



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Craig R. Nicol
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
W. W. Realty Associates, LLC
FOR
The Route 17 Mine
VPDES Permit No. VAG84
Storm Water Registration No. VAG840149**

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 W. W. Realty Associates, LLC, regarding the Route 17 Mine, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation. This Order supersedes and terminates the Consent Order issued by the Board to W. W. Realty Associates, LLC on May 7, 2015.

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 the discharge of a pollutant.
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. "Facility" means the Route 17 Mine located 7000 feet East of Route 17 on the South side of the Virginia-North Carolina border in South Mills, North Carolina. The location from which discharges of process wastewater commingled with stormwater occur is in Chesapeake, Virginia.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "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.
11. "Permit" means VPDES General Permit No. VAG84, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. W. W. Realty applied for registration under the Permit and was issued Registration No. VAG840149 on July 1, 2014.
12. "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.
13. "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.

14. “Registration statement” means a registration statement for coverage under a general permit.
15. “Regulation” means The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Nonmetallic Mineral Mining, 9VAC25-190-70, *et seq.*
16. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. “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.
18. “TRO” means the DEQ Tidewater Regional Office in Virginia Beach, Virginia.
19. “Va. Code” means the Code of Virginia (1950), as amended.
20. “VAC” means the Virginia Administrative Code.
21. “VPDES” means Virginia Pollutant Discharge Elimination System.
22. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
23. “W. W. Realty” means W. W. Realty Associates, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. W. W. Realty is a “person” within the meaning of Va. Code § 62.1-44.3.

SECTION C: Findings of Fact and Conclusions of Law

1. W. W. Realty owns and operates the Facility, a sand mining operation located in South Mills, North Carolina, which discharges stormwater associated with industrial activity.

2. The Permit allows W. W. Realty to discharge process wastewater and commingled stormwater from Outfall 001 of the Facility to an unnamed tributary that leads to the Northwest River, in strict compliance with the terms and conditions of the Permit.
3. The Northwest River is located in the Albemarle Sound Coastal River Basin watershed. The Northwest River is listed in DEQ's 305(b) report as impaired for aquatic life use. The cause of impairment is low dissolved oxygen.
4. Part III.C of the Permit requires that W. W. Realty submit its monitoring results on DMRs no later than the 10th day of the month after monitoring takes place.
5. W. W. Realty has failed to submit its quarterly DMRs by the 10th day of the month after monitoring takes place for the July to September and October to December 2016 reporting periods, and for the January to March and April to June 2017 reporting periods.
6. W. W. Realty is subject to a State Water Control Board Order by Consent, which W. W. Realty entered into on May 7, 2015. The 2015 Order addresses violations for the failure to submit DMRs for the first and second quarter of 2013 and for the first, second, and third quarters of 2014, and requires that W. W. Realty comply, in the future, with all Permit conditions.
7. DEQ issued to W. W. Realty WL Nos. W2016-11-T-1005, W2017-02-T-1051, and W2017-05-T-1004 on November 18, 2016, February 6, 2017, and May 1, 2017, respectively, for the abovementioned DMR violations.
8. On September 12, 2017, DEQ issued to W. W. Realty Notice of Violation ("NOV") No. W2017-09-T-0003 for failure to submit its quarterly DMRs and failure to comply with the requirements of the 2015 Order.
9. Va. Code § 62.1-44.31 states that it shall be unlawful for any owner to fail to comply with any special order adopted by the Board.
10. 9VAC25-190-70.III.L states that the Permittee shall comply with all conditions of the Permit.
11. Based on DEQ's records, the Board concludes that W. W. Realty has violated Va. Code § 62.1-44.31, 9VAC25-190-70.III.L, Part III.C of the Permit, and the 2015 Order, as noted in paragraph C(5) of this Order.
12. On September 6, 2017, DEQ met with representatives of W. W. Realty. During the meeting, a W. W. Realty representative maintained that the mine had been inactive with no discharges for about a year; however, DEQ did not receive notification of inactivity or a request for temporary waiver of Permit requirements. On October 17, 2017, DEQ met with representatives of W. W. Realty and W. W. Realty provided documentation that the mine was inactive and its contractor ceased pumping and discharging in 2015.

13. In order for W. W. Realty to complete its return to compliance, DEQ staff and W. W. Realty 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 Va. Code §§ 62.1-44.15, the Board orders W. W. Realty, and W. W. Realty agrees to pay a civil charge of \$5,000.00 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

W. W. Realty shall include its Federal Employer Identification Number (FEIN) 231 40 0602 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, W. W. Realty shall be liable for attorneys' fees of 30% of the amount outstanding.

Both the Board and W. W. Realty understand and agree that this Order supersedes and terminates the Consent Order issued by the Board to W. W. Realty on May 7, 2015.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of W. W. Realty for good cause shown by W. W. Realty, 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 in NOV No. W2017-09-T-0003 dated September 12, 2017. 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, W. W. Realty admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. W. W. Realty 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. W. W. Realty 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 W. W. Realty 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. W. W. Realty 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. W. W. Realty shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. W. W. Realty 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.

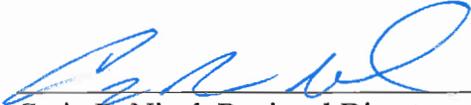
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement 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 W. W. Realty. Nevertheless, W. W. Realty 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 W. W. Realty has completed all of the requirements of the Order;
 - b. W. W. Realty 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 W. W. Realty.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve W. W. Realty 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 W. W. Realty 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 W. W. Realty 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 W. W. Realty to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of W. W. Realty.
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, W. W. Realty voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3RD day of JANUARY, 2018.



Craig R. Nicol, Regional Director
Department of Environmental Quality

W. W. Realty Associates, LLC voluntarily agrees to the issuance of this Order.

Date: NOV 9 / 2017 By: FRANK WILLIAMS
Frank T Williams

(Person) (Title)
W. W. Realty Associates, LLC

Commonwealth of Virginia
City/County of VIRGINIA BEACH

The foregoing document was signed and acknowledged before me this 9TH day of NOVEMBER, 2017, by FRANK T. WILLIAMS who is MEMBER of W. W. Realty Associates, LLC, on behalf of the limited liability company.

JAMES D. SCHMIDT

Notary Public

257769

Registration No.

My commission expires: 10/31/21

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

W. W. Realty shall:

1. By January 10, 2018, April 10, 2018, July 10, 2018, and October 10, 2018 submit to DEQ TRO monthly DMRs that include sampling results for the parameters listed in Part III.C for the preceding month.
2. Comply with all conditions of the Permit.
3. Mail all submittals and reports required by this Appendix A to:

Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462