |
| #2 | 174-00026 | 37-04-29.5 N | 77-21-28.8 W |
| #3 | 174-00230 | 37-04-30.5 N | 77-21-28.7 W |
| #4 | 174-00231 | 37-04-37.7 N | 77-21-36.5 W |
| #5 | 174-00232 | 37-04-34.9 N | 77-21-40.4 W |

5. Groundwater withdrawn from each metered well and the total groundwater withdrawn from the withdrawal system use shall be recorded monthly and reported on forms approved by the Department to the Groundwater Withdrawal Permitting Program by the tenth day of each month for the respective previous month. Records of water use shall be maintained by Bexley as required in 9 VAC 25-610-130(F).

6. Bexley shall install and maintain in-line totalizing flow meter to read gallons, cubic feet, or cubic meters at each active well in accordance with 9 VAC 25-610-140(A)(6)(a) within 60 days of execution of this Order.

   Prior to withdrawing from well #3, DEQ well number 174-00230 and/or wells constructed as outlined in the approved CAP, Bexley shall notify the Department and install an in-line totalizing flow meter to read gallons, cubic feet, or cubic meters for this well before initiating the withdrawal.

**Corrective Action Plan**

7. No later than **June 30, 2014**, Bexley shall submit an approvable Corrective Action Plan (CAP) that details the procedures that Bexley will take to meet the requirements of 9 VAC 25-610-92 that includes but not limited to the following:

    a) Modifications to the existing withdrawal system to meet existing system capacity needs in conjunction with changes to demonstrate that no pumps or water intake locations are placed below the top of the uppermost confined aquifer that a well utilizes as a groundwater source or below the bottom of an unconfined aquifer that a well utilizes as a groundwater source.

    Measures to ensure that all hydrogeologic information and well construction documentation is obtained prior to or following the construction of any new well(s). The CAP must be sufficient to meet all criteria necessary for groundwater withdrawal permit issuance in accordance with 9 VAC 25-610-110 (C). The CAP shall also include a schedule of completion dates for all items listed. Upon DEQ approval of the CAP, Bexley shall begin implementation of the Corrective Action Plan in accordance with the schedule contained therein.

**Revised Groundwater Withdrawal Permit Application Submittal:**

8. Bexley shall submit biannual audit reports of the Facility's groundwater withdrawal system as required in 9VAC25-610-100 B. Audit information shall be recorded monthly and reported on forms approved by the Department to the Groundwater Withdrawal Permitting Program by the tenth day of each July and January for the respective previous 6 months. The audits shall be based on an evaluation of in-line totalizing flow metered data of the facility. The audit report shall include an evaluation of:

    a) The number of active connections for each month along with an evaluation of the per connection use and an evaluation of the volume of groundwater loss in the distribution system, (withdrawn by the wells but not used by customers);

    b) Corrective actions taken or planned for reducing the loss of groundwater through the distribution system, and as necessary,

    c) Corrective actions taken for those customers that show groundwater use indicative of potential leaks from internal plumbing, fixtures, appliances, or outdoor uses.

    The audit shall include identifiers of connection types such as; age of plumbing, and maximum or minimum occupancy.

9. By December 31, 2014, Bexley shall submit a revised and approvable Groundwater Withdrawal Permit Application that includes a Water Conservation and Management Plan in accordance with 9 VAC 25-610-100 (B) to the Groundwater Withdrawal Permitting Program. The revised application shall include all wells that are part of the withdrawal system to meet the needs of the facility as authorized in the Waterworks Operators Permit issued by the Virginia Department of

Health for the withdrawal system and the revised annual and monthly request amounts based on the results of the completed annual audit.

**DEQ Contact**

Unless otherwise specified in this Order, Bexley Properties, LLC., shall submit all requirements of Appendix A of this Order to:

Previn D. Smith
GWPP Compliance Coordinator
VA DEQ – Central Office
P.O. Box 1105, Richmond, VA 23218
(804) 698-4027
Previn.Smith@deq.virginia.gov