COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
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Amy Thatcher Owens
Regional Director

STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VIRGINIA POULTRY GROWERS COOPERATIVE, INC.
Registration No. 80786

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 Virginia Poultry Growers Cooperative, Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

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 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. "Facility" means the feed mill production plant, located at 410 S. Main Street, Broadway, in Rockingham County, Virginia, used by Virginia Poultry Growers Cooperative.

5. "VPGC" or "Virginia Poultry Growers Cooperative" means Virginia Poultry Growers Cooperative, Inc., a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Virginia Poultry Growers Cooperative, Inc., is a "person" within the meaning of Va. Code § 10.1-1300.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

7. "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.

8. "PCE" means a partial compliance evaluation by DEQ staff.

9. "Permit" means the New Source Review (NSR) permit to operate a feed mill production facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Virginia Poultry Growers Cooperative, Inc., on March 11, 2005.

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

11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.

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 Fact and Conclusions of Law

1. VPGC owns and operates the Facility in Rockingham County, Virginia. The Facility is subject to the Permit which allows for the modification and operation of a feed mill production plant, including the operation of feed storage and handling bins.

2. On March 5, 2012, Department staff conducted a PCE of the Facility record for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:

   On March 2, 2012, DEQ staff received notification from VPGC that construction of the following equipment had been completed or was underway on the dates noted:

   a. one 42,000 bushel corn bin, in use on August 8, 2011,

b. six finish feed bins numbered 9 through 14, in use on December 5, 2011,
c. one 25,000 bushel wheat bin, construction commenced March 1, 2012.

This equipment is not covered in the Permit, and based on information submitted by VPGC, is not exempt from permitting requirements.

3. 9 VAC 5-80-1120(A) states "No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source."

4. 9 VAC 5-80-1210(D) states "Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."

5. 9 VAC 5-50-50 (A) states "Any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications 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. 2. The anticipated date of initial startup of a new or modified source postmarked not more than 60 days nor less than 30 days prior to such date. 3. The actual date of initial startup of a new or modified source postmarked within 15 days after such date. 4. The date of any performance test required by 9VAC5 Chapter 80 (9VAC5-80) and any other performance test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked not less than 30 days prior to such date. 5. The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9VAC5-50-40 C. Notification shall be postmarked not less than 30 days prior to such date. 6. The anticipated date for conducting the opacity observations required by 9VAC5-50-20 G 1. The notification shall also include, if appropriate, a request for the board to provide a visible emissions reader during a performance test. The notification shall be postmarked not less than 30 days prior to such date."

6. On March 12, 2011, based on the PCE, the Department issued Notice of Violation No. AVRO8299 to VPGC for the violations described in paragraph C(2) and C(3), above.

7. On March 22, 2012, DEQ issued a new NSR permit to VPGC. This new permit included the equipment noted in paragraph C(2).

8. On March 26, 2012, DEQ staff met with representatives of VPGC staff to discuss the violations, including any possible corrective actions to return the Facility to compliance.

9. Based on the results of the March 5, 2012 PCE, the March 26, 2012 meeting and documentation submitted on March 2, 2012, the Board concludes that VPGC violated 9 VAC 5-80-1120(A), 9 VAC 5-80-1210(D) and 9 VAC 5-50-50(A) as described in paragraphs C(2) through C(5) above.

10. Upon issuance of the March 22, 2012 permit, VPGC has corrected the violations described in paragraphs C(2) through C(5), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders VPGC and VPGC agrees to pay a civil charge of $4,707.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

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

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

VPGC shall include its Federal Employer Identification Number (20-1175478) 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).

SECTION E: Administrative Provisions

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

4. VPGC 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. VPGC 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 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 VPGC 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. VPGC 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. VPGC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. VPGC 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 VPGC 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, 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 VPGC. Nevertheless, VPGC 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. VPGC 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

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

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve VPGC 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 VPGC 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 VPGC 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 VPGC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of VPGC.

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, VPGC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of June, 2012.

Amy Thatcher Owens, Regional Director
Department of Environmental Quality

Virginia Poultry Growers Cooperative, Inc., voluntarily agrees to the issuance of this Order.

Date: 6-1-12 By: James L. Mason, President
(Person) (Title)
Virginia Poultry Growers Cooperative, Inc.

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 1st day of June, 2012, by James L. Mason who is President of VPGC, Inc., on behalf of the corporation.

Carmie E. Liskey
Notary Public

342124
Registration No.

My commission expires: December 31, 2012

Notary seal:

CARMIE E. LISKEY
NOTARY PUBLIC
MY COMMISSION NUMBER 342124
COMMONWEALTH OF VIRGINIA