



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director

Francis L. Daniel  
Tidewater Regional Director  
(757) 518-2000

### STATE WATER CONTROL BOARD ENFORCEMENT ACTION

#### SPECIAL ORDER BY CONSENT

WITH

**BERGEY'S DAIRY FARM, INC.**

#### SECTION A: Purpose

This is a special order by consent issued under the authority of Sections 62.1-44.15(8a) and (8d) of the Code of Virginia between the State Water Control Board and Bergey's Dairy Farm, Inc. to resolve certain violations of environmental laws and regulations.

#### SECTION B: Definitions

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

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 62.1-44.7 and 10.1-1184.
3. "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Tidewater Regional Office of the Department of Environmental Quality.
6. "Order" means this document, also known as a consent special order.
7. "Regulations" means 9 VAC 25-32-10 et seq. - Virginia Pollution Abatement (VPA) Permit Regulation.
8. "Bergey's" means Bergey's Dairy Farm, Inc.
9. "Permit" means Virginia Pollution Abatement Permit No. VPA01072.

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

1. Bergey's owns and operates Bergey's Dairy Farm, which is located at 2221 Mount Pleasant Road in Chesapeake, Virginia. Bergey's Dairy Farm drains to an unnamed tributary to the Chesapeake and Albemarle Canal. The Chesapeake and Albemarle Canal is a State waterway that is listed in the DEQ 1998 303(d) Total Maximum Daily Load Priority List and Report as impaired with respect to dissolved oxygen.
2. The land application of treated wastewater from Bergey's is the subject of the Permit which became effective on February 4, 2002 and expires on February 4, 2012.
3. Section 62.1-44.5 of the Code and 9 VAC 25-32-30 of the Regulations prohibit waste discharges to State waters except as authorized by a permit from the Board.
4. Part I.A.2 of the Permit requires the quarterly sampling of the storage lagoon volume. Part I.A.4 requires the nutrient levels in the final lagoon be analyzed on an annual basis. Part I.B.3. requires the submittal of an operations and maintenance manual within 90 days of the effective date of the permit. Part I.B.7 requires the submittal of quarterly monitoring reports containing lagoon storage volumes and monthly logs. Part I.C.3 requires monthly inspections and record keeping.
5. Bergey's failed to monitor and submit the quarterly lagoon volume reports and monthly inspection logs for the 1<sup>st</sup> and 3<sup>rd</sup> quarter of 2002. The 2<sup>nd</sup> quarter reports were incomplete. In addition the annual nutrient analyses of the final lagoon due in April 2002 were not conducted. The required operations and maintenance manual has not been submitted to date. In addition, the monthly inspections and associated record keeping were not performed.
6. Part II.F of the Permit prohibits unauthorized discharges to State waters and Part II.G requires that unauthorized discharges be reported. On October 4, 2002, DEQ documented an unpermitted discharge from the wastewater collection system to State waters. Bergey's failed to report this discharge in accordance with the Permit.
7. The above violations were cited in the following Notices of Violation issued to Bergey's: NOV No. W2002-09-T-0002, issued on September 5, 2002; NOV No. W21002-10-T-0002 issued on October 16, 2002; NOV No. W2002-11-T-0002, issued on November 22, 2002; and, NOV No. W2002-12-T-002, issued on December 20, 2002.

## SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Code § 62.1-44.15(8a) and (8d), orders Bergey's, and Bergey's agrees, to perform the actions described in Appendix A of this Order and to pay a civil charge of \$6,400 within 30 days of the effective date of the Order in

settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall include Bergey's Federal Identification Number. Payment shall be made by check payable to the "Treasurer of Virginia" delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Bergey's, for good cause shown by Bergey's, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued to Bergey's by DEQ cited above. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Bergey's admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Bergey's 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. Bergey's declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 enforce this Order.
6. Failure by Bergey's 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. Bergey's 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 occurrence. Bergey's shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Bergey's shall notify the DEQ Regional Director in writing 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 within 24 hours 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, 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 Bergey's. Notwithstanding the foregoing, Bergey's 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. Bergey's petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that Bergey's has satisfied all the requirements of the Order is a "case decision" within the meaning of the Virginia Administrative Process Act; or

b. The Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Bergey's

Termination of this Order, or any obligation imposed in this Order, shall not operate to

relieve Bergey's from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Bergey's voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 26, 2003

Francis L. Daniel

Francis L. Daniel, Tidewater Regional Director for  
Robert G. Burnley, Director  
Department of Environmental Quality

Bergey's voluntarily agrees to the issuance of this Order.

By: Leonard E. Bergey

Date: April 24, 2003

Commonwealth of Virginia  
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 24th day of  
April, 2003, by Leonard E. Bergey, who is president of Bergey's Dairy farm, Inc., on  
behalf of the corporation.

Beverly B. Edge  
Notary Public

My commission expires: 01-31-2007

## APPENDIX A

### BERGEY'S DAIRY FARM, INC.

Bergey's shall:

1. Mail all submittals and reports required by this Appendix A to:  
Francis L. Daniel, Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462
2. Notify DEQ of any discharges that may reasonably be expected to enter State waters (757 518-2077). Such notification shall be provided by telephone, as quickly as possible upon discovery, however, in no case later than 24 hours after discovery. A written notification shall be submitted to DEQ within five working days following the initial notice. The written notification shall include the following information: date, time and estimated duration of the discharge; estimate of the volume of the discharge, cause of the discharge; response and disposal activities to clean up the discharge; and corrective actions undertaken.
3. By April 1, 2003, replace the existing sump pump/barrel system for conveying wash water from Bergey's Dairy Farm restaurant to the pump station with a closed hard piped system.
4. By May 1, 2003, submit an operations and maintenance manual which includes applicable best management practices for dairy farm operations, to DEQ, for review and approval. Upon approval of the manual, operate Bergey's in accordance with the approved manual.
5. Comply with all monitoring, sampling, and reporting requirements of the Permit including all provisions of the Permit's nutrient management plan.