



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

Windcrest Holsteins, Inc.
VPA Permit No. VPG100208

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 Windcrest Holsteins, Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable permit.

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 the discharge of a pollutant.
5. "Facility" or "Site" means the Windcrest Holsteins, Inc. dairy farm located at 15638 Spar Mine Road in Timberville, Virginia, where Windcrest Holsteins, Inc. manages pollutants which are the subject of the Permit.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "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.
8. "Permit" means VPA General Permit No. VPG100208, which was issued under the State Water Control Law and the Regulation on November 16, 2004 and which expires on November 15, 2014.
9. "Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged.
10. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the Board determines that such injection or disposal will result in the degradation of ground or surface water resources. 9 VAC 25-32-10.
11. "Regulation" means VPA General Permit Regulation for Animal Feeding Operations, 9 VAC 25-192-10, *et seq.*
12. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
13. "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.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "VPA" means Virginia Pollution Abatement.
17. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
18. "Windcrest" means Windcrest Holsteins, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Windcrest is a "person" within the meaning of Va. Code § 62.1-44.3.

SECTION C: Findings of Fact and Conclusions of Law

1. Windcrest owns and operates the Site. At the Site, Windcrest operates a dairy with associated manure storage and handling facilities.
2. The Site is the subject of the Permit which allows Windcrest to manage pollutants created by dairy cattle, in strict compliance with the terms and conditions of the Permit.
3. On October 4, 2011, DEQ staff performed a site inspection for compliance with the requirements of the State Water Control Law, the Permit, and the Regulation. Based on the inspection and follow-up information, Department staff made the following observations:
 - a. Manure Storage Cell #1 had overflowed.
 - b. This discharge flowed through a silage storage area and into a spring fed channel which flowed into the North Fork Shenandoah River.
 - c. Windcrest asserted that it had just become aware of the release and planned to notify DEQ.
 - d. The overflow was caused by operator error; the influent valve to Manure Storage Cell #1 was open while the effluent valve was closed, allowing material to build up in the cell until it overflowed.
 - e. The amount of manure released was estimated to be between 24,000 and 120,000 gallons.
 - f. Samples were obtained of the material spilled as well as river water both upstream and downstream of the release.
4. Va. Code §62.1-44.5 states that: “Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to: (1) Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances... .”
5. 9 VAC 25-31-50 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.”
6. Condition I.B.1 of Windcrest’s Permit states that “Any liquid manure collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical

limitations prohibit the land application of waste.”

7. Condition III.R of Windcrest’s Permit states that “Except in compliance with this permit, it shall be unlawful for any permittee to:
 1. Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances; or
 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.
8. On October 18, 2011, based on the inspection and follow-up information, the Department issued Notice of Violation No. W2011-10-V-1005 to Windcrest for the violations described in paragraphs C(3), above.
9. On October 27, 2011, DEQ received laboratory analysis results of the samples taken on October 4, 2011. These results indicated that river samples upstream of the release contained 25 E. coli colonies per 100 ml and that river samples downstream of the release contained at least 2000 E. coli colonies per 100 ml which exceeded the water quality criteria for fresh water.
10. On October 28, 2011, Windcrest responded by email to the NOV. In that response, Windcrest’s representative stated that he did not dispute the observations in the NOV.
11. Based on the results of the October 4, 2011 inspection, and/ documentation received on October 27, 2011, the Board concludes that Windcrest has violated 9 VAC 25-31-50, §62.1-44.5 of the Va. Code and Parts I.B.1 and III.R of the Permit, as described in paragraph C(3), above.
12. On November 30, 2011, Windcrest submitted documentation to show that berms had been installed to prevent a recurrence of the incident described in paragraph C(3), above.
13. On December 12, 2011, DEQ staff performed an inspection of the newly constructed berms at Windcrest and observed that the berms were not of sufficient height to prevent future overflows.
14. In order for Windcrest to complete its return to compliance, DEQ staff and representatives of Windcrest have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

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

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$6,825.00 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

Windcrest shall include its Federal Employer Identification Number (FEIN) 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 Windcrest for good cause shown by Windcrest, 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, Windcrest admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Windcrest 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. Windcrest 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 Windcrest 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. Windcrest 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. Windcrest shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Windcrest 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.

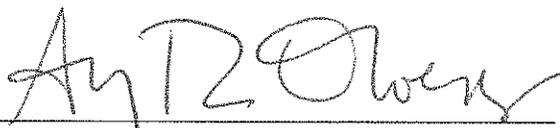
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Windcrest.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Windcrest has completed all of the requirements of the Order;
 - b. Windcrest 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 Windcrest.

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

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



Amy T. Owens, Regional Director
Department of Environmental Quality

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Windcrest Holsteins, Inc. voluntarily agrees to the issuance of this Order.

Date: Jan 12, 2012 By: David Yutzy, President
David Yutzy President
Windcrest Holsteins, Inc.

Commonwealth of Virginia
City/County of Rockingham

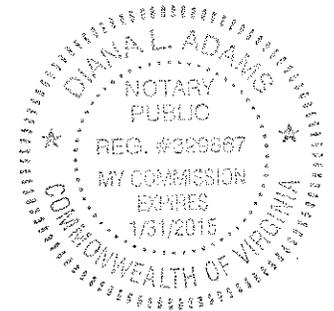
The foregoing document was signed and acknowledged before me this 12th day of January, 2012, by David Yutzy who is President of Windcrest Holsteins, Inc. on behalf of the corporation.

Diana L Adams
Notary Public

329867
Registration No.

My commission expires: 1/31/2015

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Spill Prevention

By March 1, 2012, Windcrest shall submit to DEQ, for review and approval, proposed changes to the manure storage system to prevent overflow.

By August 1, 2012, Windcrest will complete the DEQ approved changes to the manure storage system.

2. DEQ Contact

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

Karen Hensley
Enforcement Specialist
VA DEQ –Valley Regional Office
P.O. Box 3000
4411 Early Road
Harrisonburg, VA 22801
Phone: (540) 574-7821
Fax: (540) 574-7878
Email: karen.hensley@deq.virginia.gov