



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
VALLEY REGIONAL OFFICE

Douglas W. Domenech  
Secretary of Natural Resources

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David K. Paylor  
Director

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## STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO GEORGE'S CHICKEN, LLC VPDES Permit No. VA0077402

### 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 George's Chicken, 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. "CBOD" means carbonaceous biochemical oxygen demand.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
7. "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.
8. "DMR" means Discharge Monitoring Report.
9. "D.O." means dissolved oxygen.
10. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
11. "Facility" means the wastewater treatment plant located at 117 Screech Owl Lane, Edinburg Virginia, that treats and discharges treated effluent from George's Chicken co-located business operations under VPDES Permit No. VA0077402.
12. "George's" or "Company" means George's Chicken, LLC, a limited liability company authorized to do business in Virginia, and its members, affiliates, partners, and subsidiaries. George's is a "person" within the meaning of Va. Code § 62.1-44.3.
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
14. "O&M" means operations and maintenance.
15. "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.
16. "Permit" means VPDES Permit No. VA0077402, which was issued under the State Water Control Law and the Regulation to George's Chicken, LLC which became effective on May 1, 2010 and which expires on April 30, 2015.
17. "Plant" means the Company's poultry processing plant which is co-located with the Facility.

18. "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.
19. "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.
20. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
22. "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.
23. "TMDL" means total maximum daily load.
24. "TSS" means total suspended solids.
25. "Va. Code" means the Code of Virginia (1950), as amended.
26. "VAC" means the Virginia Administrative Code.
27. "VPDES" means the Virginia Pollutant Discharge Elimination System.
28. "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. George's owns and operates an advanced Facility with a design average flow capacity of 1.7 MGD, which serves its poultry processing plant, a rendering operation, and private sewer customers including a trailer park, two businesses, and five residences in Shenandoah County, Virginia. The Permit authorizes George's to discharge treated wastewater from the Facility to Stony Creek from Outfall 001, in strict compliance with the terms and conditions of the Permit.
2. Stony Creek is located in the Shenandoah River subbasin and the Potomac River Basin. Stony Creek is listed as Tier 1 waters. Stony Creek is listed for benthic impairment. The benthic impairment is attributed to wildlife other than waterfowl, non-point source, and agriculture sources. A Benthic TMDL has not been developed for the stream segment receiving the effluent. Stony Creek is also listed in DEQ's 305(b) report as impaired for recreational use due to violations of E. coli water quality standards. This is addressed in the EPA approved bacterial TMDL for Stony Creek.
3. On August 3, 2012, George's reported to DEQ that it was experiencing an ongoing unusual discharge to Stony Creek that began on August 2, 2012, which was causing discoloration in the stream. Later that day, George's determined that the Facility's biological processes appeared to be out of balance. George's continued to troubleshoot the cause of the problem.
4. On August 5, 2012, George's reported to DEQ that testing indicated that an unknown source had shocked and dramatically reduced the Facility's nitrification treatment process, creating a biological imbalance. George's also indicated that it had reduced the Facility's influent flow to increase the detention time to improve nitrifier bacteria growth and planned to augment treatment the next day through the addition of both nitrifier and other bacteria.
5. On August 6, 2012, DEQ staff investigated the unauthorized discharge. DEQ staff observed a persisting turbid plume in Stony Creek for >200 meters downstream of the outfall with *Sphaerotilus* bacterial growth coating the rocks throughout the area of the plume. The *Sphaerotilus* growth is indicative of high organic loading in the wastewater discharge. Staff took effluent samples at Outfall 001, conducted in-stream sampling and also conducted a benthic survey.
6. In submitting its DMRs, as required by the Permit, George's has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for CBOD, ammonia and D.O. for the month of August 2012. George's attributed the exceedances to an unknown toxic substance that shocked the treatment system and reduced the nitrification process.

7. On September 20, 2012, DEQ VRO issued Notice of Violation No. W2012-09-V-0003 to George's for unauthorized discharges to State waters in conjunction with CBOD, ammonia and D.O. permit effluent limitation exceedances in August 2012.
8. On October 11, 2012, DEQ staff met with representatives of George's to discuss the NOV and the Facility's compliance issues, the problems that led to the violations and corrective actions needed to address the violations. During those discussions, George's laid out the corrective actions taken to address violations including the addition of nitrifier bacteria to improve the ammonia treatment. George's also indicated that it had contacted the processing plant's management, purchasing staff, maintenance and sanitation contractors, and its local dischargers to the Facility to determine if they were conducting any cleaning or maintenance work that may introduce toxic chemicals into the Facility's influent.
9. On October 29, 2012, George's notified DEQ that the Facility was again experiencing ammonia effluent limitation exceedances that apparently began on or about October 28, 2012. George's reported that it was conducting testing and investigations to try to identify the source of treatment problems and then take corrective actions to address those problems.
10. In submitting its DMRs, as required by the Permit, George's has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for TSS in October, and TSS, total nitrogen, ammonia and oil & grease for the month of November 2012. George's attributed the exceedances to the introduction of some unknown toxic that significantly disrupted the Facility's nitrification treatment process.
11. George's provided DEQ with frequent updates on its testing and the corrective actions it was employing to address the treatment problems during the October – November 2012 period.
12. On November 26, 2012, George's submitted to DEQ its consultant's memorandum dated November 20, 2012, titled "Nitrifier Activity & Wastewater Inhibition Testing". This memorandum provided an overview of the sampling and testing conducted in an attempt to identify the cause of the Facility's ammonia treatment problems and the operational controls needed to restore the Facility to compliance.  
A number of tests were conducted to test nitrifier activity and for the presence of a possible toxic in the sludge or wastewater. The report concluded that:
  - a. The loss of complete nitrification at the Facility began on or about October 29, 2012;
  - b. There was no evidence of residual wastewater toxicity in the samples collected on November 9, 2012; and,
  - c. The most probable cause for the loss of nitrification was the discharge of a toxic or inhibitory substance discharged into the system, but the agent is still unknown.

13. On January 22, 2013, DEQ VRO issued Notice of Violation No. W2013-01-V-0003 to George's for a TSS effluent limitation exceedance in October 2012, and ammonia, oil & grease, and total nitrogen effluent limitation exceedances in November 2012. The NOV also cited an inadequately completed DMR submitted for the month of November 2012. In addition, there were two TSS effluent exceedances in November that were not cited on the NOV.
14. In submitting its DMRs, as required by the Permit, George's has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for oil & grease and the calendar year limitations for total nitrogen and total phosphorus in December 2012. George's attributed the calendar year total nitrogen and total phosphorus exceedances to the treatment problems in October through November 2012.
15. George's operating logs for the Facility indicate that it discharged treated wastewater during the months of August through December 2012.
16. On February 14, 2013, DEQ VRO issued Notice of Violation No. W2013-02-V-0002 to George's for oil & grease, and total nitrogen and total phosphorus (calendar year) effluent limitation exceedances in December 2012.
17. On February 21, 2013, DEQ staff met with representatives of George's to discuss the NOVs and George's compliance plans and corrective actions needed to address the violations. During those discussions, George's briefed DEQ on its plan of corrective actions.
18. By letters and communications dated November 28, 2012, February 18, and February 22, 2013, George's submitted a plan of further corrective actions to detect, identify and/or address any future unusual discharges into its system for inclusion in Appendix A of this Order.
19. 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."
20. 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.
21. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
22. The Department has issued no permits or certificates to George's authorizing the discharge of wastewater from the Facility other than VPDES Permit No. VA0077402.
23. Stony Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

24. Based on George's letter(s) to DEQ, the NOV's, the October 11, 2012 and February 21, 2013 meetings, DEQ's inspections and benthic reports, and a file review, the Board concludes that George's 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.
25. In order for George's to provide for compliance with the Permit, Regulation and Va. Code § 62.1-44.5, DEQ and representatives of George's 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 George's, and George's agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of ~~\$13,700~~ 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. George's shall include its Federal Employer Identification Number (FEIN) [(71-1791045)] 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, George's shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

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

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

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Amy T. Owens, Regional Director  
Department of Environmental Quality

George's Chicken, LLC voluntarily agrees to the issuance of this Order.

Date: 3/25/2013 By: [Signature], vice president  
(Person) (Title)  
George's Chicken, LLC

Commonwealth of Virginia  
City/County of ROCKINGHAM

The foregoing document was signed and acknowledged before me this 25 day of MARCH, 2013, by ROBERT KENNEDY who is VICE PRESIDENT of George's Chicken, LLC on behalf of George's Chicken, LLC.



[Signature]  
Notary Public  
#7139599  
Registration No.  
My commission expires: 2/28/15

Notary seal:

**APPENDIX A  
SCHEDULE OF COMPLIANCE  
GEORGE'S CHICKEN, LLC**

1. **By March 15, 2013**, George's shall submit to DEQ a report on its evaluation of the chemicals used at the Plant and the Mountain View Rendering facility which have the greatest potential to adversely impact the Facility's wastewater treatment process as outlined in George's February 22, 2013 corrective action plan.
2. **By March 15, 2013**, George's shall institute and post Product Guides for each of the chemicals of concern identified in Item 1 above. Each Product Guide shall address the product's main ingredients, the proper applications and usage, safety considerations, spill containment and control, and disposal guidelines. The Product Guides shall be posted at locations of product preparation and use.
3. **By March 15, 2013**, George's shall develop and submit to DEQ for review and comment an educational brochure that provides proper disposal information for household hazardous wastes. George's shall respond to any comments on the brochure **within 30 days** of receipt of comments. **Within 15 days** of approval of the brochure, George's shall distribute the brochure to all of its Facility's users.
4. **By April 10, 2013**, George's shall identify and evaluate on-line and laboratory tests that may be used as an early warning indicator of a potential treatment process upset. George's shall submit to DEQ a report indicating the on-line and laboratory test methods selected for use at George's facilities along with standard operating procedure (SOP) documents for laboratory testing. The report shall describe the monitoring locations, data handling protocols, and the procedures for responding to unusual or out-of-range measurements that could result in a treatment process upset. **George's shall update the SOP as needed.**
5. **By April 30, 2013**, George's shall develop and train its supervisory staff in the use of a Chemical Control Manual to address proper chemical handling and disposal procedures, the potential impacts of improper chemical use and disposal on wastewater treatment, spill clean-up and reporting procedures, and related information.
6. **By April 30, 2013**, George's shall train Facility staff and implement the additional process control monitoring for the laboratory testing program referenced in paragraph 4 above.
7. **By May 31, 2013**, George's shall complete installation of the selected on-line monitoring systems referenced in paragraph 4 above and initiate operations.
8. **By June 15, 2013**, George's shall conduct training for the Facility staff on the on-line monitoring for the laboratory testing program.

9. **By June 30, 2013**, George's shall have in place a written response plan and procedures for responding to potential out of range conditions identified by the monitoring.
10. No later than **14 days** following a completion date identified in the above schedule of compliance George's 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, George's 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](mailto:Steven.hetrick@deq.virginia.gov)