



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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[www.deq.virginia.gov](http://www.deq.virginia.gov)

Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
CG FIRST STREET LP  
FOR  
GABLES OLD TOWN NORTH  
VPDES GENERAL PERMIT NO. VAG830517**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and CG First Street LP for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
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, as described in Va. Code § 10.1-1185.

5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" means the Gables Old Town North wastewater treatment system located at 525 Montgomery Street, Alexandria, Virginia, which treats and discharges groundwater contaminated by petroleum products and chlorinated hydrocarbon solvents for the dewatering activities of CG First Street LP at Gables Old Town North.
10. "CG First Street LP" means CG First Street LP a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. CG First Street LP is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "O&M" means operations and maintenance.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES General Permit No. VAG830517, which was issued under the State Water Control Law and the Regulation to CG First Street LP on 27 April 2017 and which was terminated on 31 January 2018.
15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

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

1. CG First Street LP owned and operated the Facility. The Permit allows CG First Street LP to discharge groundwater treated for petroleum products and chlorinated hydrocarbon solvents from dewatering activities from the Facility, to the Potomac River, in strict compliance with the terms and conditions of the Permit.
2. The Potomac River is located in the Potomac River Basin. A small section of the Potomac River along the Alexandria City shoreline is state waters. This area of state waters was not included in the water quality assessment until 2016. The 2016 assessment is still in draft in format.

3. In submitting DMRs, as required by the Permit, CG First Street LP has indicated that he exceeds discharge limitations contained in Part I.A.1 of the Permit, for pH and chlorinated hydrocarbon solvents, for the months summarized below:

Date	pH- Min	pH- Max	Trichloroethylene (µg/L)	Tetrachloroethylene (µg/L)	Vinyl Chloride (µg/L)
June2017	5.1	5.5	15.3		
July2017	5.4	5.6	17.4		
August2017	5.67	5.78	13.6	5.8	
September2017					
October2017					
November2017	5.1		8.8	29.5	2.9
December2017				7.8	2.2
January2018				6.9	2.3

4. NRO issued Warning Letters and Notice of Violations for the pH and chlorinated hydrocarbon solvent exceedances as follows: WL No. W2017-07-N-1013, issued 15 August 2017; WL No. W2017-09-N-1003, issued 27 September 2017; WL No. W2017-10-N-1006, issued 27 October 2017; NOV No. W2018-01-N-0003, issued 10 January 2018; NOV No. W2018-02-N-0007, issued 14 February 2018; and NOV W2018-03-N-0023, issued 19 March 2018.
5. Apex Companies responded on CG First Street LP behalf for the Warning Letters and Notices of Violation. Responses were included in the next month's DMR submittal cover letters. The submittal cover letters stated that the non-compliance conditions had not yet been corrected and possible treatment options were being evaluated.
6. Permit Part II, Section A, Effluent Limitations and Monitoring Requirements, states, "The daily concentration minimum limit for pH is 6.0 S.U.; The daily concentration maximum limit for Trichloroethylene is 5.0 µg/L; The daily concentration maximum limit for Vinyl Chloride is 2.0 µg/L; The daily concentration maximum limit for Tetrachloroethylene is 5.0 µg/L
7. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
8. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
9. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

10. The Department has issued no permits or certificates to CG First Street LP other than VPDES General Permit No. VAG830517.
11. The portion of the Potomac River which was the receiving water for this facility's discharge is a surface water located partially within the Commonwealth and is considered a "state water" under State Water Control Law.
12. Based on documentation in the DMR's, the Board concludes that CG First Street LP has violated the Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50, by discharging water from the facility that exceeded the effluent limits, as described in paragraph C(1)-(11), above.
13. On 29 January 2018, Department staff met with the staff of CG First Street LP and their consultant Apex Companies to discuss the violations. According to Apex Companies, characterization of the area indicated that contaminate concentrations were low and effluent was not treated from June 2017 to September 2017. Treatment was installed in September 2017.
14. On 29 January 2018, CG First Street LP requested termination of coverage under the Permit. During the 29 January meeting, CG First Street LP staff stated the construction phase requiring dewatering was complete. DEQ terminated the Permit on January 31, 2018.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders, CG First Street LP and CG First Street LP agrees to pay a civil charge of \$11,156.75 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

CG First Street LP shall make a 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 has to refer collection of moneys due under this Order to the Department of Law, CG First Street LP shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of CG First Street LP for good cause shown by CG First Street LP, 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 the Warning Letters and Notice of Violations listed in Section C(4). 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, CG First Street LP admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. CG First Street LP 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. CG First Street LP declares it has received fair and due process under the Administrative Process Act 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 modify, rewrite, amend, or enforce this Order.
6. Failure by CG First Street LP 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. CG First Street LP 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. CG First Street LP shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CG First Street LP shall notify the DEQ Regional 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 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 CG First Street LP. Nevertheless, CG First Street LP 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 CG First Street LP has completed all of the requirements of the Order;
  - b. CG First Street LP 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 CG First Street LP.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CG First Street LP 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 CG First Street LP 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. Any documents to be submitted pursuant to this Order shall be submitted by CG First Street LP or an authorized representative of CG First Street LP.
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, CG First Street LP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 4<sup>th</sup> day of September, 2018.



Thomas Faha, Regional Director  
Department of Environmental Quality

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CG First Street LP voluntarily agrees to the issuance of this Order.

Date: 6/7/18

CG FIRST STREET, L.P.  
A Virginia limited partnership

By: Gables Realty GP, LLC, its general partner

By: Lion Gables Realty Limited Partnership, a  
Delaware limited partnership, its sole  
member

By: Gables GP LLC  
a Texas limited liability company

By: [Signature]  
Name: Torger Randa  
Title: Regional VP

Commonwealth of Virginia  
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 7<sup>th</sup> day of  
June, 2018, by Sarah Elizabeth Quirk

[Signature]  
Notary Public

7723732  
Registration No.

My commission expires: 02/28/2021

Notary seal:

