COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
NUTRI-BLEND, INC.
VDHBUR Permit No. 084

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 Nutri-Blend, Inc. 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. "Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application, marketing or distribution in accordance with the Regulation as defined in 9 VAC 25-32-310.

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. "BUR" means Biosolids Use Regulation. 12 VAC 5-585-10 *et seq.*

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 25-32-10.

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

8. "Nutri-Blend" means Nutri-Blend, Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Nutri-Blend is a "person" within the meaning of Va. Code § 62.1-44.3.

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

10. "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.

11. "Permit" means VDHBUR Permit No. 084, which was issued to Nutri-Blend on August 14, 2000, by the VDH, and administratively extended by the VDH on June 23, 2006. After the transfer of the biosolids program to DEQ on January 1, 2008, DEQ administratively continued VDHBUR permits until December 31, 2012.

12. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the Board determines that such injection or disposal will result in the degradation of ground or surface water resources. 9 VAC 25-32-10.

13. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters or soil as will, or is likely to, create a nuisance or render such waters or soil (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable despite reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural or for other reasonable uses. Such alteration is also deemed to be pollution, if there occurs: (a) an alteration of the physical, chemical or biological property of state waters or soil, or a discharge or a deposit of sewage, industrial wastes or other wastes to state waters or soil 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 or soil by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters or soil; or (c) the contravention of standards of air or water quality duly established by the State Water Control Board. 9 VAC 25-32-310

14. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

15. "Regulation" means the VPA Permit Regulation, 9 VAC 25-32-10 *et seq.* On January 1, 2008, regulatory oversight of all permits relating to land application of Biosolids was transferred from the VDH to DEQ. This transfer occurred at the direction of the 2007 General Assembly, which passed legislation that required all land application of biosolids in the Commonwealth of Virginia be permitted under a permit issued by DEQ. The enactment clauses of the legislation specified that VDHBUR permits would continue to be valid for the term specified in each permit unless amended or revoked by the Board. At the time of the program transfer the provisions of the BUR were incorporated in the Regulation.

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.

20. "VDH" means Virginia Department of Health.

21. "VPA" means Virginia Pollution Abatement.

22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

23. "WWTP" means waste water treatment plant.

SECTION C: Findings of Fact and Conclusions of Law

1. Nutri-Blend owns a biosolids management company which regularly transports and contracts for the transport of sewage sludge and biosolids from regional WWTPs to application sites.

2. On August 14, 2000, VDH issued BUR Permit No. 084 to Nutri-Blend. On January 1, 2008, DEQ administratively continued VDHBUR Permit No. 084 which will expire on December 31, 2012.

3. On June 3, 2011, a dump trailer contracted by Nutri-Blend transported and released Henrico County WWTP biosolids onto State Route ("SR") 711 in Powhatan County, Virginia.

4. On June 3, 2011, DEQ was notified, and conducted an investigation at the spill site. DEQ staff determined that the tailgate had failed on the dump trailer hauling the biosolids, which released the biosolids onto SR 711. DEQ staff observed that the biosolids had been released on the pavement of the westbound lane of SR-711 for approximately 400 feet. The failure of the tailgate and the resulting spill were inconsistent with Nutri-Blend's company objective that tailgates be leak-proof. This objective, found in Nutri-Blend's 2008 O&M manual and in its 2010 amended O&M manual, is applied on a day-to-day basis through company policy to hauling activities regulated under its BUR permits. DEQ staff were informed during the investigation that two drivers lost control of their vehicles and drove off the road due to the biosolids spill. The biosolids did not reach state waters.

5. On June 3, 2011, the biosolids spill was fully cleaned up from the road by Nutri-Blend.

6. DEQ did not receive a written report within five working days of the spill.

7. On July 11, 2011, DEQ issued NOV No. 2011-07-PRO-201 for the violations described in paragraphs C (3) – C (6), citing, 9 VAC 25-32-540(A) and 9 VAC 25-32-540 (E).

8. 9 VAC 25-32-540 (A) states that "Transport vehicles shall be sufficiently sealed to prevent leakage and spillage of sludge."

9. 9 VAC 25-32-540 (E) states that a written report, which shall include a description of measures taken in response to the spill, shall be submitted by the permit holder to the Department within five working days of the spill.

10. On July 15, 2011, Nutri-Blend submitted a written response to NOV No. 2011-07-PRO-201. In the response, Nutri-Blend confirmed a written report had not been submitted to DEQ, provided additional information about the spill, including the tailgate failure, and explained why a written report had not been sent to DEQ within five working days of the spill.

11. On August 2, 2011, DEQ staff met with representatives of Nutri-Blend to discuss the violations, including Nutri-Blend's written response. Nutri-Blend stated that it would adhere to its O&M manual.

12. Based on the results of DEQ staff's investigation of the spill, the August 2, 2011 meeting and the July 15, 2011 letter from Nutri-Blend, the Board concludes that Nutri-Blend has violated 9 VAC 25-32-540(A) and 9 VAC 25-32-540 (E), as described in paragraphs C(1) through C(11), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Nutri-Blend and Nutri-Blend agrees to:

1. Pay a civil charge of $10,260 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

Nutri-Blend 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Nutri-Blend for good cause shown by Nutri-Blend 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, Nutri-Blend admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

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

b. Nutri-Blend 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 Nutri-Blend.

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

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, Nutri-Blend voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2013.

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

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

Nutri-Blend, Inc. voluntarily agrees to the issuance of this Order.

Date: 10/30/2012 By: _____, Vice President
(Person) (Title)
Nutri-Blend, Inc.

Commonwealth of Virginia
~~City~~/County of Henrico

The foregoing document was signed and acknowledged before me this 30th day of October, 2012, by David Simons, who is Vice-President of Nutri-Blend, Inc., on behalf of the corporation.

William M. Burnett
Notary Public

7500019
Registration No.

My commission expires: June 30, 2015

Notary seal:

WILLIAM M. BURNETT
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7500019
My Commission Expires 6/30/15