



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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David K. Paylor
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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO NEW MARKET POULTRY, LLC VPDES Permit No. VA0054453

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 New Market Poultry, LLC, regarding the Facility, for the purpose of resolving certain violations of the State Water Control Law and the Permit and the Regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "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.
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. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10

6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Facility" means the wastewater treatment plant located at 145 Old E. Cross Road, New Market, Virginia, that treats and discharges treated effluent from New Market Poultry's co-located business operations under VPDES Permit No. VA0054453.
9. "NMP" or "Company" means New Market Poultry, LLC, a limited liability company authorized to do business in Virginia, and its members, affiliates, partners, and subsidiaries. NMP is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "O&M" means operations and maintenance.
12. "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.
13. "Permit" means VPDES Permit No. VA0054453, which was issued under the State Water Control Law and the Regulation to New Market Poultry, LLC through a change of ownership on March 25, 2011 and which expires on June 30, 2014.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
15. "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.

16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "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.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means the Virginia Pollutant Discharge Elimination System.
22. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: The Board's Findings of Facts and Conclusions of Law

1. NMP owns and operates the Facility, which serves the poultry processing plant in Shenandoah County, Virginia. The Permit authorizes NMP to discharge treated wastewater from the Facility to Smith Creek from Outfall 001 and to discharge storm water to an unnamed tributary to Smith Creek from Outfall 002, in strict compliance with the terms and conditions of the Permit. The Permit prohibits the discharge of process wastewater from Outfall 002.
2. Smith Creek and the unnamed tributary to Smith Creek are located in the Shenandoah River subbasin and the Potomac River Basin. Smith Creek is listed as Tier 1 waters. Smith Creek is listed in DEQ's 305(b) report as impaired for both aquatic use and not supporting recreational uses based on violations of E. coli water quality standards. This is addressed in the EPA approved bacterial TMDL for Smith Creek. This assessment unit is addressed in the EPA approved Smith Creek benthic TMDL.
3. On February 20, 2012 (a State Holiday), DEQ received a pollution complaint via a voicemail reporting an overflow of bloody water from the Facility into the unnamed tributary to Smith Creek in the Town of New Market.

4. On February 21, 2012, DEQ contacted NMP to inquire if the Company had experienced any unusual events on February 20, 2012. NMP indicated that there had been an overflow of approximately 8,000 – 72,000 gallons of wastewater from a plugged manhole on the Facility's premises which entered the unnamed tributary to Smith Creek.
5. On February 21, 2012, NMP submitted a written report on the wastewater overflow which occurred on February 20, 2012.
6. On February 22, 2012, DEQ staff investigated the pollution complaint and observed that two manholes on NMP's influent wastewater transmission line to the Facility had overflowed into the unnamed tributary to Smith Creek. Staff observed thick masses of coagulated oil and grease coating/filling the interiors of those two manholes. Staff concluded that the second, upstream manhole had overflowed as a result of backup from the lower, plugged manhole.
7. DEQ staff followed the path of the wastewater overflows from where they entered the unnamed tributary to Smith Creek downstream to its confluence with Smith Creek. Staff observed chironomids (blood worms) and flat worms, but few other benthic organisms, apparent *Sphaerotilus* (a bacterial growth) and grease coated rock substrate through this entire stream reach. The *Sphaerotilus* growth and the few observed benthic organisms are indicative of high organic loading, low D.O. and high BOD.
8. During the February 22, 2012 investigation, DEQ staff also observed/noted an abundance of *Sphaerotilus* growth in the form of beige slime, and white foam, and an egg odor at NMP's Outfall 002 which is also a storm water outfall in the Town of New Market. DEQ staff observed that the Facility's receiving dock area, which apparently leaks/drains to the outfall, is frequently hosed and cleaned to remove, feathers, poultry wastes and eggs following the cleaning of live delivery trucks at the receiving dock. Staff also observed that bloody, greasy packing ice melt process wastewater in the trailer parking lot is not collected for treatment. Staff observed wastewater entering roadway drainage ditches from both areas. NMP's Permit prohibits the discharge of process wastewater from Outfall 002. The storm water outfall discharges at the headwaters of the same unnamed tributary to Smith Creek as noted above.
9. On February 24, 2012, NMP submitted to DEQ a 5 day letter in response to the wastewater spill as required by the Permit. NMP indicated that it believed the spill was caused by grease clogging the effluent pipe of the manhole.
10. On February 28, 2012, DEQ VRO issued Notice of Violation No. W2012-02-V-0006 to NMP for unpermitted discharges to State waters in February 2012.
11. On March 5, 2012, DEQ staff met with representatives of NMP to discuss the NOV's violations, the problems that led to the violations and corrective actions needed to address

- the problems. During those discussions, NMP laid out some of the corrective actions that it had taken to address problems.
12. By letter dated March 9, 2012, DEQ suggested that NMP conduct investigations to determine if and/or where its process wastewaters are entering the storm water (Outfall 002) conveyance system under its poultry processing plant.
 13. On April 4, 2012, DEQ staff met with representatives of NMP to discuss the Company's corrective action plan ("CAP") which it submitted at the meeting. The CAP provided a preliminary plan and schedule of corrective actions for inclusion in Appendix A of this Order.
 14. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
 15. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes. Also, the Permit Part I.A.4. Effluent Limitations and Monitoring Requirements authorize the discharge from Outfall 002 (storm water) -There shall be no discharge of process wastewater from this outfall.
 16. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
 17. The Department has issued no permits or certificates to NMP authorizing the discharge of wastewater from the Facility other than VPDES Permit No. VA0054453.
 18. The unnamed tributary to Smith Creek and Smith Creek are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.
 19. Based on NMP's letter(s) to DEQ, the NOV, the March 5, 2012 meeting, DEQ's inspection report, and a file review, the Board concludes that NMP has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging wastewater to State waters while concurrently failing to comply with the conditions of the Permit, as described in Section C above.
 20. In order for NMP to provide for compliance with the Permit, Regulation and Va. Code § 62.1-44.5, DEQ and representatives of NMP 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 NMP, and NMP agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of ~~\$9,100~~ 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

3. NMP shall include its Federal Employer Identification Number (FEIN) [(27-4862405)] 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of NMP for good cause shown by NMP, 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, NMP admits the jurisdictional allegations, and neither admits or denies the findings of fact, and conclusions of law contained herein.
4. NMP 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. NMP 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 NMP 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. NMP 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 unforeseen occurrence beyond its control and not due to a lack of good faith or diligence on its part. NMP shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NMP 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 NMP 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.

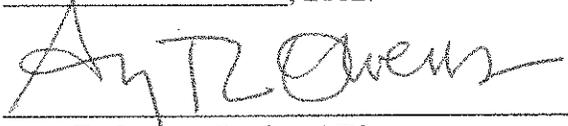
9. This Order is binding on the parties hereto, any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and NMP. Nevertheless, NMP agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after NMP has completed all of the requirements of the Order;

- b. NMP 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 NMP.

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

And it is so ORDERED this 28th day of September, 2012.



Amy T. Owens, Regional Director
Department of Environmental Quality

New Market Poultry, LLC voluntarily agrees to the issuance of this Order.

Date: MAY 18, 2012 By:  (BRAD RESPASS), CHIEF BUSINESS OFFICER
(Person) (Title)
New Market Poultry, LLC

~~STATE OF GEORGIA~~
~~Commonwealth of Virginia~~
City/County of COBB

The foregoing document was signed and acknowledged before me this 18th day of May, 2012, by Brad Respass who is

Chief Business Officer of New Market Poultry, LLC on behalf of New Market Poultry, LLC



Notary Public

Registration No.

My commission expires: August 1, 2014

Notary seal:



**APPENDIX A
SCHEDULE OF COMPLIANCE
NEW MARKET POULTRY, LLC**

1. **By June 1, 2012**, NMP shall complete the camera inspection of the storm water drain (Outfall 002) to determine the drain's routing and whether there are other piping sources and/or defects discharging wastewaters to the storm water line.
2. **By August 1, 2012**, NMP shall complete the construction/installation of the truck drainage pad staging area project to capture process wastewaters which leak from parked trailers and transport those wastewaters to treatment.
3. **By September 1, 2012**, NMP shall submit to DEQ for review and approval a plan and schedule of corrective actions to eliminate sources of process wastewaters from entering the storm water system (Outfall 002). NMP shall respond to any comments regarding the plan and schedule **within 30 days** of receipt of written comments. Upon approval of the corrective action plan, said plan and schedule shall be incorporated by reference into this Order and become enforceable as part of this Order.
4. **Within 30 days** of completing the approved corrective action plan to address the entry of process wastewaters into the Outfall 002 storm water drain, NMP shall complete the cleanup and removal of the *Sphaerotilus* bacterial growth in the stream utilizing the approved cleanup plan referenced in Item 1 above.
5. **By September 1, 2012**, NMP shall complete construction of the replacement of approximately 700 feet of the wastewater influent pipe and the replacement/repairs of deficient manholes.
6. **By September 1, 2012**, NMP shall complete the installation of the influent pipe flow meter and alarming system.
7. NMP shall implement and maintain standard operating procedures ("SOP") to ensure that all process wastewaters are captured and properly treated as outlined in NMP's Action Plan dated April 4, 2012 and modified by Letter dated April 11, 2012 (or as contained in any approved follow-up revisions).
8. No later than **14 days** following a completion date identified in the above schedule of compliance NMP shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

DEQ Contact

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

Steve Hetrick
Enforcement Specialist Sr.
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7833 Phone
(540) 574-7878 Fax
Steven.hetrick@deq.virginia.gov