COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
(540) 574-7800 Fax (540) 574-7878
www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Wayne Freeze, Jr.

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 Wayne Freeze, Jr., for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

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. "Mr. Freeze" means Wayne Freeze, Jr., currently a resident of Page County, Virginia. Mr. Freeze is a "person" within the meaning of Va. Code § 62.1-44.3.

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

6. "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.

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

8. "Poultry Waste Broker" means a person, other than the poultry grower, who possesses more than 10 tons of poultry waste in any 365-day period and who transfers some or all of the waste to other persons, as defined in 9 VAC 25-630-10.

9. "Regulation" means the Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management, 9 VAC 25-630-10 *et seq.*

10. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

11. "Va. Code" means the Code of Virginia (1950), as amended.

12. "VAC" means the Virginia Administrative Code.

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

14. "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. Freeze operates in the Commonwealth of Virginia as a Poultry Waste Broker within the meaning of 9 VAC 25-630-10.

2. The Regulation, at 9 VAC 25-630-60(D), requires that each Poultry Waste Broker submit records of poultry waste that has been acquired and transferred throughout the previous calendar year by February 15th of the following year.

3. Mr. Freeze failed to submit the required poultry waste records by February 15th, 2008, for the calendar year 2007. On March 18, 2008, DEQ staff issued a Warning Letter, number WL-08-VRO-007, to Mr. Freeze for this violation of the Regulation at 9 VAC 25-630-60(D). No response to the WL was received.

4. On April 17, 2008, DEQ staff issued NOV number 08-04-VRO-005 to Mr. Freeze for this violation of the Regulation at 9 VAC 25-630-60(D). No response to the 2008 NOV was received.

5. On July 3, 2008, DEQ staff sent Mr. Freeze a Consent Special Order that would enable him to comply with the Regulation by submitting his poultry waste transfer source and

destination records for the calendar year 2007 and by paying a civil charge. No response to the Consent Special Order was received.

6. Mr. Freeze failed to submit the required poultry waste records by February 15th, 2009, for the calendar year 2008. On February 27, 2009, DEQ staff issued Notice of Violation, number NOV-09-03-VRO-1, to Mr. Freeze for this violation of the Regulation at 9 VAC 25-630-60(D). The NOV was sent via certified and return receipt mail and was returned to the DEQ as unclaimed.

7. On May 28, 2009, Page County Sheriff's Office served Mr. Freeze with the February 27, 2009, NOV. No response to the 2009 NOV was received.

8. Having received no responses to either the 2008 and 2009 NOVs, nor to the Consent Special Order proposed sent in 2008, DEQ staff scheduled an Special Order Proceeding for September 23, 2009, in accordance with §§2.2-4019 and 10.1-1186 of the Va. Code. A notice of this proceeding was sent via certified and return receipt mail on August 21, 2009. The notice was returned to the DEQ as unclaimed.

9. On September 14, 2009, Page County Sheriff's Office served Mr. Freeze with the February 27, 2009, notice.

10. On September 23, 2009, Mr. Freeze called DEQ staff to inform them that he could not attend the proceeding. The proceeding was then rescheduled for October 8, 2009.

11. On October 8, 2009, Special Order Proceeding was held at VRO.

12. Based on the results of the above referenced records review and statements made by Mr. Freeze at the October 8, 2009, proceeding, the Board concludes that Mr. Freeze has violated 9 VAC 25-630-60(D), as described in paragraphs 3 through 11, above.

13. In order for Mr. Freeze to maintain compliance with regulatory requirements, DEQ staff and Mr. Freeze 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 Mr. Freeze, and Mr. Freeze agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $2,000.00 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. Freeze 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. Freeze for good cause shown by Mr. Freeze, 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. Freeze admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

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

And it is so ORDERED this _____ day of _____, 2009.

_____
Amy Thatcher Owens, Regional Director
Department of Environmental Quality

Date: 10/8/09 Wayne Freeze, Jr.
Wayne Freeze, Jr.

Commonwealth of Virginia, City/County of ROCKINGHAM
The foregoing document was signed and acknowledged before me this 8 day of October, 2009, by Wayne Freeze, Jr.

Kelly R. Showalter
Notary Public

7139599
Registration No.
My commission expires: 2/28/2011

Notary seal:

KELLY R. SHOWALTER
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7139599
My Commission Expires Feb. 28, 2011

APPENDIX A
SCHEDULE OF COMPLIANCE

Record Submittal

1. Mr. Freeze shall submit all applicable poultry waste records for the calendar years 2007 and 2008 by November 15, 2009.
2. Mr. Freeze shall submit all applicable poultry waste records for the calendar year 2009 by February 1, 2010.

3. **DEQ Contact**

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

David Robinett
Enforcement Specialist
VA DEQ –Valley Regional Office
PO Box 3000
Harrisonburg, VA 22801
540-574-7862
540-574-7878
david.robinett@deq.virginia.com