COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MENA FARM, LLC

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 Mena Farm, LLC, regarding an unauthorized discharge event at Mena Farm, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

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. "*E. coli*" means Escherichia coli.

8. "Facility" means the Mena Farm facility, a sheep and goat slaughtering operation, located at 3451 Logmill Road in Haymarket, Virginia.

9. "Mena Farm" means Mena Farm, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners and subsidiaries. Mena Farm is a "person" within the meaning of Va. Code § 62.1-44.3.

10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

12. "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.

13. "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.

14. "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.

15. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *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. "Va. Code" means the Code of Virginia (1950), as amended.

19. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Mena Farm operates a commercial animal slaughtering facility in Haymarket, Virginia. An unnamed tributary of Chestnut Lick is located to the rear of the property.

2. While DEQ does not have any water quality information for the unnamed tributary or Chestnut Lick, it does have water quality information for Bull Run, which Chestnut Lick flows into. Bull Run is listed in the draft 2012 Integrated Water Quality Report as not supporting the recreation use, due to exceedances of the *E. coli* bacteria criterion. The aquatic life and wildlife uses are listed as fully supporting.

3. On December 29, 2012, the Virginia Department of Health (VDH) was contacted and responded to a compliant of a discharge of slaughter waste water from the Mena Farm property. VDH personnel arrived on scene and investigated the unnamed tributary of Chestnut Lick located to the rear of the Mena Farm property. Red colored water and several areas of foam were observed in the unnamed tributary along the Mena Farm property, consistent with animal slaughter waste materials.

4. Mena Farm is the only commercial/industrial source of wastewater in the unnamed tributary of Chestnut Lick that would produce materials as described.

5. VDH provided the aforementioned information and relevant photographs of the site to DEQ.

6. The Department has issued no permits or certificates to authorize the discharge of commercial/industrial wastewater from Mena Farm.

7. NRO issued Notice of Violation No. W2013-01-N-001 on January 30, 2013, to Mena Farm for the unauthorized discharge event.

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 unnamed tributary to Chestnut Lick is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

10. Based on documentation provided to DEQ by VDH regarding the unauthorized discharge, the Board concludes that Mena Farm has violated Va. Code § 62.1-44.5 by the unauthorized discharge of animal slaughter waste materials to state waters as described in C(2) through C(3) above.

11. DEQ met with representatives from Mena Farm on March 5, 2013, to discuss the aforementioned unauthorized discharge, and the steps Mena Farm will take to prevent future unauthorized discharges.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Mena Farm, LLC, and Mena Farm, LLC agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Mena Farm, LLC for good cause shown by Mena Farm, LLC, 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, Mena Farm, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Mena Farm, LLC 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. Mena Farm, LLC 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 Mena Farm, LLC 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. Mena Farm, LLC 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. Mena Farm, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mena Farm, LLC 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 Mena Farm, LLC. Nevertheless, Mena Farm, LLC 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 Mena Farm, LLC has completed all of the requirements of the Order;

    b. Mena Farm, LLC 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 Mena Farm, LLC.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mena Farm, LLC 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 Mena Farm, LLC, 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 Mena Farm, LLC 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 Mena Farm, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Mena Farm, LLC.

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, Mena Farm, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of December, 2013.

Thomas A. Faha

Thomas A. Faha Regional Director
Department of Environmental Quality

----------(Remainder of Page Intentionally Blank)----------

Mena Farm, LLC voluntarily agrees to the issuance of this Order.

Date: 10/18/13 By: Ekube ARAYA, MANAGER
(Person) (Title)
Mena Farm, LLC

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 18 day of October, 2013, by Ekube Araya who is owner of Mena Farm, LLC on behalf of Mena Farm, LLC.

Notary Public

MARLON RAMIRO LOPEZ
Notary Public
Commonwealth of Virginia
7341194
My Commission Expires Aug 31, 2014

7341194
Registration No.

My commission expires: 08-31-2014

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

Mena Farm, LLC shall:

1. Submit disposal documentation for the animal waste slaughter operation to DEQ for the life of the Order within 15 days of disposal. The disposal documentation shall include receipts, manifests, or other records, including any VDH pump and haul permits, documenting both the liquid and solid wastes are managed by properly licensed hauling operators.