COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MOOTHRU, LLC
FOR
MOOTHRU WASTEWATER TREATMENT PLANT
VPDES Permit No. VAG40
Registration Number VAG406542

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 Moothru, LLC regarding the Moothru Wastewater Treatment Plant, 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. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

9. "Facility" or "Plant" means the Moothru wastewater treatment plant located at 11402 James Madison Highway, in Remington, Virginia, which treats and discharges treated sewage for the Moothru.

10. "Moothru" means Moothru, LLC a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Moothru 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. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

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 General No. VAG40, the General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day which was issued under the State Water Control Law and the Regulation on August 2, 2011 and which expires on August 1, 2016. Moothru applied for registration under the Permit and was issued Registration Number VAG406542 on January 16, 2013.

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… 9VAC 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. "Regulation" means the VPDES General Permit Regulation for Domestic Sewage discharges of Less Than or Equal to 1,000 Gallons Per Day, 9 VAC 25-110 *et seq.*

18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

19. "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.

20. "Va. Code" means the Code of Virginia (1950), as amended.

21. "VAC" means the Virginia Administrative Code.

22. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Moothru owns, and Dominion Septic, Inc. maintains, the Plant. The Permit allows Moothru to discharge treated sewage from the Plant to a Virginia Department of Transportation (VDOT) swale (swale) which is an unnamed tributary to Tinpot Run in strict compliance with the terms and conditions of the Permit.

2. The VDOT swale is located in the Rappahannock River Basin. Monitoring for Tinpot Run, approximately 3.5 miles from the Facility, downstream of the unnamed tributary confluence has occurred. In the 2012 Integrated Report, Tinpot Run is listed as not supporting the recreation use due to exceedances of *E.coli*.

3. Moo-thru, LLC staff are required to maintain all monitoring data required by Part I.A.1 of their permit on site. On January 9, 2014, DEQ requested sample results from Moothru, LLC. In February and March 2014, Dominion Septic, on behalf of Moothru, LLC, submitted sample results to DEQ as a result of the DEQ document request. These results noted violations of the effluent limits contained in Part I.A.1 of the Permit, i.e. violations of instantaneous maximum limit for Total Suspended Solids on September 5, 2013, November 17, 2013, and December 5, 2013, April 24, 2014, May 22, 2014, and June 25, 2014; violations of the instantaneous maximum limit for BOD_5 (Biological Oxygen Demand) on September 5, 2013, December 5, 2013, and May 22, 2014; violations of the instantaneous maximum limit for *E.coli* on December 5, 2013, April 24, 2014, April 30, 2014 and June 25, 2014; and violations of the instantaneous minimum limit for Dissolved Oxygen on September 5, 2013, September 30, 2014, November 7, 2013, December 5, 2013, January 7, 2014, February 5,2014, March 6, 2014, and April 24, 2014.

4. NRO issued Notice of Violation No. W2014-03-N-0015 on March 26, 2014, Notice of Violation No. W2014-07-N-0002 on July 18, 2014, and Notice of Violation No. W2014-08-N-0005 on August 12, 2014, for the aforementioned permit effluent violations.

5. Moothru responded to the violations by submitting a plan to modify the Plant to include a post aeration system.

6. Moothru's operating logs indicate that it discharged treated wastewater from the Plant every day from September 5, 2013 through June 30, 2014.

7. 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."

8. 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.

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

10. The Department has issued coverage under no permits or certificates to Moothru other than VPDES Permit No. VAG406542.

11. The swale which is an unnamed tributary to Tinpot Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

12. Based on the sample results submitted to DEQ in February, March, and June 2014 the Board concludes that Moothru has violated, Va. Code § 62.1-44.5, 9 VAC 25-31-50, and Part I.A.1 of the Permit, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(3) above.

13. In order for Moothru to return to compliance, DEQ staff and representatives of Moothru 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 Moothru and Moothru agrees to:

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

2. Pay a civil charge of $1,000.00 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

Moothru 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, Moothru 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 Moothru for good cause shown by Moothru, 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, Moothru admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Moothru consents to venue in the Circuit Court of Fauquier County for any civil action taken to enforce the terms of this Order.

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

    b. Moothru 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 Moothru.

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

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, Moothru voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2015.

_____
Thomas A. Faha Regional Director
Department of Environmental Quality

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Moothru, LLC voluntarily agrees to the issuance of this Order.

Date: 4/1/15 By: Kenneth Smith owner MooThru
(Person) (Title)
Moothru, LLC

Commonwealth of Virginia
City/County of Fauquier

The foregoing document was signed and acknowledged before me this 1st day of April, 2015, by Kenneth Smith who is Owner of Moothru, LLC on behalf of the limited liability company.

Notary Public

71671
Registration No.

SHERYL M. WOLFE
Notary Public
Commonwealth of Virginia
My Commission Expires April 30, 2016
Commission ID# 7167711

My commission expires: 4/30/16

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

Moothru, LLC shall:

1. Conduct increased sampling at the Facility at the frequency of once per month for Total Suspended Solids, BOD_5, *E.Coli*, and DO (Dissolved Oxygen), and submit these sampling results along with the associated chain of custody and certificates of analysis to DEQ by the 10th of each month following the month in which the samples are taken, for the remainder of the VPDES General Permit Registration No. VAG406542 permit term, or unless otherwise notified by DEQ in writing. Sampling shall begin on April 1, 2015.

1. **DEQ Contact**

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

   VA-DEQ- Northern Regional Office
   Attention: Enforcement
   13901 Crown Court
   Woodbridge, VA 22193