



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO

Hickory Green Dairy Farm, LLC

VPA Registration No. VPG100092

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d) and 62.1-44.17:1(J) between the State Water Control Board and Hickory Green Dairy Farm, LLC 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 meanings 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 citizen 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. "Hickory Green" means Hickory Green Dairy Farm, LLC, a limited liability corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Mr. James T. Wilson is a principal in the LLC.
7. "Facility" or "Facilities" means the structures and appurtenances, including the land application areas, associated with dairy manure management owned by Hickory Green.
8. "VPA" means Virginia Pollution Abatement.
9. "VPA Permit" means VPA Registration No. VPG100092, General Permit for Confined Animal Feeding Operations, issued to Hickory Green on December 21, 2004.
10. "VPA Permit Regulation" means the VPA General Permit Regulation for Animal Feeding Operations, 9 VAC 25-192-10 et seq.
11. "VRO" means DEQ's Valley Regional Office.
12. "NMP" means Nutrient Management Plan.
13. "DCR" means the Virginia Department of Conservation and Recreation.

SECTION C: Findings of Facts and Conclusions of Law

1. Hickory Green owns and operates the Facility located at 1724 Berry's Ferry Lane, White Post, Virginia. The Facility is the subject of the VPA Permit.
2. Under Part I.B.7 of the VPA Permit and 9 VAC 25-192-70.B.7 of the VPA Permit Regulation, Hickory Green is required to implement a NMP approved by the DCR which is enforceable under the permit. Hickory Green's DCR-approved NMP was valid between November 1, 2003 and November 1, 2006.
3. The Facilities covered under the VPA Permit include a synthetic-lined earthen liquid manure storage lagoon. Pursuant to Part I.B.5 of the VPA Permit and 9 VAC 25-192-70.B.5 of the VPA Permit Regulation, Hickory Green is required to maintain at least one foot of freeboard at all times in its liquid waste storage facilities (except in the case of a storm event greater than a 25-year, 24-hour storm).
4. The Facilities covered under the VPA Permit also include 1,875 acres of agricultural land for use in application of the manure generated by the Hickory Green dairy operations.
5. The amount of livestock authorized for housing at the Facility under the approved NMP and, therefore, the VPA Permit is based on the available acreage for land application of the manure/nutrients generated. The approved NMP for the Facility allowed for the management of manure generated by 876 dairy cattle on the 1,875 acre land application

area. Under the terms of the VPA Permit, Hickory Green is required to periodically land apply manure at the agronomic rates prescribed in the NMP while also maintaining the one foot manure lagoon freeboard requirement.

6. The file record for the Facility indicates that Hickory Green has experienced chronic problems with managing the volume of manure generated at the Facility. Inspections of the Facility conducted on March 31, 2005, April 12, 2005, November 8, 2005 and January 24, 2006 indicate that high volumes of manure were in storage at the Facility. On April 18, 2005 DEQ issued Warning Letter No. 05-04-VRO-6 to Hickory Green citing problems with excess manure in storage at the Facility.
7. On March 21, 2006, DEQ and Hickory Green entered into a Letter of Agreement ("LOA") to provide for improved manure management at the Facility. The LOA established September 30, 2006 as the deadline for completion of the items under the LOA. The primary improvement proposed by Hickory Green under the LOA was the installation of a sand separation unit for manure processing / volume reduction. The LOA also imposed a restriction limiting the number of dairy cattle at the Facility to the number then present (approximately 400) pending completion of the improvements under the LOA. Hickory Green subsequently described difficulties in meeting the September 30, 2006 deadline for installation of the sand separation unit including some health problems of Mr. Wilson and problems securing the equipment itself. Based on these circumstances, DEQ exercised enforcement discretion and extended the LOA compliance deadline to March 31, 2007.
8. On March 8, 2007, DEQ staff inspected the Facility and observed that only six inches of freeboard remained in the manure storage lagoon. On March 9, 2007, DEQ issued Notice of Violation No. W2007-03-V-0001 ("NOV") to Hickory Green citing the following apparent violations:
 - a. Failure to maintain a minimum of one foot of freeboard at all times in the manure storage lagoon in apparent violation of § 9 VAC 25-192-70.B.5 of the VPA Permit Regulation [and Part I.B.5 of the VPA Permit]; and,
 - b. Failure to maintain an approved NMP (NMP expired 11/1/06) in apparent violation of § 9 VAC 25-192-70. B.7 of the VPA Permit Regulation [and Part I.B.7 of the VPA Permit].
9. Immediately prior to issuance of the NOV, Hickory Green contracted with a custom manure applicator to draw down its liquid manure storage lagoon. The custom applicator arrived at the Facility on March 10, 2007 and by March 23, 2007 had completely drawn down the lagoon and land applied the manure. Although the NMP had expired on November 1, 2006, the manure was land applied in accordance with the recommendations of Hickory Green's certified nutrient planner.

10. On March 30, 2007 staff of DEQ-VRO and representatives of Hickory Green met in an informal enforcement conference to discuss the issues outlined in the March 21, 2006 LOA and March 9, 2007 NOV. During the conference, representatives of Hickory Green indicated that in terms of its business feasibility, it remained in the company's long-term plans to bring the number of dairy cattle at the Facility up to a point at or near the 876 animals authorized under the NMP/VPA Permit. The Hickory Green representatives also explained that at the 876 animal level, the manure lagoon would need to be emptied four times per year to maintain compliance with the VPA Permit. The Hickory Green representatives further explained that it was not feasible for the company to empty the manure lagoon four times per year even at the 876 animal level and, therefore, that an enhanced manure management system was necessary to enable the company to feasibly operate the Facility at the 876 animal level while requiring the manure lagoon to be emptied not more than twice per year.
11. During the March 30, 2007 enforcement conference, Hickory Green explained that its preferred system for manure management was now a flush water recycling/composted manure solids bedding system as opposed to the previously proposed sand separation system. At the conclusion of the enforcement conference, the parties agreed that based on Hickory Green's compliance history, its stated business needs and on DEQ's obligation to enforce compliance with the VPA Permit, Hickory Green would accept a phased approach to bringing the number of dairy cattle housed at the Facility up to the maximum number authorized under the VPA Permit. This approach is further addressed in Appendix A of the Order.

SECTION D: Agreement and Order

1. Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d) and 62.1-44.17:1(J) orders Hickory Green, and Hickory Green agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Hickory Green, and Hickory Green voluntarily agrees to pay a civil charge of **\$2,500**, within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Hickory Green's Federal Identification Number and shall reference that it is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Hickory Green, for good cause shown by Hickory Green, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice of Violation. 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, Hickory Green admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Hickory Green 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. Hickory Green 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 Hickory Green 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. Hickory Green 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 act of God, war, strike, or such other occurrence. Hickory Green shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hickory Green 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 Regional Director within 48 hours of learning of any condition above, which Hickory Green 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 Hickory Green. Notwithstanding the foregoing, Hickory Green agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Hickory Green. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hickory Green from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Hickory Green voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 28 June, 2007.



Amy Thatcher Owens, Regional Director
Department of Environmental Quality

Hickory Green voluntarily agrees to the issuance of this Order.

By: James T. Wilson MANAGER/Member
Date: 4-27-07

Commonwealth of Virginia
City/County of Winchester

The foregoing document was signed and acknowledged before me this 27th day of
April, 2007, by James T. Wilson, who is
(name)
Manager/Member of Hickory Green Dairy Farm, LLC, on behalf of the LLC.
(title)

Claire J. Daugherty
Notary Public

My commission expires : 9-30-09.

**APPENDIX A
SCHEDULE OF COMPLIANCE**

**HICKORY GREEN DAIRY FARM, LLC
VPA Registration No. VPG100092**

1. Hickory Green shall limit the number of dairy cattle housed at the Facility to a maximum of 415 animals. While in effect, this limit shall supersede any animal unit limit established under the NMP/VPA Permit for the Facility. This limit shall be in effect beginning on the date of Hickory Green's execution of the Order and shall continue until such time as a date for its suspension or amendment is established under Item No. 2 of this Appendix, or until amendment/cancellation of the Order, whichever occurs first.
2. Hickory Green may petition DEQ to suspend or amend the limit imposed by Item No. 1 of this Appendix. Such petition may include but need not be limited to proposals involving reductions in the volume of liquid manure to be stored or increases in the capacity for liquid manure storage. Such petition(s) shall include plans and specifications, as appropriate. Should any such petition(s) for suspension/amendment be approved by DEQ, such approval shall be by letter signed by the Valley Regional Director and the suspension/amendment shall take effect on the date established in the letter.
3. Notwithstanding any suspension or amendment of the animal unit limit as may be authorized under Item No. 2 of this Appendix, DEQ reserves the right to amend the Order to further reduce the maximum number of dairy cattle authorized for housing at the Facility should such action be necessary to ensure consistent compliance with the VPA Permit.
4. **By May 1, 2007**, Hickory Green shall submit to DCR for approval, a revised NMP for the Facility.
5. Hickory Green shall maintain at least one foot of freeboard at all times on its liquid waste storage facilities, except in the case of a storm event greater than a 25-year, 24-hour storm.