



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Matthew J. Strickler David K. Paylor  
Secretary of Natural Resources Director  
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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Tri M. Nguyen  
FOR  
Anna Farm  
Unpermitted Ground Water Withdrawal**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-268, between the State Water Control Board and Tri M. Nguyen, regarding the Anna Farm, for the purpose of resolving certain violations of the Virginia Ground Water Management Act of 1992 (Va. Code § 62.1-254 *et seq.*) and its supporting regulations (9 VAC 25-610-10, *et seq.*).

**SECTION B: Definitions:**

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

1. "Act" means the Ground Water Management Act of 1992, Va. Code §§ 62.1-254, *et seq.*
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.
5. "Facility" means the Anna Farm, a chicken farm located at 24164 Mary N Smith Road; Accomack, Virginia.

6. "Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of the Commonwealth of Virginia, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs. 9 VAC 25-610-10.
7. "Ground Water Management Area" means any area declared by the Board to have met any of the conditions in 9 VAC 25-610-70 and the Board determines that the public welfare, safety and health require that regulatory efforts be initiated.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Order" means this document, also known as a "Consent Order" or an "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country. 9 VAC 25-610-10.
11. "Regulations" means the Ground Water Withdrawal Regulations, 9 VAC 25-610-10 et seq.
12. "Tri M. Nguyen" means is currently a resident of Houston Texas. Tri M. Nguyen is a "person" within the meaning of Va. Code § 62.1-44.3.
13. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.

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

1. Tri M. Nguyen, a person, owns and operates the Facility in Accomack County, Virginia. Accomack County is located in the Eastern Shore ground water management area as declared in 9 VAC 25-600-20.
2. On December 28, 2018 the Tri M. Nguyen applied for a permit for Anna Farm (Facility); Groundwater Withdrawal Identification # GW0079100. The Tri M. Nguyen has 10 wells as part of the distribution system, serving eight chicken houses with five flocks a year. Tri M. Nguyen applied for a groundwater withdrawal of approximately 2 million gallons a month and 7.5 million gallons a year. The application is still under review.
3. On August 7, 2019 and August 12, 2019 DEQ conducted a site inspection at the Facility. Daily Meter readings provided on Anna Farm Mortality Charts and Flow Meters Forms

(attached photos) indicated that withdrawals from the groundwater withdrawal system were 18,230,400 gallons in July and 12,105,100 gallons in August.

4. Va. Code § 62.1-258 and 9 VAC 25-610-40(A) of the Regulations prohibit the withdrawal of groundwater within a ground water management area without a permit.
5. On August 15, 2019, DEQ issued NOV #GW0079100 to Tri M. Nguyen for operating a groundwater withdrawal system in excess of 300,000 gallons a month without a permit.
6. On August 28, 2019, DEQ sent a Request of Information (RFI).
7. On August 29, 2019, Cornerstone Environmental Services, LLC responded to the RFI by stating that, “my conclusion is that the mortality chart sheets and meter totals were calculated together for each house”. This response raised additional questions because the consultant stated that there are 45,500 chickens per house with an average water use of 2,500 to 3,000 gallons per day used, for a total usage amount of 79,530 gallons per month. After additional inquires and questions regarding the validity of the data, their consultant informed DEQ that they were no longer representing this Tri M. Nguyen due to liability issues.
8. October 2, 2019, the Tri M. Nguyen’s new consultant, Somerset Well Drilling Co., Inc. responded to the RFI and provided the following information:
  - Two flocks were put in eight chicken houses, 46,600 chickens per house
    - Flock one was from April 25, 2019 through June 17, 2019 (53 days)
    - Flock two was from July 11, 2019 through September 2, 2019 (53 days)
  - There are currently no chickens in any houses and the facility is not operating
  - Groundwater withdrawals were as follows:

Month	Volume (Gallons)
April	64,612
May	618,002
June	461,485
July	508,298
August	1,198,256
September	42,847
	Total: 2,893,500

9. On December 23, 2019, DEQ discussed corrective actions measures and a penalty of \$258,300. The Tri M. Nguyen asked that DEQ assess his inability to pay the penalty as required in Va. Code 62.1-44.15(8b).
10. On February 4, 2020, DEQ determined that the Tri M. Nguyen had an inability to pay any of the penalty. As a result, DEQ is not pursuing a penalty in this action.
11. Based on the information of cited above, the Board concludes that Tri M. Nguyen has violated Va. Code § 62.1-258 and 9 VAC 25-610-40(A).

**SECTION D: Agreement and Order**

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

1. 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 Tri M. Nguyen for good cause shown by Tri M. Nguyen, 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, Tri M. Nguyen admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Tri M. Nguyen 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. Tri M. Nguyen declares it has received fair and due process under the Administrative Process Act and the Ground Water Management Act of 1992 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 Tri M. Nguyen 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. Tri M. Nguyen 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. Tri M. Nguyen shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tri M. Nguyen 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 Tri M. Nguyen. Nevertheless, Tri M. Nguyen 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 Tri M. Nguyen has completed all of the requirements of the Order;
  - b. Tri M. Nguyen 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 Tri M. Nguyen.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tri M. Nguyen 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 Tri M. Nguyen 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. Any documents to be submitted pursuant to this Order shall be submitted by Tri M. Nguyen or an authorized representative of Tri M. Nguyen.
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, Tri M. Nguyen voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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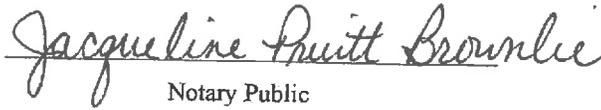
Jutta Schneider  
Water Planning Division Director  
Department of Environmental Quality

Tri M. Nguyen voluntarily agrees to the issuance of this Order to resolve the violation at Anna Farm.

Date: 2/6/2020 By:   
Tri M. Nguyen

Commonwealth of Virginia  
City/County of Accomack

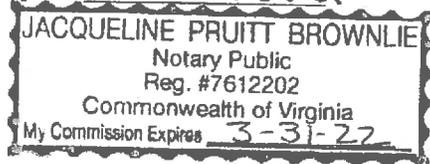
The foregoing document was signed and acknowledged before me this 6 day of February, 2020, by Tri M. Nguyen.

  
Notary Public

7612202  
Registration No.

My commission expires: 3-31-2022

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

1. Tri M. Nguyen shall comply with the Ground Water Management Act of 1992 (Va. Code §62.1-254 *et seq.*) and the Ground Water Withdrawal Regulations (9VAC25-610-10 *et seq.*), and cease the withdrawal of groundwater in excess of 300,000 gallons in any one month unless authorized via a permit.
2. Tri M. Nguyen shall monitor and report monthly groundwater withdrawals at the Anna Farm. The Department's Quarterly Groundwater Withdrawal Report shall be submitted by the 10<sup>th</sup> of every January, April, June, and October for the previous quarter. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for failing to report withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in groundwater withdrawal reports.
3. DEQ Contact

Unless otherwise specified in this Order, Tri M. Nguyen shall submit all requirements of Appendix A of this Order to:

Joseph Grist  
Water Withdrawal Permitting and Compliance Manager  
Department of Environmental Quality  
1111 East Main Street  
Richmond, Virginia  
(804) 698-4031  
Joseph.Grist@deq.virginia.gov