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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO CERTAIN GROUNDWATER WITHDRAWAL APPLICANTS LOCATED IN ACCOMACK AND NORTHAMPTON COUNTIES FOR 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 certain groundwater withdrawal applicants located in Accomack and Northampton counties, 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. "Adverse impact" means reductions in groundwater levels or changes in groundwater quality that limit the ability of any existing groundwater user lawfully withdrawing or authorized to withdraw groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of groundwater required by the existing use. Existing groundwater users include all those persons who have been granted a groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

3. "Agricultural use" means utilizing groundwater for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations.
4. "Applicant" means a person filing an application to initiate or expand a groundwater withdrawal in a groundwater management area.
5. "Beneficial use" includes, but is not limited to domestic (including public water supply), agricultural, commercial, and industrial uses.
6. "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.
7. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
8. "Director" means the Director of the Department of Environmental Quality.
9. "Facility" means the specific agricultural operation as identified in the appendices of this Order.
10. "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.
11. "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 VAC 25-600-10.
12. "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.
13. "Permit" means 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 ground water management area. 9 VAC 25-610-10
14. "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.
15. "Regulations" means the Groundwater Withdrawal Regulations, 9 VAC 25-610-10 *et seq.*

16. "Salt water intrusion" means the encroachment of saline waters in any aquifer that creates adverse impacts to existing groundwater users or is counter to the public interest. 9 VAC 25-610-10
17. "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
18. "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 25-610-10

SECTION C: Findings of Fact and Conclusions of Law

1. Each Applicant identified in the appendices of this Order is a person, who owns and operates a Facility in Accomack and/or Northampton County, Virginia. Accomack and Northampton County are located in the Eastern Shore Groundwater Management Area as declared in 9 VAC 25-600-20.
2. The Applicants identified herein are currently withdrawing 300,000 gallons or more of groundwater a month from a withdrawal system for agricultural use without a permit, and no exclusions from the permitting requirements are applicable to the groundwater withdrawal.
3. 9 VAC 25-610-90(4) states that, "[a]ny person withdrawing groundwater for agricultural or livestock watering purposes on or before July 1, 1992, shall file an application for a groundwater withdrawal permit on or before December 31, 1993."
4. 9 VAC 25-610-94 states that, "[p]ersons wishing to initiate a new withdrawal, expand an existing withdrawal, or reapply for a current permitted withdrawal in any groundwater management area and not excluded from requirements of this chapter by 9 VAC 25-610-50 shall apply for a permit."
5. Va. Code § 62.1-258 and 9 VAC 25-610-40(A) of the Regulations prohibit the withdrawal of 300,000 gallons or more of groundwater a month within a groundwater management area without a permit.
6. In order to avoid an adverse impact and/or salt water intrusion, and to ensure that no more than the smallest amount of withdrawal necessary to support the proposed beneficial use is withdrawn, DEQ has requested information and worked with the Applicants to complete or address inaccuracies in their groundwater withdrawal applications.

7. Based on the results of information provided by the Applicants and an extensive review by DEQ staff, the Board concludes that the Applicants have violated Va. Code § 62.1-258 and 9 VAC 25-610-40(A).
8. In order for the Applicants to return to compliance, DEQ staff and the Applicants have agreed to a Schedule of Compliance, which is incorporated as Appendices 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 Applicants, and the Applicants agree to:

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

If the Department has to refer violations of this Order to the Department of Law, the Applicants shall be liable for all costs and reasonable attorney's fees.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Applicants for good cause shown by Applicants, 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 Applicants admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Applicants consent 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 Applicants declare they have received fair and due process under the Administrative Process Act and the Ground Water Management Act of 1992 and they 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 Applicants 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 Applicants 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 their part. The Applicants shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. The Applicants shall notify the Water Withdrawal Permitting & Compliance 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 Water Withdrawal Permitting & Compliance Manager 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.

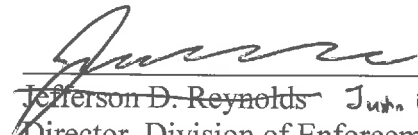
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Applicants. Nevertheless, the Applicants agree to be bound by any compliance date 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 Applicant has completed all of the requirements of the Order;

- b. The Applicant 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 Applicant;
- d. In no case shall this Order extend beyond September 30, 2019 or until the agency tentatively denies or issues the permit, whichever is later.

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

And it is so ORDERED this 26th day of September, 2018



~~Jefferson D. Reynolds~~ Justin Wilkins
Director, Division of Enforcement
Department of Environmental Quality

APPENDIX A
Nicholas J. Thomas LLC for Wishart's Point Farm

Nicholas J. Thomas LLC 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 Wishart's Point Farm.

AUTHORIZED WITHDRAWAL

1. Until such time as a groundwater withdrawal permit has been issued to Nicholas J. Thomas LLC for the Wishart's Point Farm, Nicholas J. Thomas LLC's groundwater withdrawal shall not exceed 3,900,000 gallons per year and 1,000,000 gallons per month. The groundwater withdrawal will be used to provide water for consumption, cooling, and maintenance at the poultry farm and the potable water supply for the residence. Other beneficial uses are not authorized by this Order.
2. Withdrawal amounts authorized in this Order may reflect the amount requested in your groundwater withdrawal application, and any groundwater withdrawal amounts authorized in any permit by the Department will be dependent upon the results of the technical evaluation and the availability of the resource.
3. The withdrawal of groundwater shall be limited to the following wells identified in the table below. Withdrawals from wells not included in the table are not authorized by this Order and are therefore prohibited.

Owner Well Name	DEQ Well #	Well Depth (ft)	Screen Intervals	Aquifer
Well #1	100-01447	250	230-250 ft	TBD
Well #2	100-01448	250	230-250 ft	TBD
Well #3	100-01449	250	230-250 ft	TBD

4. Any actions that result in a change to the status, construction, or pump intake setting of wells included in this Order must be pre-approved by DEQ prior to implementing the change and a revised Uniform Water Well Completion Report (GW-2 Form) must be submitted to DEQ within 30 days after the physical construction of a well is altered or the pump intake setting has been changed. If changes are a result of an emergency, notify DEQ within 5 days from the date of the change.

PUMP INTAKE SETTINGS

Nicholas J. Thomas LLC shall not place a pump or water intake device lower than the top of the uppermost confined aquifer that a well utilizes as a groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater source in order to prevent dewatering of the aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

REPORTING

1. Water withdrawn from each well shall be recorded monthly at the end of each month and reported to the Water Withdrawal Permitting & Compliance Manager, in paper or electronic format, on a form provided by DEQ by the tenth (10th) day of each January, April, July and October for the respective previous calendar quarter. Records of water use shall be maintained by Nicholas J. Thomas LLC in accordance with the Regulations.
2. Nicholas J. Thomas LLC shall report any amount in excess of the authorized withdrawal by the fifth (5th) day of the month following the month when such a withdrawal occurred. Failure to report may result in compliance or enforcement activities.

METERING AND EQUIPMENT REQUIREMENTS

1. As soon as possible, but no later than October 1, 2018, Nicholas J. Thomas LLC shall install in-line totalizing flow meters to read gallons, cubic feet, or cubic meters on all wells identified in the table above. Meters shall produce volume determinations within plus or minus 10% of actual flows.
2. A defective meter or other device must be repaired or replaced within 30 days.
3. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals. The period during which the meter was defective must be clearly identified in the groundwater withdrawal report required by Appendix A of this Order.

INSPECTION, ENTRY AND INFORMATION REQUESTS

Upon presentation of credentials, Nicholas J. Thomas LLC shall allow the Board, DEQ, or any duly authorized agent of the Board, at reasonable times and under reasonable circumstances, to enter upon the property, public or private, and have access to, inspect and copy any records that must be kept as part of this Order, and to inspect any facilities, well(s), withdrawal system, operations, or practices (including sampling, monitoring and withdrawal) required under this Order. For the purpose of this Order, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

DUTY TO PROVIDE INFORMATION

Nicholas J. Thomas LLC shall furnish to the Board or DEQ, within a reasonable time, any information that the Board may request to determine whether cause exists for modifying or terminating this Order, or to determine compliance with this Order. Nicholas J. Thomas LLC shall also furnish to the Board or DEQ, upon request, copies of records required to be kept by the Regulations or this Order.

WELL CONSTRUCTION

At least two weeks prior to the scheduled construction of any well(s), Nicholas J. Thomas LLC shall notify DEQ of the construction timetable and receive prior approval of the well(s) location(s) and acquire the DEQ Well number. All wells shall be constructed in accordance with the following requirements.

1. A well site approval letter or well construction permit must be obtained from the Virginia Department of Health prior to construction of the well.
2. A complete suite of geophysical logs (Spontaneous Potential, Single Point Resistance, 16/64 Short and Long Normal, Natural Gamma) shall be completed for each well and submitted to DEQ along with the corresponding completion report.
3. DEQ will evaluate the geophysical log and driller's log information on site to estimate the top of the target aquifer and establish a depth below which the pump shall not be set.
4. Nicholas J. Thomas LLC shall install gravel packs and grout in a manner that prevents leakance between aquifers. Gravel pack shall be terminated close to the top of the well screen(s) and shall not extend above the top of the target aquifer.
5. A completed Uniform Water Well Completion Report (GW-2 Form) and any additional water well construction documents shall be submitted to DEQ within 30 days of the completion of any well and prior to the initiation of any withdrawal from the well. The assigned DEQ Well number shall be included on all well documents.
6. Each well shall be equipped in a manner such that water levels can be measured during pumping and non-pumping periods without dismantling any equipment. Any opening for tape measurement of water levels shall have an inside diameter of at least 0.5 inches and be sealed by a removable plug or cap. Nicholas J. Thomas LLC shall provide a tap for taking raw water samples from each permitted well.

GROUNDWATER WITHDRAWAL PERMIT APPLICATION

1. As soon as possible, but no later than October 1, 2018, Nicholas J. Thomas LLC shall provide to DEQ a complete permit application.
2. Should Nicholas J. Thomas LLC fail to provide a complete permit application on or before October 1, 2018, the existing permit application may be suspended from processing. Further, where the Applicant becomes aware that one or more relevant facts from a permit application were omitted, or that incorrect information was submitted in a permit application or in any report, the Applicant shall immediately submit such facts or the correct information.

