COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

BOWMAN APPLE PRODUCTS COMPANY, INC.

(VPA Permit No. VPA001533)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) between the State Water Control Board and Bowman Apple Products Company, Inc., for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. 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 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.

5. "Order" means this document, also known as a Consent Special Order.

6. "Bowman" means Bowman Apple Products Company, Inc., a Virginia corporation in good standing located at Mount Jackson, Virginia.

7. "VPA" means Virginia Pollution Abatement.

8. "VPA Permit Regulation" or "Regulation" means 9 VAC 25-32-10 *et seq.*

9. "Facility" means the Bowman fruit processing Facility and land application site located at 10119 Old Valley Pike in Mount Jackson, Virginia.

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

11. "Permit" means Virginia Pollution Abatement Permit No. VPA001533 issued to Bowman Apple Products Company, Inc., which became effective April 10, 2002 and expires April 10, 2012.

12. "STP" means sewage treatment plant.

13. "NOV" means Notice of Violation.

14. "Regulation" means the VPA Permit Regulation 9 VAC 25-32-10 et seq.

15. "UP" means the Upgrade Plan.

16. "TKN" means Total Kjeldahl Nitrogen.

17. "NO3" means Nitrate.

SECTION C: Findings of Fact and Conclusions of Law

1. Bowman operates a fruit processing Facility in Mount Jackson, Shenandoah County, Virginia. Bowman annually land applies approximately 34 million gallons of fruit processing wastewater on a spray field site which is approximately 18.7 acres in total area. The spray fields consist of 6 fields numbered 1-6. Historically, the largest volume of wastewater is land applied in the fourth and first calendar quarters of each year during Bowman's peak processing period.

2. Bowman's VPA Permit authorizes the management of pollutants from the Facility until the expiration of the Permit on April 10, 2012; however, in lieu of a schedule in the Permit to upgrade, the Permit was issued with a special condition (Part I.C.11) which required Bowman to cease all spray irrigation by April 10, 2006. This reflected Bowman's agreement to take its spray irrigation system off-line and direct its wastewater to a (then) proposed North Fork Regional Wastewater Treatment Plant ("NFRWWTP") by April 10, 2006.

3. Had the Permit not contained the April 10, 2006 sunset, it would have instead included a schedule for upgrading the Facility's land application equipment and design.

4. Following Permit issuance (April 10, 2002), regional plans for the proposed NFRWWTP were abandoned. As an alternative to conveying wastewater to the NFRWWTP, Bowman then entered into an agreement with the Town of Mt. Jackson to convey the wastewater to the Town's sewage collection system. However, connection to the Town's system has not and cannot occur until completion of the construction of the new Mt. Jackson STP. That project has been significantly delayed, thus delaying the connection of the Bowman Facility to the Town's collection system.

5. DEQ issued Warning Letter W2006-03-V-1012 on March 17, 2006, to Bowman for violations of the Permit's maximum TKN & NO3 annual maximum loading rates for Fields 1, 2, 4, 5 and 6 during 2005.

6. On April 17, 2006, representatives of Bowman met with DEQ to discuss the expiration of the Permit's authorization to continue spray irrigation at the Facility. During the April 17, 2006, meeting, DEQ requested that Bowman submit a plan and schedule of corrective actions for the interim operations (upgrade plan or "UP" and interim operating plan or "IOP") of the Facility to maximize Facility treatment performance pending connection to the Town of Mt. Jackson's collection system.

7. DEQ issued Warning Letter W2006-06-V-1047on June 8, 2006, to Bowman for failure to cease all spray irrigation operations within four years of the effective date of the Permit (April 10, 2006). (Reference Part I. C. 11. of the Permit).

8. On June 18, 2006, DEQ received Bowman's UP to address the expiration of Permit-authorized spray irrigation at the Facility.

9. On June 20, 2006, DEQ conducted a technical and laboratory inspection at the Facility. This inspection identified a number of deficiencies including:

    a. failure to maintain all spray applicators so that they function optimally (Permit Part II.Q.);
    b. failure to allow normal inspection process of photography to occur (Permit Part II. W.4.); and,
    c. other deficiencies noted under the laboratory section of the inspection.

10. DEQ issued NOV No. W2006-08-V-0007 on August 2, 2006, to Bowman for failure to cease all spray irrigation operations within four years of the effective date of the permit (April 10, 2006) (Reference Part I. C. 11. of the subject permit), irrigating onto Field 4 when ground was saturated (ponding was taking place around the third spray head) (Reference Part I. B. 6 or 7) and failure to allow inspection with photography.

(Reference Part II.W.) These apparent violations were observed during a routine inspection on June 20, 2006.[1]

11. On August 17, 2006, DEQ conducted a technical and laboratory reevaluation inspection at the Facility. This inspection noted that the laboratory inspection deficiencies from the June 20, 2006 inspection remained uncorrected and that Bowman continued to refuse the allowance of photography. The spray applicator maintenance issue, as noted in the June 20, 2006 inspection, appeared to have been corrected.

12. On August 21, 2006, DEQ provided comments to Bowman regarding its June 18, 2006, Facility UP. DEQ requested that Bowman address the comments within 30 days (by September 20, 2006). The comments included:

    a. Need for proposed irrigation schedule;
    b. Need for additional information for the soil moisture monitoring plan;
    c. Need for details on the closure of groundwater monitoring well #1;
    d. Need for details on efforts to minimize process water usage;
    e. Need for a plan showing that the company will utilize all suitable available surrounding land for spray irrigation to minimize over application during March, April, October and November; and
    f. Need for addition construction information.

13. DEQ issued NOV No. W2006-10-V-0009 on October 3, 2006, to Bowman for failure to allow photography during an August 17, 2006 inspection (Reference Part II.W), failure to report noncompliance of the Field 4 spray head No. 2 (ponding) in the company's Second Quarterly Report 2006 (Reference Parts I.B. or II.I.3.of the Permit, and failure to address the laboratory inspection deficiencies noted in the June 20, 2006 technical and laboratory inspections report.

14. On October 19, 2006, DEQ received Bowman's response to the DEQ's comment letter of August 21, 2006 regarding the Facility UP/IOP.

15. On October 30, 2006, DEQ provided further written comments to Bowman on its letter received October 19, 2006.

16. On November 8, 2006, DEQ met with Bowman to discuss finalizing the Facility UP/IOP.

17. On November 27, 2006, DEQ received Bowman's amended schedule to address the expiration of Permit-authorized spray irrigation at the Facility.

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[1] Following NOV issuance, and after reviewing comments provided by Bowman, DEQ concluded that the specific citations of the Permit Part I.B.6. or B.7. for sprayfield ponding issues are more appropriately categorized as apparent violations of the Permit Part II.Q. (Proper Operations and Maintenance).

18. On December 14, 2006, DEQ conducted an unannounced inspection of the Facility to determine the status of spray irrigation. During the December 14, 2006, inspection, staff noted that Bowman continues to land apply wastewater without authorization of a permit. Also, staff observed wastewater ponding off of Spray Field 3 and an unusual discharge which was likely to enter State waters. Staff also observed a number of operational problems at the Facility. The operational problems included: improper operations of spray heads; ponding of wastewater on Spray Field 3; runoff of wastewater from Spray Field 2 with ponding of the wastewater; and runoff from the fields with potential to discharge to state waters. These problems in large part resulted from the spray head clogging and improper operations of the spray equipment. In addition, Bowman prevented the inspector from taking photographs to document the apparent violations.

19. DEQ issued NOV No. W2006-12-V-0004 on December 15, 2006, to Bowman for failure to address the laboratory inspection deficiencies noted in the June 20, 2006 technical and laboratory inspections report.

20. On December 27, 2006, DEQ received Bowman's revised Facility UP and schedule to address the expiration of authorization to continue spray irrigation at the Facility and its IOP for incorporation into this Order.

21. On February 1, 2007, DEQ approved Bowman's UP for the physical upgrades to the Facility's spray irrigation system.

22. By letter dated March 20, 2007, DEQ provided additional comments to Bowman's revised Facility IOP.

23. As documented by the file, Bowman has continued to land apply wastewater since April 10, 2006, without Permit authorization.

24. DEQ issued NOV No. W2007-04-V-0002 on April 11, 2007, to Bowman for failure to cease all spray irrigation operations within four years of the effective date of the permit (April 10, 2006), failure to address the January 26, 2007 compliance inspection's required actions letter due by February 17, 2007, failure to allow photography during January 27, 2007 inspection (Reference Part II.W), failure to report noncompliance on quarterly reports regarding ponding in the irrigation field. (Reference Part II.I.3. of subject permit).

25. Bowman disputes DEQ's legal authority to take photographs during inspections under the Permit Part II.W requirements. This issue is in litigation and therefore, is not addressed in the proposed Order.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a), orders Bowman, and Bowman agrees, to perform the actions described in Appendix A of this Order.

2. Bowman is authorized to operate the wastewater spray irrigation system in accordance with its Permit and the approved UP and the IOP until the earlier of the following two dates at which time all spray irrigation under the Permit shall cease:

    a. 90 days following a connection to the Mt. Jackson sewage treatment plant being made available; or
    b. **December 31, 2009**

3. The date established under Paragraph 2.b above may be extended by the Director for good cause shown by Bowman.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Bowman, for good cause shown by Bowman, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein in Section C. 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 as may be authorized by law; or (3) taking subsequent action to enforce the 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, Bowman admits the jurisdictional allegations, but does not admit to the factual findings, and conclusions of law contained herein.

4. Bowman consents to venue in the Circuit Court of Shenandoah County for any civil action taken to enforce the terms of this Order.

5. Bowman declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 enforce this Order.

6. Failure by Bowman 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. Bowman 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. Bowman shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Bowman shall notify the DEQ Regional Director in writing 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 Director of the Valley Regional Office within 48 hours of learning of any condition above, which Bowman 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 Bowman. Notwithstanding the foregoing, Bowman 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. Bowman petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or

b. The Director, his designee, or the Board may terminate this Order, upon his or its own initiative, upon 30 days written notice to Bowman, and in accordance with the provisions of the Administrative Process Act.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Bowman from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of Bowman 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 Bowman to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Bowman.

13. By its signature below, the Bowman Apple Products Company, Inc. voluntarily agrees to the issuance of this Order.
And it is so ORDERED this_____ day of _____, 2007.

_____
Amy T. Owens, Regional Director
Department of Environmental Quality

Bowman Apple Products Company, Inc. voluntarily agrees to the issuance of this Order.

By: [signature]

Title: C.E.O.

Date: 7/3/07

Commonwealth of Virginia
~~City~~/County of Shenandoah

The foregoing document was signed and acknowledged before me this

3rd day of July, 2007, by Timothy S. Proctor,
(name)

who is C.E.O. of Bowman Apple Products Company, Inc. on behalf of the Company.

(title)

Vickie R. Baker
Notary Public

My commission expires: May 31 2011

Registration No. 169280

VICKIE R. BAKER
Notary Public
Commonwealth of Virginia
My Commission Expires May 31, 2011

APPENDIX A
SCHEDULE OF COMPLIANCE
BOWMAN APPLE PRODUCTS COMPANY, INC.

1. Bowman shall immediately begin reporting to DEQ, in accordance with the Permit Part II.I.3., any wastewater ponding that leaves the spray field site that has the potential to discharge or actually discharges to State waters.

2. On February 1, 2007, DEQ approved Bowman's UP for the design of the Facility's spray irrigation upgrades which included the construction of additional spray irrigation fields 7 to 10.

3. **By July 1, 2007**, Bowman shall cease land application on spray subfield 3-2.

4. **By July 15, 2007**, Bowman shall submit to DEQ for review and approval a corrective action plan to address the clogging and improper operations of the Facility's spray heads. Bowman shall address any comments on the corrective action plan **within 30 days** of receipt of comments. Upon approval, the plan shall be incorporated by reference into this Order and will become an enforceable under the Order.

5. Bowman shall continue to maintain the operational status of the ground water monitoring wells until either the Facility connects to the Mt. Jackson collection system and ceases land application or until DEQ notifies Bowman that the monitoring well's data is no longer necessary for the continued operations of the Facility.

6. **By July 15, 2007**, Bowman shall submit to DEQ, for review an IOP for the Facility's interim spray irrigation operations until the Facility's connection to the Town of Mt. Jackson's collection system. The IOP is to contain the following:

    a. a discussion/plan on how the Facility will be operated to minimize winter irrigation;
    b. a discussion of how irrigation decisions will be made on a day-to-day basis;
    c. spray irrigation schedules for operating fields 1-8 (26.4 acres) in addition to 1-10 (33.0 acres)(for when fields 9 and 10 are brought online);
    d. a revised monthly spray irrigation reporting form; and
    e. a daily operations log designed to document the daily inspections of the spray fields and any operational problems, including; spray heads clogging, ponding of wastewater (on and??) off of the designated spray fields, and potential and actual discharges to State waters.

7. **By August 10, 2007**, Bowman shall begin submitting to DEQ monitoring reports on a monthly basis.

GENERAL REQUIREMENTS

8. No later than **14 days** following a date identified in the above schedule of compliance Bowman 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.