COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
BLUE RIDGE REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Steven A. Dietrich
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
HURRICANE RIDGE DAIRY FARM, INC.
VPA General Permit Registration No. VPG100019

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 Hurricane Ridge Dairy Farm, Inc., for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

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" or "Site" means the Hurricane Ridge Dairy Farm located at 1130 Hurricane Ridge Road in Patrick County, Virginia, where Hurricane Ridge Dairy Farm, Inc. manages pollutants which are the subject of the Permit.

5. "Hurricane Ridge Dairy Farm, Inc." means Hurricane Ridge Dairy Farm, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Hurricane Ridge Dairy Farm, 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 VPA General Permit No. VPG1, which was effective November 16, 2004 and which expires November 15, 2014. Hurricane Ridge Dairy Farm, Inc. was registered for coverage under the Permit, as evidenced by VPA General Permit Registration No. VPG100019, effective December 20, 2004.

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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

12. "Regulation" means the VPA General Permit Regulation for Animal Feeding Operations, 9 VAC 25-32-192 *et seq.*

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

14. "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.

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

16. "VAC" means the Virginia Administrative Code.

17. "VPA" means Virginia Pollution Abatement.

SECTION C: Findings of Fact and Conclusions of Law

1. Hurricane Ridge Dairy Farm, Inc. owns and operates the Facility in Patrick County, Virginia. At the Facility, Hurricane Ridge Dairy Farm, Inc. performed dairy operations including animal feeding operations for 300 or more animal units.

2. The Facility is the subject of the Permit which allows Hurricane Ridge Dairy Farm, Inc., which utilizes a liquid manure collection and storage system, to manage pollutants within the boundaries of the Commonwealth.

3. On April 13th and 15th 2009, Department staff inspected the Facility for compliance with the requirements of the State Water Control Law, the Permit, and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

    a. On Monday April 13, 2009, at approximately 10:25am the operator of the Facility discovered that the waste air valve of the off load pipe for the Facility's manure pit was open and discharging approximately 2000 gallons per minute of waste.
    b. Upon discovery of the unpermitted discharge the operator of the Facility cut the air line to the system which caused the waste valve to close and stop the discharge which was reaching State waters, i.e. an unnamed tributary to Mayberry Creek. The operator after closing the valve took action to mitigate and stop additional impacts to State waters by digging a trench between the pit and the unnamed tributary of Mayberry Creek to capture what he could of the released waste.
    c. The estimated amount of unauthorized discharge from the manure pit is 30,000 gallons of which 5,000 gallons were recovered from the trench. The amount of unauthorized discharge reaching Mayberry Creek is estimated to be 25,000 gallons. The unauthorized discharge to Mayberry Creek caused a fish kill.
    d. The BRRO biology staff performed a fish kill investigation on April 15, 2009. The reach of Mayberry Creek that was used to extrapolate the total fish kill estimate was the upstream most reach, extending from above the pool where the initial dead fish were observed to Latitude 36.71056, Longitude -80.44756 (2,046 feet). DEQ staff estimate the fish kill for this reach and this incident to be 32 fish.

4. 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."

5. Va. Code § 62.1-44.15(5a) states that a VPA permit is a "certificate" under the statute.

6. Part III.R of the Permit states that: "[Except in compliance with this permit, it shall be unlawful for any permittee to: Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances."

7. 9 VAC 25-192-50 and Part I.B.1 of the Permit prohibit discharges of pollutants to State waters except in the case of a storm event greater than the 25-year, 24-hour storm.

8. The Department has issued no permits or certificates to Hurricane Ridge Dairy Farm, Inc. other than registration for coverage under VPA General Permit No. VPG1.

9. The wastes in the manure pit were "pollutants" within the definition of 9 VAC 25-32-10.

10. No storm occurred at the Facility on the day of the discharge.

11. On April 19, 2009, Hurricane Ridge Dairy Farm, Inc. submitted a written statement of the events causing the unauthorized discharge of pollutants.

12. On June 9, 2009, based on the inspection and follow-up information, the Department issued Notice of Violation No. W2009-06-W-0001 to the Hurricane Ridge Dairy Farm, Inc. for the violations described in paragraph C (3) above.

13. On June 10, 2009, Department staff discussed with representatives of Hurricane Ridge Dairy Farm, Inc. the violations, including Hurricane Ridge Dairy Farm, Inc. written response of April 19, 2009.

14. Based on the results of the April 13th and 15th 2009 inspections, the June 10, 2009 discussion, and the documentation submitted on April 19, 2009, the Board concludes that Hurricane Ridge Dairy Farm, Inc. has violated Permit conditions Parts I.B.1 and III.R, 9 VAC 25-192-50 and §62.1-44.5 as described in paragraph C (3) above.

15. Based on inspections from July 16 and July 21, 2009, Hurricane Ridge Dairy Farm, Inc. has taken the appropriate corrective actions to prevent reoccurrence of this type of event.

16. In order for Hurricane Ridge Dairy Farm, Inc. to complete its return to compliance, DEQ staff and representatives of Hurricane Ridge Dairy Farm, Inc. 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 Hurricane Ridge Dairy Farm, Inc., and Hurricane Ridge Dairy Farm, Inc. agrees to:

1. Pay $15.92 for the replacement of the fish killed as a result of the waste discharge within 30 days of the effective date of the Order by separate check, certified check, money order or cashier's check payable to the "Department of Game and Inland Fisheries" and delivered to the address specified in Section D.3. of this Order;

2. Pay $1881.66 for DEQ investigative costs associated with the discharge within 30 days of the effective date of the Order by separate check, certified check, money order or cashier's check payable to the "Treasurer of Virginia" and delivered to the address specified in Section D.3 of this Order; and

3. Pay a civil charge of $6,500 in settlement of the violations cited in this Order within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

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

Hurricane Ridge Dairy Farm, Inc. shall include its Federal Employer Identification Number (FEIN) 541183176 with the civil charge payment and shall indicate that the civil charge payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF) that the payment of the fish replacement costs is for the Department of Game and Inland Fisheries; and, that payment of the investigative costs is for reimbursement of DEQ expenditures.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Hurricane Ridge Dairy Farm, Inc. for good cause shown by Hurricane Ridge Dairy Farm, 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 purposes of this Order and subsequent actions with respect to this Order only, Hurricane Ridge Dairy Farm, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Hurricane Ridge Dairy Farm, Inc. 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. Hurricane Ridge Dairy Farm, Inc. 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 Hurricane Ridge Dairy Farm, Inc. 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. Hurricane Ridge Dairy Farm, Inc. 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. Hurricane Ridge Dairy Farm, Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hurricane Ridge Dairy Farm, Inc. 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 Hurricane Ridge Dairy Farm, Inc. 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 Hurricane Ridge Dairy Farm, Inc.

11. This Order shall continue in effect until:

    a. Hurricane Ridge Dairy Farm, Inc. 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

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Hurricane Ridge Dairy Farm, Inc.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hurricane Ridge Dairy Farm, Inc. 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 Hurricane Ridge Dairy Farm, Inc. 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 Hurricane Ridge Dairy Farm, Inc. 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 Hurricane Ridge Dairy Farm, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Hurricane Ridge Dairy Farm, Inc.

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, Hurricane Ridge Dairy Farm, Inc. voluntarily agrees to the issuance of this Order.

----------(Remainder of Page Intentionally Blank)----------

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

_____
Steven A Dietrich, Regional Director
Department of Environmental Quality

Hurricane Ridge Dairy Farm, Inc.voluntarily agrees to the issuance of this Order.

Date: 9-3-09 By: Gary J Barnard President
(Person) (Title)
Hurricane Ridge Dairy Farm, Inc.

Commonwealth of Virginia
City/County of Patrick

The foregoing document was signed and acknowledged before me this 3rd day of September, 2009, by Gary J Barnard who is President of Hurricane Ridge Dairy Farm, Inc. on behalf of the corporation.

Melissa Avey Belcher
Notary Public

7267177
Registration No.

My commission expires: June 30, 2013

Notary seal:

MELISSA AVEY BELCHER
NOTARY PUBLIC
MY COMMISSION NUMBER 7267177
COMMONWEALTH OF VIRGINIA