



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 Fax (540) 574-7878

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT ISSUED TO

Stanley Koogler

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d) between the State Water Control Board and Stanley Koogler for the purpose of resolving certain violations of environmental laws and 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 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.
5. "Order" means this document, also known as a Consent Special Order.
6. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
7. "NOV" means Notice of Violation.
8. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.

9. "Koogler Dairy Farm" means the dairy farm (approximately 75 cows) located at 2494 West Mosby Road, Dayton, Virginia, and owned by Mr. Stanley Koogler. The Koogler Dairy Farm is too small for coverage under the VPA General Permit for Confined Animal Feeding Operations.

SECTION C: Findings of Fact and Conclusions of Law

1. On Saturday, September 23, 2006, DEQ staff received a pollution complaint that liquid manure was spewing onto the ground and on several of the buildings at the Koogler Dairy Farm. According to the complainant, manure was leaking from an irrigation pipe in the course of pumping the manure upgradient from the manure storage tank to a mobile applicator tank.
2. On September 23, 2006, DEQ staff conducted a site investigation and observed that an earthen berm had been constructed adjacent to the manure storage tank, presumably to prevent the flow of manure from entering the unnamed tributary flowing through the Koogler Dairy Farm. During the investigation, a single channel of manure was observed flowing from the area where manure had apparently sprayed out of a broken section of the irrigation pipe. Based on DEQ staff observations, it did not appear that manure had reached the creek.
3. On the morning of Monday, September 25, 2006, DEQ staff conducted a follow-up site inspection and observed that manure was flowing down a second channel from the spill area and that it appeared to have reached the stream. Later that morning, DEQ staff met with Mr. Koogler on site to discuss the events of the preceding weekend that led to the apparent discharge. During that discussion, Mr. Koogler explained that while there had been several incidents on Saturday the 23rd where manure was spraying from the pipe, he was not aware of any manure reaching the stream. During DEQ's investigation of September 25, 2006, it appeared to DEQ staff that manure had entered the stream. Furthermore, DEQ staff observed pools of manure located within 20-30 feet of the stream that could be flushed into the stream in the event of a heavy rain. DEQ staff estimated that approximately 100-150 gallons of manure may have been discharged into the stream. Staff requested that Mr. Koogler install an additional earthen berm at the end of this second flow channel to prevent the remaining manure from entering the stream.
4. On September 26, 2006, DEQ staff returned to the Koogler Dairy Farm to conduct in-stream water quality monitoring for dissolved oxygen ("D.O.") and *E. coli* to determine if the manure spill caused any problems related to water quality standards. On this date, staff observed that Mr. Koogler had removed some of the liquid manure nearest the stream and had constructed the additional earthen berm as requested. Water samples were collected by DEQ staff from the unnamed tributary, both upstream and downstream of the manure discharge point on the Koogler Dairy Farm. Samples were also taken from Cook's Creek, both upstream and downstream of its confluence with the unnamed tributary. Field analyses of water samples demonstrated that at all sampling locations, the water quality standard for D.O. had been met. Water samples

collected for laboratory analysis for *E. coli* showed results that were greater than the laboratory's detection limit both upstream and downstream of the manure spill discharge point. Staff observed that the cattle accessing the stream in the area of the spill may themselves be a significant source of bacteria in this reach of the stream. The *E. coli* levels in Cook's Creek were higher downstream of its confluence with the unnamed tributary than upstream of the confluence; however, due to high *E. coli* background levels, it was impossible to determine whether the source of the bacteria was the manure spilled or that which is directly deposited by cattle in or near the stream.

5. On September 27, 2006, DEQ issued NOV-06-09-VRO-001 to Stanley Koogler for waste discharges or other quality alterations of state waters without a permit in apparent a violation of Section 62.1-44.5.A.1 of the Virginia Code and for failure to report the discharge in apparent violation of Virginia Code Section 62.1-44.5.B.

SECTION D: Agreement and Order

Accordingly the State Water Control Board, by virtue of the authority granted it pursuant to Va. Code §62.1-44.15(8a) and (8d), orders Stanley Koogler, and Stanley Koogler agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Stanley Koogler, and Stanley Koogler voluntarily agrees to pay a civil charge of **\$2,340.00** in settlement of the violations cited in this Order.

1. **\$234.00** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "**Treasurer of the Commonwealth of Virginia**" and sent to:

**Receipts Control
Department of Environmental Quality
P. O. Box 1104
Richmond, Virginia 23240**

Stanley Koogler shall include his Federal Identification or Social Security Number with the civil charge payment and shall note on the check that the payment is being made pursuant to this Order.

2. **\$2,106.00** of this civil charge shall be satisfied upon completion by Stanley Koogler of a Supplemental Environmental Project ("SEP") pursuant to Va. Code § 10.1-1186.2 and as described in Appendix A of this Order.
3. By signing this Order, Stanley Koogler certifies that he has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.
4. In the event that the SEP is not performed as described in Appendix A, upon notification by the Department, Stanley Koogler shall pay the amount specified in Paragraph 2 above within 30 days of such notification according to the procedures

specified in Paragraph 1 above, unless an alternate project has been agreed upon by the parties.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Stanley Koogler, for good cause shown by Stanley Koogler, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein in Section C. 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 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, Stanley Koogler admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Stanley Koogler 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. Stanley Koogler declares he 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 Stanley Koogler 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. Stanley Koogler 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 occurrence. Stanley Koogler shall show that such circumstances were beyond his control and not due to a lack of good faith or

diligence on his part. Stanley Koogler 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 48 hours of learning of any condition above, which Stanley Koogler 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 Stanley Koogler. Notwithstanding the foregoing, Stanley Koogler 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. Stanley Koogler petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or,
 - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Stanley Koogler.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Stanley Koogler from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

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

And it is so ORDERED this day of 20 June, 2007.

Amy Thatcher Owens
Amy Thatcher Owens, Regional Director
Department of Environmental Quality

Stanley Koogler agrees to the issuance of this Order.

By: Stanley Koogler
Stanley Koogler

Date: April 24 - 07

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 24th day of April, 2007, by Stanley Koogler.
(name)

Laure A. Podus
Notary Public

My commission expires: July 31, 2010.

APPENDIX A
SUPPLEMENTAL ENVIRONMENTAL PROJECT
STANLEY KOOGLER
KOOGLER DAIRY FARM

The Supplemental Environmental Project to be performed by Stanley Koogler is the construction of drainage system improvements at the Koogler Dairy Farm for the purpose of preventing non-point source sheet flow stormwater from flowing onto the dairy farm sacrifice lot. As the sacrifice lot is presently configured, this stormwater drainage sheet flows onto the sacrifice lot, commingles on the lot with dairy cattle manure and subsequently sheet flows into the adjacent unnamed tributary of Cooks Creek. The drainage improvements would capture the stormwater before it flows onto the sacrifice lot and convey (pipe) it beneath the sacrifice lot directly into the unnamed tributary.

1. The drainage system improvements project for the Koogler Dairy Farm sacrifice lot to be constructed under the SEP consists of the following items:
 - a. 180 lineal feet of 12 inch diameter ADS drainage pipe;
 - b. 110 lineal feet of 6 inch diameter ADS drainage pipe;
 - c. 1.5 cubic yards of concrete;
 - d. 1 backhoe for installation; and,
 - e. 50 hours of labor for completing all construction items.
2. The cost of the SEP to Stanley Koogler shall not be less than **\$2,106.00**. In the event that the final cost of the SEP is less than this amount, Stanley Koogler shall pay the remainder of the amount to the Commonwealth of Virginia, unless otherwise agreed to by the Department.
3. Stanley Koogler acknowledges that he is solely responsible for completion of the SEP project. Any delegation of funds, tasks, or otherwise by Stanley Koogler to a third party, shall not relieve Stanley Koogler of his responsibility to complete the SEP as contained in this Order.
4. The SEP shall be completed **by July 1, 2007**.
5. Stanley Koogler shall submit verification to the Department in the form of a Final SEP Report within 30 days of the project completion date. The Final SEP Report shall identify the final overall cost of the SEP and shall include invoices or other documentation of project costs.
6. In the event that Stanley Koogler publicizes the SEP or the results of the SEP, Stanley Koogler shall state in a prominent manner the project is part of a settlement for an enforcement action.
7. The Department has the sole discretion to determine whether the SEP has been completed in a satisfactory manner.