



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 SHENANDOAH VALLEY ORGANIC, LLC FOR SHENANDOAH VALLEY ORGANIC Unpermitted Discharge

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 Shenandoah Valley Organic, LLC, regarding the Shenandoah Valley Organic facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "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.
7. "Facility" means the organic poultry processing plant located at 566 North Liberty Street, Harrisonburg, Virginia, owned and operated by Shenandoah Valley Organic, LLC.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "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.
10. "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.
11. "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.

12. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
13. "Shenandoah" means Shenandoah Valley Organic, LLC, a limited liability company, authorized to do business in Virginia, and its members, affiliates, partners, and subsidiaries. Shenandoah is a "person" within the meaning of Va. Code § 62.1-44.3.
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "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.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "VPDES" means Virginia Pollutant Discharge Elimination System.
19. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
20. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Shenandoah owns and operates an organic poultry processing plant in Harrisonburg, Virginia.
2. Blacks Run is located in the Potomac River Basin. Blacks Run is listed in DEQ's 305(b)/303d report as impaired for E. coli, Fecal Coliform, and Aquatic Life.
3. On May 13, 2015 and June 3, 2015, in response to a complaint, DEQ staff conducted inspections of the Facility and observed:
 - a. A discharge of process wastewater and industrial stormwater from the Facility to Blacks Run;
 - b. No record of coverage for Shenandoah under a VPDES Permit.
4. 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."

5. The Regulation at 9 VAC 25-31-120 states: "Dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit."
6. The Regulation, at 9 VAC 25-31-50, 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.
7. On June 10, 2015, VRO issued Notice of Violation No. 15-06-VRO-002 to Shenandoah for discharging process wastewater and industrial stormwater without a permit.
8. From July 2015 to April 2016, DEQ staff met multiple times with Shenandoah to discuss Shenandoah's compliance options and isolation of process wastewater from intermingling with stormwater. Shenandoah creates process wastewater with the wash down of surfaces and roadways that are contaminated with poultry feces, feathers, and ice-melt from poultry storage operations. Shenandoah installed a pump system to take all stormwater and wastewater to its on-site pretreatment system, which discharges to sanitary sewer owned by the City of Harrisonburg in an effort to prevent an unpermitted discharge of wastewater to Blacks Run. However, discharges from the Facility have occurred since the corrective action was employed.
9. The Department has issued no permits or certificates to Shenandoah.
10. Blacks Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
11. Shenandoah reported three additional process wastewater discharges to DEQ on July 11, 2015, September 29, 2015, and February 9, 2016.
12. Based on the results of the May 13, 2015 and June 3, 2015 inspections, and the meetings from July 2015 to April 2016, the Board concludes that Shenandoah has violated Va. Code 62.1-44.5, 9 VAC 25-31-50, and 9 VAC 25-31-120, by discharging process wastewater and industrial stormwater without a permit, therefore failing to comply with the State Water Control Law and Regulation, as described in paragraphs C(3) through C(6) above.
13. In order for Shenandoah to return to compliance, DEQ staff and representatives of Shenandoah 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 Shenandoah, and Shenandoah agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$9,100 in settlement of the violations cited in this Order.
 - a. Shenandoah shall pay \$2,275 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," and delivered to:

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

Shenandoah 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Shenandoah shall be liable for attorneys' fees of 30% of the amount outstanding.

- b. Shenandoah shall satisfy **\$6,825** 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 Shenandoah shall not be less than the amount set forth in Paragraph D.2.b. If it is, Shenandoah 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 Shenandoah certifies that it has not commenced performance of the SEP.
- e. Shenandoah acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Shenandoah to a third party, shall not relieve Shenandoah of its responsibility to complete the SEP as described in this Order.
- g. In the event it publicizes the SEP or the SEP results, Shenandoah 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:
 - Authorize any alternate, equivalent SEP proposed by Shenandoah; and
 - Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
- i. Should the Department determine that Shenandoah has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Shenandoah in writing. Within 30 days of being notified, Shenandoah 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 Shenandoah for good cause shown by Shenandoah, 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 and in NOV No. 15-06-VRO-002 dated June 10, 2015. 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, Shenandoah admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Shenandoah 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. Shenandoah 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 Shenandoah 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. Shenandoah 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. Shenandoah shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Shenandoah 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 Shenandoah. Nevertheless, Shenandoah 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 Shenandoah has completed all of the requirements of the Order;
 - b. Shenandoah 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 Shenandoah.

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

And it is so ORDERED this _____ day of _____, 2016

Amy T. Owens, Regional Director
Department of Environmental Quality

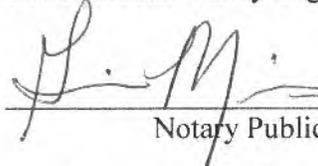
Shenandoah Valley Organic, LLC voluntarily agrees to the issuance of this Order.

Date: 8-10-16 By: , President
Corwin Heatwole Title

Shenandoah Valley Organic, LLC

Commonwealth of Virginia
City/County of Harrisonburg/Rockingham.

The foregoing document was signed and acknowledged before me this 10 day of August, 2016, by Corwin Heatwole who is President of Shenandoah Valley Organic, LLC on behalf of the limited liability company.

 Gina Morris
Notary Public

7661132
Registration No.

My commission expires: 03/31/19

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

1. **Unpermitted Discharge/Spill**

- a. Shenandoah shall immediately cease all discharges of process wastewater and industrial stormwater from the Facility to Blacks Run until coverage for any such discharges is issued under a VPDES Permit.
- b. Shenandoah has indicated that it wishes to obtain a VPDES permit for discharges from the Facility. That being the case, by October 1, 2016, Shenandoah shall submit to DEQ, a plan and schedule to address any process and/or structural changes at the facility necessary to allow coverage of process and/or industrial stormwater discharges under a VPDES Permit. Upon approval, said plan and schedule shall become a part of an enforceable under the terms of this Order.
- c. By October 30, 2016, Shenandoah shall submit a complete application for coverage under a VPDES permit to the Department for review and approval.

2. **DEQ Contact**

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

Tiffany R. Severs
Enforcement Specialist Senior
VA DEQ –Valley Regional Office
Physical: 4411 Early Road, Harrisonburg, VA 22801
Mailing: PO Box 3000, Harrisonburg, VA 22801
Phone: 540-574-7859
Fax: 540-574-7878
tiffany.severs@deq.virginia.gov

APPENDIX B
SHENANDOAH VALLEY ORGANIC, LLC
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

In accordance with Va. Code § 10.1-1186.2, Shenandoah 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 aeration and cleaning of the pond on Harrisonburg City's Purcell Park property located in Harrisonburg, VA, which drains to Blacks Run. Shenandoah will provide a \$6,825 subsidy to the Department of Parks and Recreation of the City of Harrisonburg to support the aeration project for the pond at Purcell Park. The City will begin the enhancements as proposed in the City's correspondence by September 30, 2016.

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 pond at Purcell Park supports fresh water species like Sunfish, Bluegill, and Largemouth Bass. The pond currently faces an excess of organic matter and sediment, leading to algal blooms and reduced Dissolved Oxygen (DO). The proposed project is to eliminate buildup of organic matter in the onsite ecosystem and to obtain this goal through the least invasive way possible. The project will reduce Biochemical Oxygen Demand and Total Suspended Solids (BOD/TSS) in the pond's discharge to Blacks Run, through a natural technique using microbial reduction (addition of bacteria); additionally, the project aims to reduce algal growth and increase DO through aeration.

2. Shenandoah shall submit progress reports on the SEP on a monthly basis, due the 10th day of each month.
3. The SEP shall be completed by November 15, 2016.
4. Shenandoah 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. Shenandoah shall submit the final report and certification to the Department within 45 days from the completion of the SEP project.
5. If the SEP has not or cannot be completed as described in the Order, Shenandoah 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.

6. Shenandoah shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 45 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Shenandoah's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

7. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Tiffany R. Severs
Enforcement Specialist Senior
VA DEQ –Valley Regional Office
Physical: 4411 Early Road, Harrisonburg, VA 22801
Mailing: PO Box 3000, Harrisonburg, VA 22801
Phone: 540-574-7859
Fax: 540-574-7878
tiffany.severs@deq.virginia.gov