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 W. Kemper IV
Whit Kemper Farm, Registration No.: VPG260648

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15 and 62.1-44.17:1.1, between the State Water Control Board and George W. Kemper IV, 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 meanings 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means the confined poultry feeding operation located at 9857 Goods Mill Road, McGaheysville, Rockingham County.

5. "Mr. Kemper" means George W. Kemper IV, currently a resident of Rockingham County, Virginia. Mr. Kemper is a "person" within the meaning of Va. Code § 62.1-44.3.

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

7. "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.

8. "Permit" means VPA Permit No. VPG260648, which was issued under the State Water Control Law and the Regulation to George W. Kemper IV on December 1, 2000, and which expires on November 30, 2010.

9. "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.

10. "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.

11. "Poultry Grower" means any person who owns or operates a confined poultry feeding operation, as defined in 9 VAC 25-630-10.

12. "Poultry Waste" means dry poultry litter and composted dead poultry, as defined in 9 VAC 25-630-10.

13. "Regulation" means the Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management, 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 a Virginia Pollution Abatement.

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. Mr. Kemper owns and operates a confined poultry feeding operation in Rockingham County, Virginia. The Facility is subject to both the Permit and the Regulation, which require that Pollutants from Poultry Waste at the Facility be managed in a manner that avoids discharges or adverse impact to state waters, specifically, to a nearby tributary of the South Fork of the Shenandoah River.

2. Mr. Kemper is a Poultry Grower within the meaning of 9 VAC 25-630-10.

3. On October 27, 2009, DEQ staff conducted an inspection of the Facility to evaluate compliance with the requirements of the Permit and the Regulation. Based on the inspection and follow-up information, Department staff made the following observations: Copies of current Poultry Waste transfers records were not available for review as required by 9VAC 25-630-50 Part (I)(B)(4)(b) of the Regulation and Part I.B.4. of the Permit.

4. On November 4, 2009, DEQ staff sent a letter to Mr. Kemper requesting that he submit the Poultry Waste transfer records within fourteen days. DEQ staff did not receive a response from Mr. Kemper.

5. On December 9, 2009, DEQ issued a Warning Letter, number W 2009-12-V-1002, to Mr. Kemper for this violation of the Regulation at 9 VAC 25-630-50 Part I (B)(4)(b) and Part I.B.4. of the Permit. The WL requested submittal of a response within 20 days. No response to the WL was received.

6. On January 29, 2010, DEQ staff responded to a complaint, IR number 2010-V-2227, regarding the improper storage of Poultry Waste at the Facility. During the complaint investigation, DEQ staff observed the following: a large pile of Poultry Waste was being stored, uncovered, on the ground in the front of the Poultry Waste storage shed. To avoid any potential violation of 9VAC 25-630-50 Part I.B.2 of the Regulation and Part I.B.2. of

the Permit, DEQ staff requested that the Mr. Kemper either remove the Poultry Waste from the Facility or cover and protect it from storm water runoff, wind and precipitation. No response confirming that either of these corrective actions had been performed was received by DEQ staff.

7. On February 18, 2010, DEQ issued Notice of Violation number W2010-02-V-0001 to Mr. Kemper for the violations of the Permit and the Regulation noted in paragraphs C.3. through C.6.. The NOV requested submittal of a response within 10 days. Mr. Kemper responded to the NOV by calling to set up a meeting with DEQ staff on March 18, 2010.

8. On March 4, 2010, DEQ staff performed a follow-up inspection of the Facility and confirmed that the Poultry Waste pile remained in the same place and condition as it had been observed during the January 29, 2010 complaint investigation.

9. On March 18, 2010, Department staff met with Mr. Kemper to discuss the violations noted in the NOV. Proof of compliance was confirmed by DEQ staff through receipt of the following documentation: a) Photographs showing that the Poultry Waste pile was less than half the size previously documented in the inspections and that it was completely covered and protected from storm water, wind and precipitation, and b) complete Poultry Waste transfers records from the Facility for calendar year 2009.

10. On May 5, 2010, DEQ staff performed a follow-up inspection of the Facility and confirmed that the Poultry Waste pile noted during the January 29, 2010 complaint investigation had been removed.

11. Based on the results of the above October 27, 2009, January 29 and March 4, 2010 inspections and the March 18, 2010 meeting, the Board concludes that Mr. Kemper has violated 9 VAC 25-630-50(B)(4)(b) and 9 VAC 25-630-50(B)(2) and Permit Part I.B.2. and B.4., as described in paragraphs 3 through 9, above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Mr. Kemper, and Mr. Kemper agrees to pay a civil charge of $1,000.00 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

Mr. Kemper 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 Mr. Kemper for good cause shown by Mr. Kemper, 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; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Mr. Kemper admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Mr. Kemper 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. Mr. Kemper 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 Mr. Kemper 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. Mr. Kemper 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. Mr. Kemper shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Kemper 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 Mr. Kemper 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 Mr. Kemper. Nevertheless, Mr. Kemper 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. Mr. Kemper 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 Mr. Kemper.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Kemper 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 Mr. Kemper 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, Mr. Kemper voluntarily agrees to the issuance of this Order.

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

_____
Amy Thatcher Owens, Regional Director
Department of Environmental Quality

Date: 6-1-10 George W. Kemper IV
George W. Kemper IV

Commonwealth of Virginia, City/County of Rockingham
The foregoing document was signed and acknowledged before me this 1st day of June, 2010, by George W. Kemper IV

Patricia M. McDorman
Notary Public

7139594
Registration No.
My commission expires: July 31, 2011
Notary seal:

PATRICIA M. McDORMAN
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7139594
My Commission Expires July 31, 2011