COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ALLEN L. SHANK
FOR
GOLDEN VIEW FARM
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 Allen L. Shank, regarding the Golden View Farm, 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. "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.

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

5. "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.

6. "Facility" means the Golden View Farm, located at 8423 Nazarene Church Road, Rockingham County, Virginia, an unpermitted confined animal feeding operation (CAFO) dairy farm which manages animal waste through the land application of manure.

7. "Mr. Shank" means Allen L. Shank, currently a resident of Rockingham County, Virginia. Mr. Shank is a "person" within the meaning of Va. Code § 62.1-44.3.

8. "NRCS" means Natural Resources Conservation Service, a Federal Service which works with landowners through conservation planning and assistance designed to benefit and promote productive lands and healthy ecosystems.

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

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

11. "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.

12. "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.

13. "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.

14. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

15. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

16. "SEP" means Supplemental Environmental Project.

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

18. "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.

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

20. "VAC" means the Virginia Administrative Code.

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

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Shank owns and operates the Facility. Mr. Shank does not have a permit allowing him to discharge to state waters from the Facility. Instead, he manages his liquid manure through a land-application program directed by a Nutrient Management Plan (NMP). Mr. Shank's farming operations are small enough that, at this time, the dairy farm operations do not require a CAFO permit.

2. On March 12, 2009, the DEQ received a complaint (IR #2009-V-0308) from the Virginia Department of Game and Inland Fisheries of a liquid dairy manure discharge into Spring Creek. DEQ staff investigated the complaint that same day and observed that an overflow of liquid dairy manure from a storage pit on the Facility had reached and drained into Spring Creek in violation of Va. Code § 62.1-44.5(A)(1). During the investigation, Mr. Shank confirmed for DEQ staff that the discharge happened on March 11, 2009 and that he did not report it to the DEQ in violation of Va. Code § 62.1-44.5(B).

3. Spring Creek is located in the Shenandoah River Basin. Spring Creek is not listed as impaired State waters. Spring Creek is also a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

4. Va. Code § 62.1-44.5(A)(1) states, "Except 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"

5. Va. Code § 62.1-44.5(B) states, "Any 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 Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act."

6. On March 27, 2009, VRO issued Notice of Violation number NOV-09-03-VRO-002 to Mr. Shank for the violations of the Code and Regulation noted in paragraphs C.2. through C.5. The NOV requested submittal of a response within 10 days.

7. On April 6, 2009, Mr. Shank responded to the Notice of Violation by submitting a plan and schedule of corrective actions designed to prevent future discharges from occurring.

8. On April 7, 2009, VRO staff met with Mr. Shank to discuss the violations, including possible corrective actions to prevent future similar violations from occurring. During this meeting, Mr. Shank agreed to contact NRCS to evaluate different possible corrective actions to prevent future discharges and increase manure storage capacity.

9. In letter dated April 16, 2009, NRCS proposed the following options for the Facility: 1) pump out the storage pit in the spring and fall (every 6 months); 2) remove guttering and downspouts from the 50' x 100' building on site; and 3) Install a solids/liquids separator and dry stack. According to NRCS, installation of the solids/liquids separator was the most desirable option.

10. On April 22, 2009, DEQ staff inspected the Facility to review the NRCS recommendation with Mr. Shank and verified that the violations as described in paragraphs C(2), above, had been corrected. During this inspection, DEQ staff noted that Mr. Shank had also fenced out all but the upper 100 feet of the intermittent stream that flows into Spring Creek and that he had restored vegetation on two previously denuded lots with steep slopes adjacent to the intermittent stream.

11. In a letter dated May 19, 2009, NRCS informed DEQ that they would not be offering financial assistance for the installation of a solids/liquids separator during FY2009.

12. On March 8, 2011, Mr. Shank contacted DEQ staff to inform them that NRCS had approved his application for cost share (funding) for installation of a solids/liquids separator.

13. On July 5, 2011, Mr. Shank discussed the proposed SEP with DEQ staff via telephone, and confirmed that he had received lending commitments from Farm Credit for financing his portion of the project. DEQ approved funding of this project, through Farm Credit, on July 18, 2011.

14. The Regulation, at 9 VAC 25-31-50, 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.

15. The Department has issued no permits or certificates to Mr. Shank.

16. Based on the results of the March 12, 2009 inspection, the April 7, 2009 meeting, and the documentation submitted, the Board concludes that Mr. Shank has violated Va. Code §§ 62.1-44.5(A)(1) and 62.1-44.5(B) and the Regulation, by discharging liquid dairy manure from the Facility into State waters, without a permit as described in paragraph C(2), above.

SECTION D: Agreement and Order

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

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

2. To pay a civil charge of $11,700.00 in settlement of the violations cited in this Order, to be paid as follows:

   a. Mr. Shank shall pay $2,925.00 of the civil charge within 30 days of the effective date of this Order. 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

      Mr. Shank 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).

   b. Mr. Shank shall satisfy $8,775.00 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.

   c. The net project costs of the SEP to Mr. Shank shall not be less than the amount set forth in Paragraph D.2.b. If it is, Mr. Shank shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or

other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

d. By signing this Order Mr. Shank certifies that it has not commenced performance of the SEP.

e. Mr. Shank acknowledges that he is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Mr. Shank to a third party, shall not relieve Mr. Shank of his responsibility to complete the SEP as described in this Order.

f. In the event Mr. Shank publicizes the SEP or the SEP results, he shall state in a prominent manner that the project is part of a settlement of an enforcement action.

g. The Department has the sole discretion to:

   i. Authorize any alternate, equivalent SEP proposed by Mr. Shank; and
   ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

Should the Department determine that Mr. Shank has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Mr. Shank in writing. Within 30 days of being notified, Mr. Shank shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Mr. Shank for good cause shown by Mr. Shank, 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, Mr. Shank admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Mr. Shank 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. Mr. Shank declares he has received fair and due process under the Administrative Process Act and the State Water Control Law and he 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 Mr. Shank 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. Mr. Shank 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 his control and not due to a lack of good faith or diligence on his part. Mr. Shank shall demonstrate that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Shank 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 Mr. Shank. Nevertheless, Mr. Shank 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 Mr. Shank has completed all of the requirements of the Order;

b. Mr. Shank petitions the Director or his designee to terminate the Order after he 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 Mr. Shank.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Shank from his 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 Mr. Shank 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 Mr. Shank or an authorized representative of Mr. Shank.

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 his signature below, Mr. Shank voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 9th day of April, 2012.

Amy Thatcher Owens, Regional Director
Department of Environmental Quality

Mr. Allen L. Shank voluntarily agrees to the issuance of this Order.

Date: Feb. 6 2012 By: Allen L. Shank

Allen L. Shank

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 6 day of February, 2012, by Allen L. Shank.

Diana L. Adams
Notary Public

329867
Registration No.

My commission expires: 1/31/2015

Notary seal:

DIANA L. ADAMS
NOTARY PUBLIC
REG. #329867
MY COMMISSION EXPIRES 1/31/2015
COMMONWEALTH OF VIRGINIA

APPENDIX A
ALLEN L. SHANK
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

In accordance with Va. Code § 10.1-1186.2, Mr. Shank shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed by Mr. Shank is the installation of a solids/liquids separator at the Facility that will remove the solids from the liquid manure waste stream generated by the dairy operation, thereby reducing the volume of manure flowing into storage pit.

2. The SEP shall be completed by August 1, 2012.

3. Mr. Shank shall submit progress reports on the SEP to DEQ on a monthly basis, due the 10th day of each month. The first of such reports shall be due on May 10, 2012.

4. Mr. Shank shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. Mr. Shank shall submit the final report and certification to the Department within 120 days from the effective date of the Order.

5. If the SEP has not or cannot be completed as described in the Order, Mr. Shank shall notify DEQ in writing no later than August 1, 2012. Such notification shall include payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.

6. Mr. Shank hereby consents to reasonable access by DEQ or its staff to property or documents under Mr. Shank's control, for verifying progress or completion of the SEP.

7. Mr. Shank shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of invoices and proof of payment within 30 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

8. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

   Mr. David Robinett
   DEQ Valley Regional Office
   P.O. Box 3000
   Harrisonburg, VA 22801
   david.robinett@deq.virginia.gov