



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE

Molly Joseph Ward
Secretary of Natural Resources

5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2103
www.deq.virginia.gov

David K. Paylor
Director

Maria R. Nold
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

Heaven Scent, Inc.

FOR

**Heaven Scent Poultry Farm
VPA Permit No. VPG25
Registration No. VPG250111**

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 Heaven Scent, Inc. 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. "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 Heaven Scent Poultry Farm, a confined poultry feeding operation located at 25074 Christine Lane in Parksley, Virginia where Heaven Scent manages Pollutants that are the subject of the Permit.
5. “Heaven Scent” means Heaven Scent, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Heaven Scent, Inc. 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 VPDES General Permit No. VPG25, which was issued under the State Water Control Law and the Regulation on December 1, 2010 and which expires on November 30, 2020. Heaven Scent, Inc. applied for registration under the Permit and was issued Registration No. VPG250111 on January 24, 2011.
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 by 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 Regulation and General Permit for Poultry 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. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means Virginia Administrative Code.
19. "VPA" means Virginia Pollution Abatement.

SECTION C: Findings of Fact and Conclusions of Law

1. Heaven Scent owns and operates the Facility in Parksley, Virginia. The Facility is subject to both the Permit and the Regulation, which allows Heaven Scent to manage Pollutants from Poultry Waste at the Facility in strict compliance with the terms and conditions of the Permit and in a manner that avoids discharges or adverse impact to state waters, specifically, to Katy Young Branch, a tributary to Bagwell Creek and the Chesapeake Bay.
2. Heaven Scent is a Poultry Grower within the meaning of 9 VAC 25-630-10.
3. On January 15, 2014, 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 transfer records were not available for review.
 - Poultry Waste was stored in stockpiles, outside and uncovered; Poultry Waste piles had standing dark stained water on the ground nearby and dark stained water was observed in nearby drainage ditches.

4. Part I.B.4 of the Permit requires Poultry Growers to maintain Poultry Waste transfer records for at least three years.
5. Part I.B.1 &2 and Part III.B.1 &2 of the Permit require Poultry Waste to be stored in a manner that prevents point source discharges.
6. Katy Young Branch is a surface water located wholly within the Commonwealth and is a 'state water' under State Water Control Law.
14. TRO issued NOV No. W2014-02-T-0001 on February 18, 2014 to Heaven Scent for the violations noted in paragraphs C(3) through C(5), above.
15. On January 22, 2015, DEQ staff met with Heaven Scent representatives at the Facility to discuss the NOV and noted that the uncovered Poultry Waste piles observed during the January 15, 2014 inspection had been removed; however, some residual Poultry Waste remained at the Facility.
16. On January 28, 2015, Heaven Scent submitted Poultry Waste the required transfer records to DEQ.
17. Based on the results of the January 15, 2014 inspection and the January 22, 2015 site visit, the Board concludes that Heaven Scent has violated Part I.B.4, Part I.B.1 & 2 and Part III.B.1 & 2 of the Permit and the Regulation as described in paragraphs C(3) through C(5), above.
18. In order for Heaven Scent to complete its return to compliance, DEQ staff and Heaven Scent 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 Heaven Scent, and Heaven Scent agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$1,875.00 within 30 days of the effective date of this 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 shall be delivered to:

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

Heaven Scent 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, Heaven Scent, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Heaven Scent, Inc., for good cause shown by Heaven Scent, Inc., 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 the purposes of this Order and subsequent actions with respect to this Order only, Heaven Scent admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Heaven Scent 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. Heaven Scent 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 Heaven Scent 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. Heaven Scent 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. Heaven Scent shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Heaven Scent 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 Heaven Scent 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 Heaven Scent. Nevertheless, Heaven Scent 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 Heaven Scent has completed all of the requirements of the Order;
 - b. Heaven Scent 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 Heaven Scent.

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

And it is so ORDERED this 9 day of November,
2015.

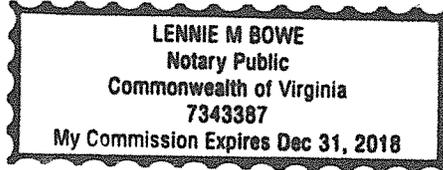


Regional Director
Department of Environmental Quality

Heaven Scent, Inc. voluntarily agrees to the issuance of this Order.

Date: 7-28-2015 By: [Signature], POA
(Person) (Title)
Heaven Scent, Inc.

Commonwealth of Virginia
City/County of Accomack



The foregoing document was signed and acknowledged before me this 28 day of July, 2015, by Timothy Valentine who is POA of Heaven Scent, Inc., on behalf of the company.

[Signature]
Notary Public

7343387
Registration No.

My commission expires: Dec. 31, 2018

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

Heaven Scent shall:

1. By September 1, 2015, remove all remaining uncovered Poultry Waste at the Facility.
2. Comply with all conditions of the Permit.
3. Mail all submittals and reports required by this Appendix A to:

Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462