COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MCGILL ENVIRONMENTAL SYSTEMS OF N.C., INC.
Unpermitted Discharge

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 McGill Environmental Systems of N.C., Inc., regarding the McGill Environmental Systems of N.C., Inc., Waverly Virginia Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable 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. "CSCE" means comprehensive site compliance evaluation.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.

7. "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.

8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

9. "EPA" means Environmental Protection Agency.

10. "Facility" means the McGill Environmental Systems of N.C., Inc., Waverly Virginia Facility located at 5056 Beef Steak Road, Waverly, Virginia, from which discharges of industrial wastewater and stormwater associated with industrial activity occur.

11. "McGill" means McGill Environmental Systems of N.C., Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. McGill is a "person" within the meaning of Va. Code § 62.1-44.3.

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

13. "O&M" means operations and maintenance.

14. "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.

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. "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. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.

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.

26. "VPDES Permit" means a Virginia Pollutant Discharge Elimination System ("VPDES") General or Individual Permit which is issued under the State Water Control Law and the Regulation.

27. "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. McGill owns and operates the Facility in Waverly, Virginia. The Facility manufactures, stores and distributes compost for profit. The Facility discharges stormwater associated with industrial activity to an unnamed tributary of the Black Swamp.

2. An unnamed tributary to Black Swamp, is the receiving body and located in the Chowan and Dismal Swamp River Basin. During the 2010 305(b)/303(d) Integrated Water Quality Assessment, the receiving stream was not assessed for any designated use. The stream is within the study area for the Assamoosick Creek Bacterial TMDL, which was approved by the EPA on June 3, 2010 and by the State Water Control Board on September 30, 2010. However, the Facility was not specifically addressed in the report. The tributary is considered a Tier 1 water. The watershed is classified as a Class VII swampwater.

3. McGill submitted a registration statement for coverage under the General VPDES Permit for Discharges of Storm Water Associated with Industrial Activity on August 15, 2011, but does not currently have permit coverage or a permit to discharge.

4. On August 8, 2012, DEQ staff investigated a complaint of black colored water in the tributary to Black Swamp that borders the Facility. DEQ staff took water samples in Black Swamp downstream of the Facility, which showed elevated levels of Total Nitrogen ("N"), Total Kjeldahl Nitrogen ("TKN"), Total Phosphorus ("P"), ortho-Phosphorus ("Ortho-P") and five day biochemical oxygen demand ("BOD_5").

5. On October 16, 2012, DEQ staff returned to Black Swamp and sampled three locations which included a location below the Facility. The October 16, 2012, samples showed a large contribution of N, P, total suspended solids ("TSS"), ammonia and BOD_5 being discharged from the Facility's stormwater outfall 003 located in stormwater pond 003 to state waters. Specifically, ammonia was reported as 475 mg/L at a pH of 7.28 at outfall 003. DEQ staff also observed a significant area of dead vegetation in Black Swamp, extending from outfall 003.

6. On December 12, 2012, DEQ staff took water samples at six locations located on the Facility. The December 12, 2012, samples showed elevated levels of N, TKN, P, ortho-P, TSS, ammonia and BOD_5 being discharged from the Facility's stormwater pond 003 through outfall 003 to state waters. Specifically, ammonia was reported as 1250 mg/L at a pH of 7.40 at outfall 003.

7. By December 20, 2012, McGill had temporarily isolated, using a clay berm, the biofilter at the Facility, which was determined to be the source of the elevated discharges into Black Swamp. All water collected from the bermed area was contained within the Facility. By January 26, 2013, the biofilter and the air distribution piping under the biofilter media had been removed.

8. McGill did not report any discharges from outfall 003 to DEQ.

9. On February 20, 2013, DEQ issued NOV No. 2013-01-PRO-301 for the violations described above citing, Va. Code § 62.1-44.5 (A), Va. Code § 62.1-44.5 (B), 9 VAC 25-31-50 (A), 9 VAC 25-31-50 (B) and 9 VAC 25-260-155 (A).

10. On February 20, 2013, DEQ staff met with representatives from McGill to discuss the cause of the violations.

11. By February 28, 2013, all biofilter media was being processed through the Facility.

12. By March 25, 2013, the piping to stormwater pond 003 was permanently closed.

13. On March 28, 2013, DEQ staff met with representatives from McGill to discuss corrective actions taken since the NOV was issued.

14. By July 28, 2013, stormwater pond 003 and outfall 003 were eliminated.

15. Va. Code § 62.1-44.5 (A) states that: "[e]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances . . .."

16. 9 VAC 25-31-50 (A) provides that "[e]xcept in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances . . .."

17. Va. Code § 62.1-44.5 (B) states that: "[a]ny person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours . . . the Director of the Department of Environmental Quality . . .." Written notice to the Director of the Department of Environmental Quality shall follow initial notice . . .."

18. 9 VAC 25-31-50 (B) states that "[a]ny person in violation of 9 VAC 25-31-50 (A), who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section shall notify the department of the discharge, immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge . . .."

19. 9 VAC 25-260-155 (A) states that "[t]he one-hour average concentration of total ammonia nitrogen (in mg N/L) in freshwater shall not exceed, more than once every three years on the average, the acute criteria below:

pH	Trout Present	Trout Absent
7.2	19.7	29.5
7.3	17.5	26.2
7.4	15.4	23.0

20. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

21. DEQ has not issued any VPDES permits or certificates to McGill which authorize the discharge of stormwater associated with industrial activity.

22. The unnamed tributary of Black Swamp, is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

23. Based on the results of the above inspections, the February 20, 2013, and March 28, 2013, meetings and the documentation submitted, the Board concludes that McGill has violated Va. Code § 62.1-44.5 (A), Va. Code § 62.1-44.5 (B), 9 VAC 25-31-50 (A), 9 VAC 25-31-50 (B) and 9 VAC 25-260-155 (A) as described in paragraphs C(1) through C(10), above.

24. In order for McGill to completely return to compliance, DEQ staff and representatives of McGill 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 McGill and McGill agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $49,140.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
July 1, 2014	$6,142.50 or balance
October 1, 2014	$6,142.50 or balance
January 1, 2015	$6,142.50 or balance
April 1, 2015	$6,142.50 or balance
July 1, 2015	$6,142.50 or balance
October 1, 2015	$6,142.50 or balance
January 1, 2016	$6,142.50 or balance
April 1, 2016	$6,142.50 or balance

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by McGill. Within 15 days of receipt of such letter, McGill shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

4. 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

5. McGill 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, McGill 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 McGill for good cause shown by McGill, or on their 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, McGill admits to the jurisdictional allegations, findings of fact and conclusions of law contained herein.

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

    b. McGill 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 McGill.

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

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, McGill voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2014.

Michael P. Murphy, Regional Director
Department of Environmental Quality

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McGill Environmental Systems of N.C., Inc. voluntarily agrees to the issuance of this Order.

Date: 4.18.14 By: M. Noel Lyons, President
(Person) (Title)
McGill Environmental Systems of N.C., Inc.

~~Commonwealth of Virginia~~ North Carolina

City/County of Wake

The foregoing document was signed and acknowledged before me this 18th day of

April, 2014, by Michael Noel Lyons, who is

President of McGill Environmental Systems of N.C., Inc, on behalf of the corporation.

Rhonda L Henderson
Notary Public

Rhonda L. Henderson
~~Registration No.~~

My commission expires: 5-11-15

Notary seal:

RHONDA L. HENDERSON
Notary Public
Wake County
NORTH CAROLINA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Unpermitted Discharge**

   a. Within 60 days of the effective date of this Order, McGill shall submit to DEQ for review and approval a sampling plan for the large stormwater pond (Pond 001) at the southwest corner of the Facility. The sampling plan shall include water sampling for the following constituents:

      1) BOD_5
      2) TSS
      3) Total Nitrogen (calculated from TKN + NO_3 +NO_2)
      4) Ammonia
      5) TKN
      6) Nitrate
      7) Nitrite
      8) Total Phosphorus

   The sampling plan shall be detailed and contain sampling location and protocols and a schedule for completion. Once approved the sampling plan shall be implemented and completed and the results submitted to DEQ no later than three months from the date the sampling plan is approved by DEQ. The purpose of the sampling plan is to determine whether a corrective action plan ("CAP") is necessary to address contaminated stormwater flows and which permit(s) are necessary for the Facility.

   b. Within three months following the submittal of the results of the sampling plan, McGill shall submit a complete permit application to DEQ for all permits which DEQ determines to be necessary for the Facility.

   c. If DEQ, after review of the of the results of the sampling plan, determines it to be necessary under State Water Control Law and regulations and DEQ guidance, McGill shall submit to DEQ for review and approval a CAP for the Site within five months following the submittal of the results of the sampling plan, including, a schedule for completion of the CAP. Once approved the CAP shall be implemented and completed no later than eight months from the date the CAP is submitted to DEQ.

2. **DEQ Contact**

   Unless otherwise specified in this Order, McGill shall submit all requirements of Appendix A of this Order to:

Gina Pisoni
Enforcement Specialist
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5156
804-527-5106 (fax)
Gina.Pisoni@deq.virginia.gov