

**WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
THOMAS R. VAN DYKE
VPA GENERAL PERMIT # VPG110007**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15 (8a) and (8d), between the State Water Control Board and Thomas R. Van Dyke, for the purpose of resolving certain violations of environmental law 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 §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “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. “SWRO” means the Southwest Regional Office of the Department.
6. “Order” means this document, also known as a consent special order.
7. “Dairy” means the Wolfden Farm located on Route 720 in Washington County.

8. “CAFO” means a Confined Animal Feeding Operation.

SECTION C: Findings of Facts and Conclusions of Law

1. The Dairy is operated by Thomas R. Van Dyke and is subject to Virginia Pollution Abatement CAFO General Permit VPG110007. The permit was effective on November 16, 1994, modified on December 1, 1998 and will terminate on November 16, 2004.
2. DEQ staff conducted an inspection of the Dairy on April 24, 2002 and reported the following apparent violations of the general permit and the nutrient management plan (“NMP”):
 - a. The large manure pit was full with no freeboard and there was evidence of an overflow.
 - b. In the field and cattle lane adjacent to the barn there was evidence of erosion from a recent rainfall.
 - c. There were large stacks of manure and bedding material adjacent to the barn which if not covered would contribute leachate to surface water runoff.
3. A Notice of Violation (“NOV”) was issued to the Mr. Van Dyke on July 29, 2002 and a meeting between Mr. Van Dyke and DEQ was held on August 20, 2002.
4. Mr. Van Dyke signed a Letter of Agreement with DEQ on September 10, 2002 that required the Dairy to come into compliance with the general permit, handle the waste according to the NMP and maintain a minimum one foot freeboard at both manure holding ponds.
5. On January 13, 2003 Mr. Van Dyke notified DEQ that the Dairy had experienced an overflow at the small holding pond and some waste had reached a nearby stream.
6. On January 14, 2003 DEQ conducted an investigation of the incident and determined that a water trough valve broke above the small manure holding pond causing the waste to overflow the berm and migrate off the property and into a nearby stream. The stream is an unnamed tributary to the Middle Fork Holston River. The inspector also noted that the large holding pond was again below the one foot minimum freeboard with only about six inches to the top of the berm. As a result of this investigation, a NOV was issued to Mr. Van Dyke on February 3, 2003.
7. DEQ staff investigated a citizen complaint at the Dairy on March 26, 2003 and found liquid manure discharging to a stream which is an unnamed tributary to the Middle Fork Holston River and is the same stream as in item 6 above. At the time Dairy personnel were irrigating a field with liquid manure and due to the wet soil condition from a recent heavy rain the manure was running down slope to a low lying area and then migrated across the road and into the stream. The manure

spreading operating was stopped and a berm was placed along the road to prevent further discharge to the stream. Below the discharge, the stream appeared dark brown in color with a strong odor and excess sediment load. Mr. Van Dyke reported the discharge upon being notified by DEQ staff that the incident had occurred.

8. The VPA Permit Part I, Section B 5 requires all facilities with waste holding ponds to maintain a one foot freeboard at all times, up to and including a twenty-five year, twenty-four hour storm.
9. Board regulation 9 VAC 25-32-30 B.1a states that except in compliance with a VPA permit, or another permit issued by the board, it shall be unlawful for any person to discharge into, or adjacent to, state waters sewage, industrial waste, or other wastes, or any noxious or deleterious substances.

SECTION D: Agreement and Order

Accordingly the Board, by virtue of the authority granted it pursuant to Va. Code § 62.4-44.15 (8a) and (8d), orders Mr. Van Dyke, and Mr. Van Dyke agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Mr. Van Dyke, and Mr. Van Dyke voluntarily agrees to pay a civil charge of **\$7000** 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 or money order payable to the “Treasurer of Virginia”, and delivered to:

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

Either on a transmittal letter or as a notation on the check or money order, Mr. Van Dyke shall indicate that this payment is submitted pursuant to this Order and shall include his Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Van Dyke, for good cause shown by Mr. Van Dyke or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or 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; and/or (3) taking subsequent action to enforce the terms of this 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, Mr. Van Dyke admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Van Dyke declares he has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to 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.
5. Failure by Mr. Van Dyke 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.
6. 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.
7. Mr. Van Dyke 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 act of God, war, strike, or such other occurrence. Mr. Van Dyke must show that such circumstances resulting in noncompliance were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Van Dyke shall notify the Director and the Director of the SWRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of 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 notify by phone the Director and the Director of the SWRO within 24 hours of learning of any condition listed above, which Mr. Van Dyke intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and Mr. Van Dyke. Notwithstanding the foregoing, Mr. Van Dyke agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Mr. Van Dyke. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Van Dyke from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. Mr. Van Dyke consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
12. By his signature below, Mr. Van Dyke voluntarily agrees to the issuance of this Order.

Date: _____

Robert G. Burnley, Director
Department of Environmental Quality

By: _____
Thomas R. Van Dyke

Date: _____

State of Virginia
City/County of _____

The foregoing instrument was acknowledged before me this _____ by
(date)

Thomas R. Van Dyke

Date

Notary Public

My commission expires:

APPENDIX A

In order to comply with the provisions of the State Water Control Law and Regulations, Mr. Van Dyke agrees to implement the following actions:

1. Meet with a Nutrient Management Specialist from the Department of Conservation and Recreation by August 1, 2003 to review the Dairy's NMP.
2. Use the schedule provided in the NMP for manure application rates and the timing of manure spreading prior to June 1, 2003. After June 1, 2003, continue to use the schedule provided in the NMP for manure application rates and the timing of manure spreading unless otherwise approved by the agent for the Department of Conservation and Recreation.
3. Completely empty both manure holding ponds twice per year, in the spring by May 31, and in the fall by October 30.
4. Maintain a minimum one foot freeboard at all times for both manure holding ponds.
5. Maintain all equipment needed for the proper operation of the Dairy, especially for manure management, in good working condition.
6. Inspect the manure storage ponds weekly to ensure structural integrity. For surface and liquid impoundments, the berms must be inspected for leaking, seepage, wind or water erosion, excessive vegetation, unusually low or high liquid levels, reduced freeboard, depth of the manure in the impoundment as indicated by the depth marker, and other signs of structural weakness. Weekly records must be maintained at the Dairy documenting the amount of freeboard and the condition of the berms. The records must be retained for a period of three years and made available during an inspection.
7. Unless provided with a cover, dry manure and bedding shall not be stored in stacks near the barn area. Those stacks presently on site shall be removed within 60 days of the effective date of the order and spread on fields in an environmentally safe manner as provided in the NMP.
8. Feed stock shall be stored in the bunker in such a manner as to prevent runoff of pollutants to surface waters.
9. An unpermitted, unusual, or extraordinary discharge which enters or could be expected to enter state waters shall be promptly reported to DEQ but in no case less than 24 hours after discovery of

the discharge. A written report of the unauthorized discharge shall be submitted by Mr. Van Dyke, to the Department, within five days of the discovery of the discharge. The written report shall contain:

- A description of the nature of the discharge;
- The cause of the discharge;
- The date on which the discharge occurred;
- The length of time that the discharge continued;
- The volume of the discharge;
- If the discharge is continuing, how long it is expected to continue;
- If the discharge is continuing, what the expected total volume of the discharge will be; and
- Any steps planned or taken to reduce, eliminate and prevent the recurrence of the present discharge of any future discharges not authorized by the permit.

10. The NMP shall be kept on site and available during each inspection.

11. Beginning with the first full month after the effective date of the Order and continuing for 12 consecutive months, Mr. Van Dyke shall submit to DEQ a report (attached) detailing the waste application to farm lands as provided by the NMP and shall include the weekly measurement of the freeboard in each manure holding pond as required in item 6 above. The monthly report shall be submitted by the 10th day of the month following the reporting period and shall be sent to the following address:

Ruby Scott
Compliance Auditor
DEQ
P.O. Box 1688
Abingdon, VA 24212

Virginia Department of Environmental Quality

MANURE APPLICATION RECORD KEEPING REPORT

MONTH: _____

WOLFDEN FARM

Permit Number: VPG110007

DATE	FIELD NAME (NMP)	NUMBER OF LOADS	RATE/ACRE	TOTAL AMOUNT APPLIED	OBSERVATIONS	MEASURED FREEBOARD (in.)	
						Pit #1 (small)	Pit #2 (large)
						WEEK 1	
						DATE:	
						INCHES: _____	
						INITIALS:	
						OBSERVATIONS:	
						WEEK 2	
						DATE:	
						INCHES: _____	
						INITIALS:	
						OBSERVATIONS:	
						WEEK 3	
						DATE:	
						INCHES: _____	
						INITIALS:	
						OBSERVATIONS:	
						WEEK 4	
						DATE:	
						INCHES: _____	
						INITIALS:	

Volumes should be expressed in gallons or tons

Owner/ Operator : _____

