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*Commonwealth of Virginia*

*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

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Director  
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Jeffrey Hurst  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
MXI ENVIRONMENTAL SERVICES, LLC**

**Registration No. 11447**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1309, and - 1316, between the State Air Pollution Control Board and MXI Environmental Services, LLC, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and - 1301.
2. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. “FCE” means full compliance evaluation by DEQ staff.
5. “Facility” means the MXI Environmental Services, LLC, located at 26319 Old Trail Road, Abingdon, Washington County, Virginia, which operates an ethanol

recovery facility.

6. “MXI Environmental Services, LLC” means MXI Environmental Services, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. MXI Environmental Services, LLC is a ‘person’ within the meaning of Va. Code § 10.1-1300.
7. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the Virginia Air Pollution Control Law.
9. “Permit” means a New Source Review Permit to operate an ethanol recovery facility which was issued under the Air Pollution Control Law and the Regulations to MXI Environmental Services, LLC effective January 10, 2017.
10. “Regulations” or “Regulations for the Control and Abatement of Air Pollution”, means 9 VAC 5 chapters 10 through 80.
11. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
12. “Va. Code” means the Code of Virginia (1950), as amended.
13. “VAC” means the Virginia Administrative Code.
14. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

### **SECTION C: Findings of Facts and Conclusions of Law**

1. MXI Environmental Services, LLC owns and operates the Facility in Washington County, Virginia. The Facility is an ethanol recovery facility.
2. On August 27, 2019, DEQ staff conducted a FCE of the Facility. During the FCE, DEQ staff reviewed compliance records and noted the Facility began processing ethanol feedstock containing methanol in October 2018 without submitting a written notification as required by the Permit. Additionally, records indicated tert-butyl alcohol was used as a denaturant at the Facility in September and October 2018 however, butanol is not listed as an approved denaturant in the Permit.
3. Condition No. 13 of the Permit states, “The permittee shall furnish written notification to the Director, Southwest Regional Office of the actual date on which processing of the new ethanol feedstock containing tetraethyl orthosilicate

and new ethanol feedstock containing methanol commenced within 30 days after such date.”

4. 9 VAC 5-50-50 states in part, “Any owner of a new or modified source subject to the provisions of this chapter shall provide written notification to the board of the following: 1. The date of commencement of construction, reconstruction or modification of a new or modified source postmarked no later than 30 days after such date....”
5. Condition No. 67 of the Permit states, “The approved denaturants for the ethanol recovery facility are gasoline, methanol and 2-ethoxyethanol. A change in the denaturants may require a permit to modify and operate.”
6. 9 VAC 5-60-300 F states. “No provisions of this article shall limit the power of the board to apply the provisions of this article to any affected facility in order to prevent or remedy a condition that may cause or contribute to the endangerment of human health.”
7. On September 10, 2019, based on the August 27, 2019 FCE, the Department issued a Notice of Violation No. ASWRO001302 to MXI Environmental Services, LLC for the alleged violation described in paragraph C(2) above.
8. On September 11, 2019, the Facility submitted a written notification of the date of November 1, 2018, on which processing of new ethanol feedstock containing methanol commenced.
9. On September 13, 2019, MXI Environmental Services, LLC submitted an application for request for a significant permit amendment to the Permit to include tert-butyl alcohol and isopropyl alcohol as approved denaturants.
10. On September 24, 2019, the Department received an electronic response to the NOV from representatives of the Facility.
11. On September 25, 2019, the Department met with representatives of the Facility regarding the September 10, 2019 NOV.
12. Based on the results of the August 27, 2019 FCE, the September 24, 2019 response and the September 25, 2019 meeting, the Board concludes that MXI Environmental Services, LLC has violated Conditions 13 and 67 of the Permit, 9 VAC 5-50-50, and 9 VAC 5-60-300 F. as described in paragraph C(2) through C(6).

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders MXI Environmental Services, LLC and MXI Environmental Services, LLC agrees to:

Pay a civil charge of \$3,263 within 30 days of the effective date of the Order in settlement of the violation cited in this Order.

Each payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

MXI Environmental Services, LLC 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, MXI Environmental Services, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of MXI Environmental Services, LLC for good cause shown by MXI Environmental Services, 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 only those violations specifically identified in Section C of this Order and NOV No.ASWRO001302 dated September 10, 2019. This Order shall not preclude the Board or 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, MXI Environmental Services, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. MXI Environmental Services, 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. MXI Environmental Services, LLC declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to 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 or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by MXI Environmental Services, 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. MXI Environmental Services, 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. MXI Environmental Services, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. MXI Environmental Services, LLC shall notify 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 this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of 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 listed above, which the parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of 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 MXI Environmental Services, LLC. Nevertheless, MXI Environmental Services, 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 MXI Environmental Services, LLC has completed all of the requirements of the Order.
  - b. MXI Environmental Services, 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 MXI Environmental Services, LLC.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve MXI Environmental Services, 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 MXI Environmental Services, 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 MXI Environmental Services, 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 MXI Environmental Services, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of MXI Environmental Services, 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, MXI Environmental Services, LLC voluntarily agrees to the issuance of this Order.

And it is ORDERED this 21<sup>st</sup> day of October, 2019



Jeffrey L. Hurst - Regional Director  
Department of Environmental Quality

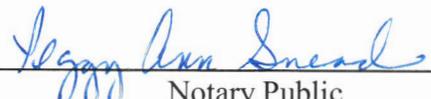
MXI Environmental Services, LLC voluntarily agrees to the issuance of this Order.

Date: 10/21/2019 By:   
Brian Potter, VP Operations  
MXI Environmental Services, LLC

State of Virginia

City/County of Washington

The foregoing document was signed and acknowledged before me this 21st day of  
October, 2019 by Brian Potter who is  
VP Operations of MXI Environmental Services, LLC, on behalf  
of the company.

  
Notary Public

186933  
Registration No.

My commission expires: 04/30/2023

Notary Seal:

**PEGGY ANN SNEAD  
NOTARY PUBLIC  
REGISTRATION NO. 186933  
COMMONWEALTH OF VIRGINIA  
My Commission Expires April 30, 2023**