



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 GEORGE'S FOODS, LLC VPDES Permit No. var05 Storm Water Registration No. VAR051326

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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
7. "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.
8. "DMR" means Discharge Monitoring Report.
9. "Facility" means the feedmill located at 61 Kratzer Road, Harrisonburg, Virginia, owned and operated by George's Foods, LLC ("George's") where it receives and processes grains with other feed ingredients into poultry feeds and distributes those feeds. Stormwater associated with industrial activity discharges from the Facility under its registration number var051326 .
10. "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.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "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.
13. "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. VAR061326 on January 8, 2010.
14. "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.

15. "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.
16. "Registration statement" means a registration statement for coverage under a storm water general permit.
17. "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.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "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.
20. "SWPPP" means a Stormwater Pollution Prevention Plan.
21. "TMDL" means total maximum daily load.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means the Virginia Pollutant Discharge Elimination System.
25. "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 in the City of Harrisonburg, Virginia, which discharges stormwater associated with industrial activity. The Permit authorizes

George's to discharge stormwater from the Facility to Blacks Run from Outfalls 001, 002 and 003, in strict compliance with the terms and conditions of the Permit.

2. Blacks Run is located in the Shenandoah River subbasin and the Potomac River Basin. Blacks Run is listed as Tier 1 waters. Blacks Run is listed in DEQ's 305(b) report as impaired for recreational use due to violations of E. coli water quality standards. This is addressed in the EPA approved bacterial TMDL for Blacks Run. Blacks Run is also listed for benthic impairment. The benthic impairment is attributed to municipal (Urbanized High Density Area), wildlife other than waterfowl, and non-point sources discharges. This assessment unit is included in the EPA approved Blacks Run benthic TMDL.
3. On February 9, 2012, DEQ staff conducted a Technical Inspection and Laboratory Inspection at the Facility. The inspection noted a number of compliance deficiencies with respect to the monitoring requirements of the Permit including:
 - a. George's had not performed and documented a comprehensive site compliance evaluation in accordance with the Permit Part III.E;
 - b. George's had not updated the stormwater pollution prevention plan as required by the Permit Part III.A.1;
 - c. George's had not ensured that at least one routine facility inspection was conducted per calendar year as required by the Permit Part III.B.6.b(5) and Part I.A.2.c ;
 - d. George's had not submitted the DMRs for 2009, 2010, and 2011 in accordance with the Permit Parts I.A.4.a and Part I.A.1.b(3); and,
 - e. George's had not reviewed and modified the SWPPP following exceeding the benchmark concentration values for TKN and TSS in 2009-2011 as required by the Permit Part I.A.5.a.
4. On April 6, 2012, DEQ issued Warning Letter No. W2012-04-V-1013 to George's for the compliance deficiencies noted during the February 9, 2012 inspection:
 - a. Failure to perform and document a comprehensive site compliance evaluation in accordance with the Permit Part III.E;
 - b. Failure to update the stormwater pollution prevention plan as required by Permit Part III.A.1;
 - c. Failure to submit the DMRs for 2009, 2010, or 2011 in accordance with Permit Part I.A.4.a and Part IA.1b.(3); and,
 - d. Failure to review and modify the SWPPP following exceeding the benchmark concentration values for TKN and TSS in 2009-2011 as required by Permit Part I.A.5.a (1).
5. By letters dated March 12, 2012 and April 19, 2012, George's responded to the Technical Inspection and Laboratory Inspection and the Warning Letter and provided confirmation of the corrective actions used to address those issues. Regarding the submittal of the

DMRs for 2009, 2010, and 2011, George's asserts that the monitoring was conducted, but not properly submitted to DEQ. Prior to July 1, 2009, DMRs were to be retained at the Facility with the Facility SWPPP. In addition, George's asserts that the annual comprehensive site compliance evaluations were conducted annually except for 2011, but were not documented.

6. On August 3, 2012, DEQ received a pollution complaint from the City's Stream Health Coordinator regarding a gray foul-smelling discharge into Blacks Run. City staff indicated that the odor had a "fermented feed" smell and the discharge was creating turbidity in the stream.
7. On August 3, 2012, DEQ staff conducted a reconnaissance inspection of the Facility in conjunction with an investigation of the pollution complaint of a discharge to Blacks Run. DEQ staff noted that an unpermitted discharge of industrial wash down waters had resulted from George's staff hosing/washing feed material from certain of the Facility's rooftops to the ground which then flowed to the drainage area for Storm Water Outfall 002. DEQ staff noted a turbid discharge from Outfall 002. George's SWPPP emphasizes that cleanup activities be only dry cleanup methods. The Permit Part I.B. Special Conditions states that "Except as provided in this section or in Part IV, all discharges covered by this permit shall be composed entirely of stormwater.... All other non-stormwater discharges shall be in compliance with a VPDES permit (other than this permit) issued for the discharge".

DEQ staff and the City staff took in-stream samples and samples associated with the unpermitted discharge from Storm Water Outfall 002. DEQ staff noted that the unpermitted discharge samples had a fermented feed odor and were opaque tan colored.

DEQ sampling of the unpermitted discharge associated with Outfall 002 showed an ammonia-nitrogen concentration of 269 mg/l, a total residual solids concentration of 848 mg/l, and a total phosphorus concentration of 186 mg/l. In-stream sampling 30-40 yards downstream of the Outfall 002 showed an ammonia-nitrogen concentration of 0.95 mg/l and a total phosphorus concentration of 0.7 mg/l. In-stream sampling upstream of Outfall 002 showed an ammonia-nitrogen concentration of 0.04 mg/l, and a total phosphorus concentration of 0.1 mg/l.

8. On August 6, 2012, DEQ received from George's a 5-Day Letter regarding the unauthorized discharge on August 3, 2012.
9. On August 8, 2012, DEQ staff conducted a reconnaissance inspection of the Facility as a follow up to the August 3, 2012 inspection to verify that the spilled feed material had been cleaned up from the Outfall 002 drainage area. During the August 8, 2012 inspection, DEQ staff had discussions with the George's staff regarding the events that lead to the unpermitted discharge and the need to review and modify the SWPPP to include further BMPs to improve stormwater quality.

10. On September 12, 2012, DEQ VRO issued Notice of Violation No. W2012-09-V-0002 to George's for the unpermitted discharge to State waters on August 3, 2012.
11. On September 25, 2012, 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 laid out some of the corrective actions that it had taken to address problems, including training staff in the requirements of the stormwater permit and updating the SWPPP.
12. By letter dated October 25, 2012, George's submitted a plan of further corrective actions to address the reasons for the unpermitted discharge.
13. 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."
14. The Regulation, at 9 VAC 25-151-10, also 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. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
16. The Department has issued no permits or certificates to George's authorizing the discharge of industrial wash down waters from the Facility other than coverage under VPDES Permit No. VAR05, the General Permit for Stormwater Discharges at Industrial Facilities, which only authorizes the discharge of stormwater.
17. Blacks Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
18. Based on George's letter(s) to DEQ, the NOV, the October 11, 2012 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 25-151-70 and the Permit, by discharging industrial wash down waters to State waters while concurrently failing to comply with the conditions of the Permit, as described in Section C above.
19. In order for George's to provide for compliance with the Permit, 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

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

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of ~~\$9,677~~ 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

3. 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).

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.

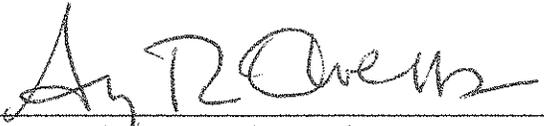
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which George's intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement 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 18th day of March, 2013.



Amy T. Owens, Regional Director
Department of Environmental Quality

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

Date: 12/14/2012 By: Robert O. Kenney, 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 14 day of
December, 2012, by Robert O. Kenney who is
Vice President of George's Foods, LLC on behalf of George's Foods, LLC

Diana Adams
Notary Public
329867
Registration No.

My commission expires: 1/31/15

Notary seal:



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

1. **Annually by December 31**, George's shall conduct training of its employees in the proper procedures required by the Storm Water General Permit and the Storm Water Pollution Prevention Plan.
2. **By December 21, 2012**, George's shall submit to DEQ for review and comment the final plan for a stormwater sediment trap at the Facility. George's shall respond to comments within 30 days of receipt of written comments on the plans for the sediment trap.
3. **By January 10, 2013**, April 10, 2013, July 10, 2013, October 10, 2013, and January 10, 2014, George's shall submit to DEQ reports of any training of Facility staff in storm water pollution prevention, all Facility storm water inspections and visual examinations of storm water quality conducted during the previous three-month period. The report shall include any corrective action taken to address deficiencies noted during those inspections and examinations.
4. George's shall perform benchmark monitoring of the permitted outfalls twice during both calendar years 2013 and 2014. The two sampling events during each calendar year shall be at least 60 days apart and shall be reported to DEQ on DMRs within 30 days of each sampling event.
5. **By May 21, 2013**, George's shall complete construction of a sediment trap.
6. 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**

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George's Foods, LLC
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