



ORIGINAL
SIGNED
ORDER

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
GEORGE'S FOODS LLC
VPDES Permit No. VAR05
Storm Water Registration No. VAR050975**

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 George's Foods LLC, regarding the Facility, for the purpose of resolving certain violations of the State Water Control Law and the Permit and the Regulation.

SECTION B: Definitions

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

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
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. "City" means the City of Harrisonburg.
4. "DAF" means dissolved air flotation.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
8. "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.
9. "DMR" means Discharge Monitoring Report.
10. "Facility" means the pretreatment plant located at 41 West Washington Street, Harrisonburg, Virginia which is owned and operated by George's Foods, LLC ("George's"). The Facility receives and processes industrial wastewaters from the George's Harrisonburg Processing Plant "Plant" located at 501 N. Liberty Street, Harrisonburg, Virginia. Storm water associated with industrial activity discharges from George's Harrisonburg Processing Plant under its registration number VAR050975.
11. "FEB" means flow equalization basin.
12. "George's" or "Company" means George's Foods, LLC, a limited liability company authorized to do business in Virginia, and its members, affiliates, partners, and subsidiaries. George's is a "person" within the meaning of Va. Code § 62.1-44.3.
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
14. "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.
15. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2009 and expires on June 30, 2014. George's applied for registration under the Permit and was issued Registration No. VAR050975 on May 31, 2011.

16. "Plant" means the George's Harrisonburg Processing Plant located at 501 N. Liberty Street, Harrisonburg, Virginia.
17. "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.
18. "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.
19. "Registration statement" means a registration statement for coverage under a storm water general permit.
20. "Regulation" means the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.*
21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
22. "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.
23. "TMDL" means total maximum daily load.
24. "Va. Code" means the Code of Virginia (1950), as amended.
25. "VAC" means the Virginia Administrative Code.
26. "VPDES" means the Virginia Pollutant Discharge Elimination System.

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

SECTION C: The Board's Findings of Facts and Conclusions of Law

1. George's owns and operates the Facility and the Plant in the City of Harrisonburg, Virginia, which discharges storm water associated with industrial activity. The Permit authorizes George's to discharge storm water from the Plant to Blacks Run from Outfalls 001, 002, and 003, in strict compliance with the terms and conditions of the Permit.
2. On September 16, 2013, DEQ received a report from George's regarding an overflow of industrial wastewater to storm drains at the Facility.
3. On September 16, 2013, DEQ staff conducted a reconnaissance inspection of the Facility in conjunction with an investigation of the report of the overflow and discharge of industrial wastewater to Blacks Run. DEQ staff noted an unpermitted discharge of partially treated industrial wastewater had resulted from an overflow of the Facility's FEB into a secondary containment basin that in turn overflowed to storm drains and entered Blacks Run. DEQ staff noted floating white foam on the surface of Blacks Run. DEQ staff took in-stream samples associated with the unpermitted discharge.

The in-stream sampling 40 yards upstream of the entry point of discharge showed a D.O concentration of 2.20 mg/l, an ammonia-nitrogen concentration of 0.02 mg/l, a total kjeldahl nitrogen concentration of 0.2 mg/l and a total phosphorus concentration of 0.02 mg/l. In-stream sampling just downstream of the entry point of discharge showed a D.O. concentration of 1.76, an ammonia-nitrogen concentration of 3.04 mg/l, a total kjeldahl nitrogen concentration of 5.6 mg/l, a total phosphorus concentration of 0.9 mg/l. Further downstream where the stream size increases the D.O. concentration was 6.4 mg/l.

4. On September 20, 2013, DEQ received from George's a letter explaining the nature of the unauthorized discharge on September 16, 2013 and the Company's response thereto.
5. On October 9, 2013, DEQ VRO issued Notice of Violation No. W2013-10-V-0002 to George's for the unpermitted discharge to State waters on September 16, 2013.
6. On October 23, 2013, DEQ staff met with representatives of George's to discuss the NOV, the problems that led to the violations cited in the NOV and corrective actions needed to address the problems. During those discussions, George's discussed some of the corrective actions that it had taken to address problems.

George's asserts that it took precautionary corrective actions before the unpermitted discharge event and took prompt corrective actions to address the event. George's asserts that in July 2013, prior to experiencing any overflows problems from the FEB, it constructed a containment basin for the FEB as a precautionary mechanism against any potential overflows. In August 2013, shortly after completing the FEB containment

basin, George's discovered problems with potential overflows from its FEB which could lead to the overflow of the containment basin and began taking corrective actions including ordering monitors, alarms and auto-dialers to notify staff of problems.

7. By letter dated November 22, 2013, George's submitted a detailed timeline of events and corrective actions the Company took before, during and after the unpermitted discharge. This letter indicated that the Company completed corrective actions including:
 - a. added a float system to the FEB tank with an auto dialer when the FEB reaches approximately 75% full;
 - b. replaced defective DAF check valves;
 - c. changed piping;
 - d. implemented operational changes; and,
 - e. installed float systems with auto dialers on the FEB and DAF containment basins.
8. Va. Code § 62.1-44.5 states that: "[E]xcept 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."
9. The Regulation, at 9 VAC 25-151-50, also states that except in compliance with a VPDES permit, or another permit 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."
10. The Permit Part II.F. states that: Except in compliance with this permit, or another permit issued by the board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
12. The Department has issued no permits or certificates to George's other than coverage under VPDES Permit No. VAR05, the General Permit for Storm water Discharges at Industrial Facilities, which only authorizes the discharge of storm water.
13. Blacks Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
14. Based on George's letter(s) to DEQ, the NOV, the October 23, 2013 meeting, DEQ's inspection report, and a file review, the Board concludes that George's has violated Va. Code § 62.1-44.5, 9 VAC 25-151-50 and the Permit, by discharging industrial wastewaters to State waters while concurrently failing to comply with the conditions of the Permit, as described in Section C above.
15. In order for George's to provide for compliance with the Permit, the Regulation and Va. Code § 62.1-44.5, DEQ and representatives of George's have agreed to the schedule of compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code § 62.1-44.15 and upon consideration of Va. Code § 10.1-1186.2, the Board orders George's, and George's agrees:

1. To perform the actions described in Appendices A and B of this Order; and
2. To a civil charge of **\$7,963** in settlement of the violations cited in this Order, to be paid as follows:
 - a. George's shall pay **\$3,963** 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

George's shall include its Federal Employer Identification Number (FEIN) (54-2046786) 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, George's shall be liable for attorneys' fees of 30% of the amount outstanding.

- b. George's shall satisfy **\$4,000** of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.
 - c. The net project costs of the SEP to George's shall not be less than the amount set forth in Paragraph D.2.b. If it is, George's 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 George's certifies that it has not commenced performance of the SEP.
- e. George's acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by George's to a third party, shall not relieve George's of its responsibility to complete the SEP as described in this Order.
- g. In the event it publicizes the SEP or the SEP results, George's shall state in a prominent manner that the project is part of a settlement of an enforcement action.
- h. The Department has the sole discretion to:
 - i. Authorize any alternate, equivalent SEP proposed by the Facility; and
 - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
- i. Should the Department determine that George's has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify George's in writing. Within 30 days of being notified, George's 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 George's for good cause shown by George's, 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, George's admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. George'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. George's 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 George'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. George'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 unforeseen occurrence beyond its control and not due to a lack of good faith or diligence on its part. George's shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. George's 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 George's intends 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, 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 George's. Nevertheless, George'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. the Director or his designee terminates the Order after George's has completed all of the requirements of the Order;
- b. George's 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 George's.

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

And it is so ORDERED this 10th day of June, 2014.

Amy T. Owens

Amy T. Owens, Regional Director
Department of Environmental Quality

George's Foods, LLC voluntarily agrees to the issuance of this Order.

Date: 4/8/2014 By: [Signature], Vice President,
(Person) (Title)
George's Foods, LLC

Commonwealth of Virginia

City/County of Rockingham

The foregoing document was signed and acknowledged before me this 8th day of
April, 2014, by Robert Kenney who is

Vice president of George's Foods, LLC on behalf of George's Foods, LLC

[Signature]
Notary Public

329867
Registration No.

My commission expires: 1/31/2015

Notary seal:



**APPENDIX A
GEORGE'S FOODS LLC
SCHEDULE OF COMPLIANCE**

As a means of expanding the treatment capacity of the Facility's DAF unit and eliminate overflows at the Facility, George's proposes to do the following:

1. **By May 30, 2014**, George's shall accept, review and award bids for the construction of the horizontal DAF to replace the existing vertical DAF unit at the Facility as per George's letter dated February 3, 2014.
2. **By June 15, 2014**, George's shall begin construction of the horizontal DAF to replace the existing vertical DAF units by ordering equipment.
3. **By November 30, 2014**, George's shall complete construction of the horizontal DAF to replace the existing vertical DAF units.
4. No later than **14 days** following a completion date identified in the above schedule of compliance George's shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

DEQ Contact

Unless otherwise specified in this Order, George's shall submit all requirements of Appendix A of this Order to:

Steve Hetrick
Enforcement Specialist Sr.
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7833 Phone
(540) 574-7878 Fax
Steven.hetrick@deq.virginia.gov

SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

In accordance with Va. Code § 10.1-1186.2, George's 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 is the planting of riparian stream trees on Blacks Run on Harrisonburg City's Public Utility property in Harrisonburg. George's will provide a **\$4,000** subsidy to the Department of Parks and Recreation of the City of Harrisonburg to support the riparian stream plantings of trees on Blacks Run. The City will be installing stream bank restoration enhancements as proposed in the City's letter of February 7, 2014 to DEQ.

Blacks Run is listed for benthic impairment which is attributed to municipal (Urbanized High Density Area), wildlife other than waterfowl, and non-point sources discharges. The planting of native riparian trees will help to prevent erosion, filter pollutants, shade the stream waters and enhance wildlife habitats.

2. The SEP shall be completed by **December 15, 2014**.
3. George's shall verify 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. George's shall submit the final report and certification to the Department within **30 days** from the completion of the SEP project.
4. If the SEP has not or cannot be completed as described in the Order, George's shall notify DEQ in writing no later than **30 days** of the discovery of the inability to complete the SEP. Such notification shall include:
 - a. an alternate SEP proposal, or
 - b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.
5. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Steve Hetrick
Enforcement Specialist Sr.
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7833 Phone
(540) 574-7878 Fax
Steven.hetrick@deq.virginia.gov