COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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L. Preston Bryant, Jr
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO WHISPERING PINES, INC.

VPDES Permit No. VA0088838

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Whispering Pines, Inc. for the purpose of resolving certain alleged violations of environmental law and/or 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 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. "Regulation" means 9 VAC 25-31-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

8. "Permit" means VPDES Permit VA0088838, which was issued to Whispering Pines, Inc. April 27, 2005 and expires on April 26, 2010.

SECTION C: Finding of Facts and Conclusions of Law

1. Whispering Pines, Inc. ("WPI") owns and operates the Whispering Pines Motel ("motel") which is a small motel located in Accomack County at 23388 Tasely Road, Tasley, Virginia.

2. The motel is serviced by a wastewater treatment plant ("plant") which is subject to the Permit. The Permit authorizes WPI to discharge 0.019 million gallons per day of domestic wastewater from the plant. Effluent from the plant is routed to an infiltration basin and settles in the infiltration basin until it sinks into the ground or evaporates.

3. The Permit requires that WPI submit to DEQ a completed discharge monitoring report ("DMR") for each of its permitted outfalls not later than the tenth day of the month following the monitoring period.

4. DEQ received WPI's DMR for outfall 101 for the December 2005 monitoring period on January 17, 2006, which was due January 10, 2006. The required signature and phone number of the principal executive office of WPI was not included on the DMR. On February 8, 2006, DEQ received a revised DMR from WPI for outfall 101 for the December 2005 monitoring period, which included the required signature and phone number of the principal executive office of WPI. DEQ received WPI's DMR for outfall 101 for the February 2006 monitoring period on March 16, 2006, which was due March 10, 2006.

5. The Permit requires WPI to comply with the following schedule for plant maintenance and upgrade and chlorine contact tank relocation: (a) Submit a plan for achievement of compliance with internal limits outlined in Part I.A of the Permit and select a firm for the design and relocation of chlorination facilities no later than June 10, 2005; (b) Submit plans for treatment plant maintenance and upgrade and chlorine contact tank relocation no later than August 10, 2005; and (c) Achieve compliance with internal limits by October 1, 2005 and submit a monitoring report no later than November 10, 2005.

6. The Permit requires WPI to comply with the following schedule for installation and monitoring of groundwater wells: (a) Submit a plan for achievement of compliance and select firm for design of facilities no later than June 10, 2005; (b) Submit a ground water plan with diagram of well location and depth profiles no later than October 10, 2005; (c) Submit a revised Operations and Maintenance ("O & M") Manual to include ground water monitoring and Preventive System Maintenance Plan ("PSMP") no later than October 10, 2005; (d) Submit a ground

water monitoring plan for DEQ review and approval no later than October 10, 2005; (e) Submit a progress report to DEQ by January 10, 2006; and (f) Install the ground water wells and submit written notification of compliance no later than March 31, 2006.

7. On or about August 10, 2005, DEQ compliance staff conducted a review of agency files and determined that WPI had not notified DEQ of firm selection and had not submitted the compliance plan for the plant upgrade and the groundwater well installation.

8. On September 1, 2005, DEQ received notice from WPI that it had retained Shore Engineering to develop plans for the plant upgrades and groundwater well installation.

9. On November 9, 2005, DEQ received a letter from WPI, indicating that it was ready to install the ground water wells as soon as the plans were approved by DEQ.

10. DEQ received completed ground water monitoring and installation plans from WPI on February 9, 2006. By letter dated February 9, 2006, DEQ permit staff notified WPI that the ground water monitoring and installation plans were reviewed and approved by DEQ.

11. On February 6, 2006, DEQ enforcement staff requested that WPI provide DEQ with a schedule outlining its plans to achieve compliance with its Permit. On behalf of WPI, Shore Engineering provided a schedule dated February 10, 2006, which indicated that wells could be installed by March 31, 2006, and plans for the chlorination facilities would be submitted by March 31, 2006, with construction projected to start within two months of DEQ's approval of the plans. In addition, Shore Engineering's schedule included a three to five month timeline to complete the revisions to the O & M Manual and PSMP.

12. By letter dated March 23, 2006 DEQ, enforcement staff requested that WPI provide a progress report no later than April 3, 2006 detailing the status of the deficient compliance schedule items. DEQ did not receive a response from WPI.

13. On April 10, 2006, DEQ enforcement staff resent the March 23, 2006 letter by fax and requested a response by April 11, 2006. On April 10, 2006, DEQ received a response from WPI indicating that it was soliciting proposals from drilling companies to install the ground water wells.

14. By letter dated May 10, 2006, DEQ enforcement staff requested that WPI provide a progress report regarding the outstanding compliance schedule items no later than May 19, 2006. DEQ has not received a response from WPI.

15. Part I.A.1 of the Permit requires WPI to submit DMRs to DEQ not later than the tenth day of the month following the monitoring period. WPI violated the permit by failing to submit timely DMRs by the due date as required by the Permit.

16. Part I.C.1 of the Permit incorporates a schedule of compliance for treatment plant maintenance and/or upgrade and chlorine contact tank relocation. WPI violated the Permit by failing to: (a) submit a plan for achievement of compliance with internal limits outlined in Part I.A of the Permit and select a firm for the design and relocation of chlorination facilities by June 10, 2005; (b) submit plans for treatment plant maintenance and upgrade and chlorine contact tank relocation by August 10, 2005; (c) achieve compliance with internal limits outlined in Part I.A of the Permit by October 1, 2005 and submit a monitoring report by November 10, 2005.

17. Part I.D.1 of the Permit incorporates a schedule of compliance for installation and monitoring of groundwater wells. WPI violated the Permit by failing to: (a) submit a plan for achievement of compliance and firm selection by June 10, 2005; (b) submit a ground water plan with a diagram of well location and depth profiles by October 10, 2005; (c) submit a progress report to DEQ by January 10, 2006; (d) install the ground water wells and submit written notification of compliance by March 31, 2006.

18. Part I.E.4 of the Permit requires WPI to submit to DEQ a revised O & M Manual with groundwater monitoring plan and PSMP by October 10, 2005. WPI violated the Permit by failing to submit to DEQ a revised O & M Manual with groundwater monitoring plan and PSMP.

19. Part I.E.8 of the Permit requires WPI to submit to DEQ a groundwater monitoring plan for approval by DEQ by October 10, 2005. WPI violated the Permit by failing to submit to DEQ a ground water monitoring plan by October 10, 2005.

20. DEQ issued Notice of Violation ("NOV") No. W2005-10-T-0003 on October 27, 2005, NOV No. W2006-02-T-0001 on February 23, 2006, NOV No. W2006-03-T-0001 on March 24, 2006 and NOV No. W2006-06-T-0002 on June 19, 2006, advising WPI of late and deficient compliance schedule items.

21. The NOV issued on March 24, 2006 referenced in paragraph 20 of this Order also advised WPI that the DMR submitted for monitoring period December 2005 was incomplete. A completed DMR was received by DEQ on February 8, 2006.

22. The NOV issued on June 19, 2006 referenced in paragraph 20 of this Order also advised WPI that DEQ had not received the DMRs for December 2005 and February 2006 monitoring periods by the due date.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d) orders WPI, and WPI agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders WPI, and WPI voluntarily agrees to pay a civil charge of $4,000 in settlement of the violations cited in this Order. The payment shall include WPI's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered 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 WPI, for good cause shown by WPI, 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 above referenced Notice(s) of Violation. 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 plant as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, WPI admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. WPI 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. WPI 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 he 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 WPI 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. WPI shall be responsible for failure to comply with any of the terms and conditions by this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. WPI shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. WPI 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 WPI 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 WPI. Notwithstanding the foregoing, WPI 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 WPI. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve WPI from his obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By his signature below, WPI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2006.

_____
Francis L. Daniel
Department of Environmental Quality

Whispering Pines, Inc. voluntarily agrees to the issuance of this Order.

By: _____

Date: 10/20/06

Commonwealth of ~~Virginia~~ Pennsylvania
City/County of York

The foregoing document was signed and acknowledged before me this 20th day of October, 2006, by Dusan Bratic (*name*), who is President (*title*) of Whispering Pines, Inc. on behalf of WPI.

_____
Notary Public

My commission expires: 2-12-09.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Ronnetta S. Rider, Notary Public
Dillsburg Boro, York County
My Commission Expires Feb. 12, 2009
Member, Pennsylvania Association of Notaries

APPENDIX A

WPI shall:

1. Not later than November 30, 2006, submit to DEQ plans and specifications for design and relocation of chlorine contact tank and plans for treatment plant maintenance and upgrade.

2. Not later than December 31, 2006, complete relocation of chlorine contact tank and treatment plant maintenance and upgrade.

3. Not later than December 31, 2006, complete installation of groundwater wells, with written notification of compliance submitted to DEQ no later than January 10, 2007.

4. Not later than January 31, 2007, submit to DEQ a revised O & M Manual and Preventive System Maintenance Plan for review and approval.

5. Not later than February 28, 2007, achieve compliance with Part I.A. limitations for outfall 101 with the first discharge monitoring report due not later than March 10, 2007.

6. Not later than April 10, 2007, submit to DEQ the quarterly ground water monitoring report in accordance with the monitoring requirements specified in Part 1.A of the Permit.

7. Mail all submittals and reports required by this Appendix A to:

   Mr. Francis L. Daniel, Director
   ATTN: Enforcement
   DEQ, Tidewater Regional Office
   5636 Southern Blvd.
   Virginia Beach, VA 23462