COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
BLUE RIDGE REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Steven A. Dietrich
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
L. WAYNE HUNT
FOR
HAVEN HOLLOW FARM
VPA General Permit Registration No. VPG27013

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 L. Wayne Hunt, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

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. "BRRO" means the Blue Ridge Regional Office of DEQ, with locations in Roanoke and Lynchburg, Virginia.

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. "Facility" or "Site" means Haven Hollow Farm located at 23640 N. James Madison Highway in Dillwyn, Virginia, where Mr. L. Wayne Hunt, owner of Haven Hollow Farm manages pollutants which are the subject of the Permit.

6. "Hunt" means L. Wayne Hunt a "person" within the meaning of Va. Code § 62.1-44.3.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

8. "O&M" means operations and maintenance.

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. "Permit" means VPA General Permit No. VPG2, which was issued under the State Water Control Law and the Regulations on December 1, 2000, and which expires on December 1, 2010. Mr. Hunt's management of pollutants at Haven Hollow Farm is regulated by the Permit as evidenced by Registration Number VPG270013.

11. "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.

12. "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.

13. "Regulation" means the VPA General Permit Regulation, 9 VAC 25-630-10 *et seq.*

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. "VPA" means Virginia Pollution Abatement.

19. "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. Hunt owns and operates the Site in Dillwyn, Virginia. At the Site, Hunt operates a confined poultry feeding business.

2. The Site is the subject of the Permit which allows management of pollutants, including chicken mortalities at Mr. Hunt's confined poultry feeding operations.

3. On September 3, 2009, a DEQ site inspection was conducted by BRRO Lynchburg compliance staff. Staff observed a confined poultry feeding operation using at least one disposal pit for routine disposal of daily chicken mortalities. The exact number of disposed birds is unknown. The only remaining evidence from the disposal was a substantial number of feathers and hundreds of bones. During the inspection the significant amount of chicken remains observed by the inspector at the main disposal pit was surrounded by several additional pockets of chicken remains located very close to one another. All of these disposal areas are on the Facility property.

4. 9 VAC 25-630-50 at Part I.B.5 states that disposing of mortalities in a pit is a practice that will not be allowed and that the use of a disposal pit for routine disposal of daily poultry mortalities by a permittee is considered a violation of the Permit. The facility has the necessary composting equipment. The prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.1-726 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia. The Permittee does not claim that an emergency situation existed and freely admits he is guilty of not

properly disposing of his daily mortalities by composting and that he mishandled the disposal of the mortalities.

5. On September 24, 2009, based on the inspection and follow-up information, the Department issued Notice of Violation No. W2009-09-L-0011 to Mr. L. Wayne Hunt, Haven Hollow Farm for the violation described in paragraph C (4), above.

6. Based on the results of the September 3, 2009 inspection, and the admission of the owner to the unauthorized disposal of mortalities, the Board concludes that Hunt has violated 9 VAC 25-630-50 Part I.B.5 of the Permit, as described in paragraph C(4), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Hunt, and Hunt agrees, to pay a civil charge of $1,250 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

Hunt shall indicate on his check 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 Hunt for good cause shown by Hunt, 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, Hunt admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Hunt 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. Hunt declares he has received fair and due process under the Administrative Process Act 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 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 Hunt 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. Hunt 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. Hunt shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Hunt 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 Hunt 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 Hunt.

11. This Order shall continue in effect until:

    a. Hunt petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Haven Hollow Farm.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hunt from his 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 Hunt 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. 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.

14. By his signature below, Hunt voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Steve A. Dietrich, Regional Director
Department of Environmental Quality

Mr. L. Wayne Hunt voluntarily agrees to the issuance of this Order.

Date: 23, Nov. 2009 By: L. Wayne Hunt
L. Wayne Hunt

Commonwealth of Virginia
City/County of Buckingham

The foregoing document was signed and acknowledged before me this 23rd day of November, 2009, by L. Wayne Hunt.

Linda G. Crews
Notary Public

110430
Registration No.

My commission expires: 7-31-12

Notary seal:

LINDA G CREWS
NOTARY PUBLIC
REG. #110430
MY COMMISSION EXPIRES
7-31-12
COMMONWEALTH OF VIRGINIA