



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
RL PROP 2011-1 INVESTMENTS, LLC
FOR
WINDMILL POINT RESORT AND YACHT HARBOR
WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0060569**

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 RL PROP 2011-1 Investments, LLC, regarding the Windmill Point Resort and Yacht Harbor Wastewater Treatment Plant, 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" or "Plant" means the Windmill Point Resort and Yacht Harbor Wastewater Treatment Plant located at 56 Windjammer Lane, White Stone Virginia, owned by RL PROP 2011-1 Investments, LLC which treats and discharges treated sewage from individual homes and a restaurant.
10. "Windmill Point" means RL PROP 2011-1 Investments, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Windmill Point 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 Permit No. VA0060569, which was issued under the State Water Control Law and the Regulation to Windmill Point on July 1, 2012, and which expires on June 30, 2017.
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. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
18. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "SAV" means submerged aquatic vegetation.
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
21. "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.
22. "TMDL" means total maximum daily load.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means the Virginia Administrative Code.
25. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Windmill Point owns and operates the Facility in White Stone, Virginia. The Permit allows Windmill Point to discharge treated sewage and other municipal wastes from the

Plant, to an unnamed tributary of the Rappahannock River, in strict compliance with the terms and conditions of the Permit.

2. The unnamed tributary of the Rappahannock River is located in the Rappahannock River Basin. The unnamed tributary of the Rappahannock River is listed in DEQ's 305(b) report as impaired for the Aquatic Life Use due to low dissolved oxygen in the Rappahannock estuary. The recreation, fish consumption, and wildlife uses were not assessed.
3. The discharge was included in the Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010. The TMDL addresses dissolved oxygen and SAV impairments in the Chesapeake Bay and its tidal tributaries by allocating total nitrogen, total phosphorus, and total suspended solids to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. The unnamed tributary is considered a Tier 1 water.
4. During a Department file review of Windmill Point, Department staff noticed that the DMRs for July, August, September, October, and November 2012 had not been received by the Department as required by Permit Part II.C. In addition DEQ staff noted that the owner does not have financial assurance in place as required by 9VAC 25-650-30 and 9 VAC 25-650-70.B.
5. On December 11, 2012, the Piedmont Regional Office issued Notice of Violation No. W2012-12-P-002 for the failure to submit DMRs and obtain financial assurance for the Facility.
6. Windmill Point responded to the Notice of Violation by requesting a meeting with the Department. On February 20, 2013, the Department met with representatives of Windmill Point. Windmill Point stated that this is its first investment property with a sewer treatment plant and expressed a willingness to comply with DEQ regulations. Windmill Point's consultant stated that the Facility in its current condition cannot meet the parameters of the newly issued Permit. The consultant made recommendations to ensure compliance with Permit effluent violations which are contained in Appendix A.
7. On March 1, 2013, Windmill Point submitted DMRs for the July 2012 through November 2012 monitoring periods that indicate the Facility failed to meet the fecal coliform bacteria Permit effluent limitation in July 2012 and the total contact and instantaneous tech minimum chlorine Permit effluent limitations in July, October, and November of 2012. Windmill Point reported that there was no discharge in August or September 2012.
8. 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."

9. 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. The Regulation, at 9 VAC 25-650-30.B. states that owners or operators of privately owned sewerage systems must demonstrate annually financial assurance in accordance with the requirements of this chapter and 9 VAC 25-650-70.B. requires a new owner or operator to demonstrate compliance with this chapter within six months of the date of the change of ownership or operational control of the facility.
10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
11. The Department has issued no permits or certificates to Windmill Point other than VPDES Permit No. VA0060569.
12. The unnamed tributary of the Rappahannock River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
13. Based on the results of Department file review and the February 20, 2013, meeting, and the documentation submitted on March 1, 2013, the Board concludes that Windmill Point has violated the Permit, Va. Code 62.1-44.5, 9 VAC 25-31-50, and 9 VAC 25-650-30.B by discharging treated sewage from the Plant while concurrently failing to comply with the conditions of the Permit, and without obtaining the required financial assurance, as described above.
14. In order for Windmill Point to return to compliance, DEQ staff and representatives of Windmill Point 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 Windmill Point, and Windmill Point agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$5,600 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

Windmill Point 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Windmill Point 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 Windmill Point for good cause shown by Windmill Point, 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, Windmill Point admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Windmill Point 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. Windmill Point 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 Windmill Point 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. Windmill Point 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. Windmill Point shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Windmill Point 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.

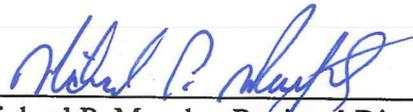
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement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

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Windmill Point 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 Windmill Point 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 Windmill Point certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Windmill Point to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Windmill Point.
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, Windmill Point voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3RD day of OCTOBER, 2013.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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RL PROP 2011-1 Investments, LLC voluntarily agrees to the issuance of this Order.

Date: 8/11/13 By: [Signature], Manager
(Person) (Title)
RL PROP 2011-1 Investments, LLC

State of Georgia
~~Commonwealth of Virginia~~
City (County) of Cobb

The foregoing document was signed and acknowledged before me this 1st day of August, 2013, by Peter Anzo who is Manager of RL PROP 2011-1 Investments, LLC, on behalf of the LLC.

[Signature]
Notary Public

Registration No. _____

My commission expires: 9/3/2014

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Financial Assurance

Windmill Point shall, as soon as possible, but in no event later than October 1, 2013, submit to the Department documentation proving that the Facility has a financial assurance mechanism in place in accordance with 9VAC 25-650-10 *et. seq.*

2. DMR Reporting

Windmill Point shall, no later than August 10, 2013, submit DMRs for the December 2012 through July 2013 monitoring periods and comply with the reporting requirements of the Permit Part II.C.

3. Facility Repairs/Improvements

On or before October 1, 2013, Windmill Point shall make the following repairs and adjustments to the Facility:

- a. Raise and redirect the effluent discharge pipe by as previously approved by DEQ.
- b. Install any equipment necessary to meet the Permit minimum dissolved oxygen level of 5.0 mg/L.
- c. Clean sludge and organic material from the chlorine contact tanks.
- d. Replace or repair breaks in the Facility's air delivery lines and replace all bad diffusers in Cell #1 of the Facility.

In conducting the above Facility modifications, Windmill Point shall, in accordance with the DEQ Sewage Collection and Treatment Regulation (9VAC25-790), obtain a Certificate to Construct (CTC), and a Certificate to Operate (CTO) by submitting applications, stamped by the design engineer, to the Department, for review and approval, prior to constructing wastewater treatment work modifications and operating the treatment work modifications, respectively.

Should the Windmill Point Facility fail to consistently meet all Permit effluent limits after conducting the above improvements, Windmill Point shall submit to DEQ, within thirty days of its request, for review and approval, a plan and schedule of corrective action to implement further modifications to the Facility.

4. DEQ Contact

Consent Order
RL PROP 2011-1 Investments LLC
VPDES Permit No. VA0060569
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Unless otherwise specified in this Order, Windmill Point shall submit all requirements of Appendix A of this Order to:

Frank Lupini
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949A Cox Road,
Glen Allen, Virginia 23060
Frank.Lupini@deq.virginia.gov