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Via Certified Mail – Return Receipt Requested

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Re: Notice of Intent to File Citizen Suit for Violations of the Clean Water Act, the Resource Conservation and Recovery Act, and the Maryland Water Pollution Control Act at Valley Proteins, Inc. - Linkwood Facility NPDES Permit MD0003247 (State Permit 99-DP-0024).

To the Individuals and Entities Addressed Above:

Chesapeake Legal Alliance writes on behalf of ShoreRivers and Dorchester Citizens for Planned Growth and their members, and the Chesapeake Bay Foundation, Inc. writes on behalf of itself and its members, (hereafter “Claimants”) pursuant to Section 505 of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1365, 40 C.F.R. Part 135, in regard to violations of the CWA, 33 U.S.C. § 1251 *et seq.*, and the Maryland Water Pollution Control Act, Md. Code, § 9-301 *et seq.* of the Environment Article, and pursuant to Section 7002(a)(2) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972, for violations of RCRA at Valley Proteins, Inc. - Linkwood Facility (“Facility”, “Permittee”, or “Site”), located at 5420 Linkwood Road, Linkwood, MD 21835. The Facility discharges to the Transquaking River (the “River”), which drains to the Chesapeake Bay.

The purpose of this letter is to notify the owners and operators of the Facility, namely Valley Proteins, Inc., of Claimants’ intent to file suit regarding:

- Ongoing and continuous violations of “an effluent standard or limitation” under Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A), by the Facility’s failure to comply with National Pollutant Discharge Elimination System (“NPDES”) Permit No. MD0003247 (State Permit 99-DP-0024) (“Permit”) in at least the instances enumerated in this notice letter;
- Failure to comply with reporting requirements and other conditions of the Permit resulting in ongoing and continuous violations of “an effluent standard or limitation” under Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A);
- Violations of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), via ongoing and continuous unpermitted discharges to waters of the United States through groundwater;
- Violations of Maryland Environment Article, Sections 9-101(l) and 9-322 via unpermitted and unauthorized discharges to groundwater of the state; and
- Violations of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(B), through discharges of sludge, a solid waste, into unlined lagoons located on the site which may create an imminent and substantial endangerment to health and the environment.

The Site's failure to comply with NPDES permit limits, the CWA, state law, and RCRA has injured and will continue to injure or threaten to injure the environmental, aesthetic, health, and economic interests of Claimants and their members. These injuries and risks are traceable to violations at the Facility and the correction of these ongoing violations will redress these injuries or risks. The statements herein are based on Claimants' information and belief, including, but not limited to, records obtained from the Maryland Department of the Environment ("MDE") via the Public Information Act ("PIA records" or "documents") and data on U.S. EPA's Enforcement & Compliance History Online ("ECHO") database.

Citizens are entitled to bring suit against "any person...alleged to be in violation" of an "effluent standard or limitation" established under the CWA or "an order issued by...a State with respect to such a standard or limitation." 33 U.S.C. § 1365(a)(1). Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source to waters of the United States except in compliance with, among other conditions, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(a). Moreover, as much as \$56,460 can be imposed per day for each violation of the CWA, including permit limits or conditions. 33 U.S.C. § 1319(d).¹

Pursuant to Section 505(b)(1)(A), 33 U.S.C. §1365(b)(1)(A), this letter serves to notify Valley Proteins, Inc. that Claimants intend to file a citizen suit for violations of the CWA, unless corrected, in the U.S. District Court for the District of Maryland anytime beginning 60 days after the postmarked date of this letter for the Clean Water Act violations. 40 C.F.R. §135.2(c).

Further, citizens may bring suit against any person who is in violation of any permit, standard, or regulation under RCRA or against any person who is contributing to the handling, storage, treatment, transportation or disposal of any solid waste which may present an imminent and substantial endangerment to health or the environment. 42 U.S.C. § 6972(a)(1)(A) and (B). As explained below, on information and belief, Claimants assert that the disposal of solid waste into onsite unlined lagoons is contributing to the contamination of groundwater beneath the Site at levels which may present an imminent and substantial endangerment to human health and the environment.

Thus, this letter also serves to notify that Claimants intend to file suit for violations of RCRA in the U.S. District Court for the District of Maryland any time after 90 days from the postmarked date of this letter. 42 U.S.C. § 6972(b)(2)(A). Any person who violates RCRA may be assessed a civil penalty of as much as \$25,000 per violation. Each day of violation constitutes a separate violation. 42 U.S.C. § 6928(g).

I. BACKGROUND

Valley Proteins, Inc. - Linkwood Facility currently operates under NPDES Permit No. MD0003247 and State Discharge Permit No. 99-DP-0024 ("Permit"), effective March 1, 2001 to

¹ See also 40 C.F.R. § 19.4 (Civil Monetary Penalty Inflation Adjustment) (effective Jan. 15, 2018).

February 28, 2006, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(b) and has been administratively continued by the Maryland Department of the Environment (“MDE”) since 2006.² The Permit authorizes Valley Proteins to discharge pollutants via outfall 001 into the Transquaking River. The Transquaking River flows to the Chesapeake Bay. Although the Permit expired in 2006, MDE has not issued an updated permit. Valley Proteins continues to operate on the administratively continued Permit; as such it remains subject to those original Permit terms and conditions.

A. NPDES Permit Requirements

The Permit contains effluent limitations and monitoring requirements for the following pollutants: Fecal Coliform, Total Residual Chlorine, Dissolved Oxygen, Total Phosphorus, pH, Biochemical Oxygen Demand (BOD₅), Total Suspended Solids (TSS), Ammonia (as N), and Oil and Grease. Additionally, the Permit contains a seasonal effluent limitation and monitoring requirement for Total Nitrogen between April 1 and November 30.³ The Permit also contains a number of Special Conditions and General Conditions. Particularly, the Permit Conditions require quarterly monitoring and reporting of groundwater from seven monitoring wells located throughout the Site.⁴ Other Conditions require the Facility to report on removed substances from the Site, conduct biomonitoring, and plan and implement a strategy for nitrate reductions in groundwater and nitrogen reductions to surface waters. The Permit prohibits discharges to groundwater, and includes general maintenance and operations requirements.⁵

B. RCRA Requirements

RCRA prohibits, among other things, the handling, storage, treatment, transportation, or disposal of any solid waste that may present an imminent and substantial endangerment to health or the environment. 42 U.S.C. § 6972(a)(1)(B).

C. The Facility

Valley Proteins, Inc. - Linkwood Facility is located at 5420 Linkwood Dr, Linkwood, MD 21835. The Facility is an industrial site that renders poultry processing by-products, such as offal, blood, and feathers into marketable byproducts like feed fats and protein-rich solids. Documents indicate the facility can process between 4.5 and 20 million pounds of material a week. The Facility discharges to the Transquaking River, which flows to Fishing Bay and is tidally adjacent to the Nanticoke River. This industrial processing and rendering facility produces wastewater that was

² Valley Proteins Linkwood Facility - NPDES Permit MD0003247 and State Discharge Permit No. 99-DP-0024 (Mar. 2001) 2-3 [hereinafter “Valley Proteins - Linkwood Facility NPDES Permit”].

³ *Id.* at 2-3.

⁴ *Id.* at 7, Special Condition N.

⁵ *See Id.* at 4-24.

discharged at an average of 167,000 gallons per day in 2020.⁶ The wastewater from this operation is made up of “scrubber overflows, condensate, plant wash water, and stormwater runoff.”⁷ The Facility produces thousands of tons of waste sludge per year. This sludge is stored onsite at various locations until it is removed and disposed off-site.⁸ The Facility is also required to operate under a nutrient management plan (“NMP”).⁹

D. The Affected Water

The Transquaking River (“River”) is 23.2 miles long and located in Dorchester County, Maryland. The River originates south of the East New Market area and drains into the Chesapeake Bay through the Fishing Bay.¹⁰ The Transquaking River and its tributaries are designated Use I - water contact recreation, and protection of nontidal warm water aquatic life.¹¹ Additionally, parts of the lower mainstem and tributaries of the Transquaking River are designated Use II - support of estuarine and marine aquatic life and shellfish harvesting.¹² The River is designated for seasonal migratory fish spawning.¹³ The Transquaking River has a Total Maximum Daily Load, submitted to EPA in 2000 for Nitrogen and Phosphorus (“2000 Nutrient TMDL”), but the waterway is still impaired.¹⁴ The 2000 Nutrient TMDL also contains a waste load allocation (“WLA”) for this Facility because it is a point source discharge. The WLAs for nitrogen and phosphorus are 14,954 lbs and 1,496 lbs, respectively.¹⁵ Additionally, in Maryland’s most recent Integrated Report, which identifies and lists all impaired waterbodies in the state under Section 303(d) of the Clean Water Act, the Transquaking River is listed as category 5 (the highest level of categorization meaning the waterbody is so impaired for a pollutant it requires a TMDL) for Total Suspended Solids for

⁶ See EPA Enforcement and Compliance History Online, *Valley Proteins Inc. - Linkwood Facility, Pollutant Loading Report (DMR)*, https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading?permit_id=MD0003247&year=2020 (last accessed Apr. 12, 2021).

⁷ Maryland Department of the Environment, *Permit (99-DP-0024) Summary Report and Fact Sheet*, 2 (2000) [hereinafter “Fact Sheet”].

⁸ *Id.*

⁹ *Id.* (“Waste sludge is processed through a belt press or through an off-site composting facility before disposal on land. The facility operates under a nutrient management plan prepared by a nutrient management adviser.”)

¹⁰ Maryland Department of the Environment, *Final TMDLs Approved by EPA: Transquaking River* https://mde.maryland.gov/programs/water/tmdl/approvedfinaltmdls/pages/tmdl_transquaking.aspx (last accessed Apr. 12, 2021).

¹¹ Maryland Department of the Environment, *Watershed Report for Biological Impairment of the Transquaking River Watershed in Dorchester County, Maryland Biological Stressor Identification Analysis Results and Interpretation*, iv (2012), https://mde.maryland.gov/programs/Water/TMDL/DocLib_Transquaking_02130308/Transquaking_River_BSID_Report_012512_final.pdf.

¹² *Id.*

¹³ *Id.* at iii.

¹⁴ See also Maryland Department of the Environment, *Total Maximum Daily Loads of Nitrogen and Phosphorus for the Transquaking River Dorchester, Maryland*, iv (2000), https://mde.maryland.gov/programs/Water/TMDL/DocLib_Transquaking_02130308/transquaking_tmdl.PDF.

¹⁵ See Environmental Protection Agency, *Decision Rational: Total Maximum Daily Loads of Nitrogen and Phosphorus for the Transquaking River Dorchester, Maryland*, 9 (2000), https://mde.maryland.gov/programs/Water/TMDL/DocLib_Transquaking_02130308/TransquakingRiver_N_DR.pdf

the designated use of aquatic life and wildlife; it has had this designation since 2012 and is still awaiting a TMDL.¹⁶

The Transquaking River drains to Fishing Bay and is tidally adjacent to the Nanticoke River, which is located in both Dorchester and Wicomico Counties on Maryland's Eastern Shore and enters the Chesapeake Bay. The Chesapeake Bay segment of the Nanticoke River is categorized as Use II, which is protected for water contact recreation, fishing, aquatic life, and wildlife. These waterways, which are impaired, in part for/by nutrients and fecal coliform, are included under the Nanticoke River Mainstem TMDL.¹⁷ The Facility discharges to the Transquaking River and is located upstream of the Blackwater National Wildlife Refuge, which contains one-third of Maryland's tidal wetlands, provides protection from storms to lower Dorchester County, and is a haven for plant and animal biodiversity.¹⁸

As long as the Facility continues its effluent limit exceedances, unauthorized discharges to groundwater, failures to report, and continues to fail to comply with the terms and conditions of its NPDES Permit, it will further degrade already sensitive surface waters and groundwaters of the Transquaking River watershed, in continuing violation of the CWA, state law, and RCRA as described in this letter.

II. VIOLATIONS OF THE CLEAN WATER ACT

A. Failure to Comply with the Permit's Effluent Limits for Biochemical Oxygen Demand ("BOD"), Ammonia (as N), Fecal Coliform, Total Nitrogen, and Total Phosphorus.

The Facility operates pursuant to a discharge permit issued by the Maryland Department of the Environment. NPDES Permit MD0003247 (State No. 99-DP-0024) ("Permit") was renewed and became effective March 1, 2001. It expired on February 28, 2006 and has been administratively continued since that date. The Permit imposes monthly and daily limits on Fecal Coliform, Biochemical Oxygen Demand ("BOD"), Total Nitrogen (between April 1 and November 30), Ammonia (as N), and Total Phosphorus.¹⁹ The Facility has continuously and significantly violated these pollution limits. These violations resulted in an excessive amount of nitrogen pollution to the River; Discharge Monitoring Reports ("DMRs") show that in 2020 the

¹⁶ See Maryland Department of the Environment, *Maryland's 2018 Final Integrated Report - Category 5 Waters*, 4 (2019), https://mde.maryland.gov/programs/Water/TMDL/Integrated303dReports/Documents/Integrated_Report_Section_PDFs/IR_2018/2018IR_Part_F.7_Final.pdf.

¹⁷ See Maryland Department of the Environment, *Total Maximum Daily Loads of Fecal Coliform for the Restricted Shellfish Harvesting in the Nanticoke River Mainstream in Dorchester and Wicomico Counties, Maryland* (2008), https://mde.maryland.gov/programs/Water/TMDL/DocLib_Nanticoke_02130305/TMDL_Nanticoke_River_061108_final.pdf.

¹⁸ U.S. Fish and Wildlife Service, *Blackwater National Wildlife Refuge: About the Refuge*, <https://www.fws.gov/refuge/Blackwater/about.html> (last accessed Apr. 12, 2021).

¹⁹ Valley Proteins - Linkwood Facility NPDES Permit, at 2-3.

Facility released 20,271 pounds of nitrogen to the Transquaking River.²⁰ The WLA allocated for nitrogen in the Transquaking Nutrient TMDL is 14,954 lbs/year²¹, and the Facility's annual load in 2020 (20,271 lbs) exceeded the WLA by more than 5,000 lbs of nitrogen. Additionally, these calculations for nitrogen are based on only eight months of data for 2020 because the Permit does not require reporting of Total Nitrogen discharges between December and March, and the Permit does not account for unpermitted discharges to the River via groundwater.²² Therefore the annual loads are likely higher than the number above. This means that Valley Proteins is not complying with the Transquaking TMDL and is causing and contributing to further impairment and degradation of the Transquaking river.

Table 1 below summarizes effluent limit violations reported on the Environmental Protection Agency ("EPA") Enforcement and Compliance History Online ("ECHO") database which shows that the Facility has violated the Permit's limits at least 24 times from July 2018 - November 2020.²³

Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A), entitles citizens to bring suit against "any person...alleged to be in violation" of an "effluent standard or limitation" established under the CWA. Moreover, it is unlawful to discharge pollutants to waters of the United States, such as the Transquaking River, without or in violation of the terms and conditions of a NPDES permit. 33 U.S.C. § 1311(a). Each day the discharged effluent exceeds permitted limits is a separate violation for which a penalty of up to \$56,460 can be assessed.²⁴ This suit, when filed, will also address any violations that were reported for the months subsequent to the most recent month in the below list.

²⁰ See EPA, ECHO Pollutant Loading Report (DMR), Permit MD0003247 https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading/?year=2021&permit_id=MD0003247 ("Select Reporting Year" 2020 > select Report F: "View NPDES Monitoring Data Download" (this will download a spreadsheet of DMR data for the selected year, including Flow (MO AVG) and discharge concentrations)). The annual loading was calculated using the daily max concentrations reported for April - November 2020 using the following formula: Flow (monthly average) * Reported Discharge Concentration * 8.34 (conversion factor: 1 gallon = 8.34 lbs of water) * Days per month = Monthly Load. The monthly loads for April - November of 2020 were then summed to the total measured load for 2020. See also Design Guidelines for Wastewater Facilities: Maryland Department of the Environment Engineering and Capital Projects Program at 6 (2016), available at <https://mde.maryland.gov/programs/Permits/WaterManagementPermits/Documents/WastewaterDesignGuidelines-2016.pdf>.

²¹ See *supra* note 15.

²² Valley Proteins - Linkwood Facility NPDES Permit, at 2-3.

²³ EPA, ECHO Effluent Limit Exceedances Report NPDES, Permit MD0003247 https://echo.epa.gov/trends/loading-tool/reports/effluent-exceedances?permit_id=MD0003247 ("Adjust Date Range" to Jul. 2018 - Apr. 2021 > "Apply Changes").

²⁴ 33 U.S.C. § 1319(d); see also 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation). Penalties that occurred on or "after November 15, 2015" and enforced "on or after December 23, 2020" are eligible for a maximum penalty of \$56,460 per day per violation. See *id.* This results in a maximum penalty of \$1,355,040 (24 violations x \$56,460).

Table 1. Effluent Limit Violations of NPDES Permit MD0003247 (July 2018-Nov 2020)

Parameter	Limit Type	Monitoring Period	Limit		Reported Conc.		% Exceedance
Fecal Coliform	Geo Mean	Jul-18	<=200	MPN/100mL	1,199	MPN/100mL	500%
Fecal Coliform	Geo Mean	Sept-18	<=200	MPN/100mL	294	MPN/100mL	47%
BOD, 5-day, 20 deg. C	DAILY MX	Nov-18	39	lb/d	40.3	lb/d	3%
Phosphorus, total [as P]	DAILY MX	Jan-19	8.2	lb/d	13.2	lb/d	61%
Phosphorus, total [as P]	MO AVG	Jan-19	4.1	lb/d	4.5	lb/d	10%
BOD, 5-day, 20 deg. C	MO AVG	Apr-19	31	lb/d	37.7	lb/d	22%
BOD, 5-day, 20 deg. C	DAILY MX	Apr-19	39	lb/d	136.1	lb/d	249%
BOD, 5-day, 20 deg. C	DAILY MX	Aug-19	39	lb/d	73.1	lb/d	87%
Phosphorus, total [as P]	DAILY MX	Feb-20	8.2	lb/d	17	lb/d	107%
Phosphorus, total [as P]	MO AVG	Feb-20	4.1	lb/d	4.9	lb/d	20%
Nitrogen, total [as N]	DAILY MX	May-20	82	lb/d	167	lb/d	104%
Nitrogen, total [as N]	MO AVG	May-20	41	lb/d	64	lb/d	56%
Nitrogen, ammonia total [as N]	DAILY MX	May-20	23	mg/L	60.4	mg/L	163%
Nitrogen, ammonia total [as N]	MO AVG	May-20	5.5	mg/L	21.5	mg/L	291%
BOD, 5-day, 20 deg. C	MO AVG	Jul-20	31	lb/d	86.1	lb/d	178%
BOD, 5-day, 20 deg. C	DAILY MX	Jul-20	39	lb/d	106.5	lb/d	173%
Nitrogen, total [as N]	MO AVG	Jul-20	41	lb/d	113.5	lb/d	177%
Nitrogen, total [as N]	DAILY MX	Jul-20	82	lb/d	142.8	lb/d	74%
Nitrogen, ammonia total [as N]	DAILY MX	Jul-20	23	mg/L	158	mg/L	587%
Nitrogen, ammonia total [as N]	MO AVG	Jul-20	5.5	mg/L	144	mg/L	2518%
BOD, 5-day, 20 deg. C	DAILY MX	Aug-20	39	lb/d	56.4	lb/d	45%
BOD, 5-day, 20 deg. C	DAILY MX	Nov-20	39	lb/d	81.3	lb/d	108%
Nitrogen, ammonia total [as N]	DAILY MX	Nov-20	23	mg/L	39.8	mg/L	73%
Nitrogen, ammonia total [as N]	MO AVG	Nov-20	5.5	mg/L	13	mg/L	136%

B. Violations of Permit Conditions for Failure to Satisfy Discharge Monitoring Report (“DMRs”) Requirements and Failure to Satisfy Removed Substances Reporting Requirements.

a. Failure to Submit Complete DMRs

Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A), entitles citizens to bring suit against “any person...alleged to be in violation” of an “effluent standard or limitation” established under the CWA. Section 505(f) defines “effluent standard or limitation” broadly to include “a permit or condition of a permit issued under Section 402 that is in effect under the [CWA].” The Permit was issued under Section 402 and is both a State of Maryland discharge permit and a federal NPDES Permit pursuant to Section 402. Therefore, violations of conditions of this NPDES permit are violations of federal law and eligible for CWA citizen suit enforcement. As stated above, the Permit contains numerous special conditions, including Special Condition N which requires the maintenance and operation of seven on-site monitoring wells.²⁵ Special Condition N states that “[o]nce per quarter, the permittee shall sample for nitrate (as N), fecal coliform, and total dissolved solids” and that the “results from these tests and the water level measurement shall be reported to the Department as per General Condition A.2.”²⁶ General Condition A.2 identifies the Facility’s monitoring and reporting requirements stating that “[m]onitoring results obtained during the calendar quarter shall be summarized on a [DMR] form” and sent to MDE “no later than the 28th day of the month following the end of the reporting period.”²⁷

To the best of Claimants’ knowledge and belief based on a review of the information on EPA’s ECHO database for this Facility²⁸ as well as public records obtained from MDE via a Public Information Act request, over the last five years, Valley Proteins has failed to timely report monitoring well sampling data at least 109 times.²⁹ To date, this missing data has not been submitted to MDE by the Facility.³⁰

To the best of Claimants’ knowledge and belief, the Facility has not remedied these non-reporting violations and this failure is an ongoing and continuous violation of the Permit.

It is unlawful to discharge pollutants to waters of the United States, such as the Transquaking River, without a NPDES Permit or in violation of the terms and conditions of a NPDES permit. 33

²⁵ Valley Proteins - Linkwood Facility NPDES Permit, at 7, Special Condition N.

²⁶ *Id.* at 7, Special Condition N.4.

²⁷ *Id.* at 17, General Condition A.2.

²⁸ EPA, ECHO Pollutant Loading Report (DMR), NPDES Permit MD0003247, https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading?year=2021&permit_id=MD0003247 (“Select Reporting Year” > select Report F: “View NPDES Monitoring Data Download”).

²⁹ This is a total of four (4) monitoring parameters (nitrate (as N), fecal coliform, total dissolved solids, and water level measurement) at seven (7) wells for each quarter, totaling 109 individual measurements that were not reported as required by the Permit (7 wells * 4 parameters = 28 violations; 28 violations * 4 quarters (Q4 2016, Q2-Q4 2018), subtract 3 violations for data reported for MW1 for Q2 2018 = 109). *See id.*

³⁰ The data is missing from the period of October 2016 to December 2018.

U.S.C. § 1311(a). The Facility is discharging pollution in violation of Special Condition N of the permit by failing to report monitoring well sampling data. Additionally, each instance of failure to report plus each day that the failure to report was not corrected constitutes a violation of the Permit and is subject to a civil penalty not to exceed \$56,460 for each violation and each day the violation continues.³¹

b. Failure to Satisfy Removed Substances Reporting Requirements

Valley Proteins removes waste material in the form of sludge from the facility and ships the material to farms to be applied to fields as fertilizer. Wastewater from the Facility's operations is sent to two onsite lagoons where material settles to the bottom. From time to time, this material, sludge, is removed from the lagoons and disposed of by a third-party sludge disposal service, Denali Water Systems ("Denali"). PIA documents detail that Denali then either sells the sludge to farmers for application on their fields as fertilizer, stores the sludge offsite at receiving farms, or sends the sludge to a wastewater treatment facility.

Valley Proteins' Permit requires detailed reporting on substances removed from the Facility, in order to ensure that waste is "disposed of in a manner to prevent any removed substances or runoff from such substances from entering or from being placed in a location where they may enter the waters of the State."³² As detailed in three subsections below, the Facility has continuously failed to comply with Special Permit Conditions D, I, and K. These failures constitute enforceable violations of the CWA and the Facility's NPDES Permit under 33 U.S.C. § 1365(a)(1)(A), and it is unlawful for the Facility to discharge pollution in violation of Special Conditions D, I and K, of the Permit.³³

i. Special Condition D. Removed Substances

Valley Proteins is required to report to the Department, when requested, information on the disposal of removed substances from the facility.³⁴ Removed substances subject to this reporting requirement are "[w]astes such as solids, sludges, or other pollutants removed from or resulting from treatment or control of wastewaters, or facility operations."³⁵ The Permit requires Valley Proteins to provide "[a] suitable map showing all areas used for disposal of removed substances" and "[t]he physical, chemical, and biological characteristics, as appropriate; quantities of any removed substances; and the method of disposal."³⁶ These reporting requirements pass on to any contractor or subcontractor hired to dispose of the removed substances from the Facility.³⁷ Denali

³¹ 224 violations x \$56,469 = \$12,649,056 maximum penalty.

³² Valley Proteins - Linkwood Facility NPDES Permit, at 20, General Condition B.7.

³³ 33 U.S.C. § 1365 (f) (effluent limitations include permit conditions); 33 U.S.C. § 1311(a).

³⁴ Valley Proteins - Linkwood Facility NPDES Permit, at 5, Special Condition D.

³⁵ *Id.* at 20, General Condition B.7.

³⁶ *Id.* at 5, Special Condition D.1.a and b.

³⁷ *Id.*, Special Condition D.1.c.

Water Solutions is the contractor hired by Valley Proteins to handle disposal of removed substances, namely sludge, from the Facility. In the Removed Substances Reporting Forms, when required by the Department to be submitted, Valley Proteins failed to report the physical, chemical, and biological characteristics of the sludge. Valley Proteins also states in the Removed Substances Reporting Forms that the sludge removed and disposed of by Denali is land applied for treatment. However, records from the Department indicate that not all the sludge is disposed of via land application, but some unknown quantity is either stored onsite at the receiving farms or sent to another wastewater treatment plant for removal. It is also unclear how much sludge is stored, either on or off site, in what manner or method, and for how long. Valley Proteins is obligated to report how the waste sludge removed from the Facility is disposed of in a manner that “prevent[s] any removed substances or runoff from such substances from entering or from being placed in a location where they may enter the waters of the State.”³⁸ Presently, Valley Proteins has not met these Permit requirements by failing to report the quantities of sludge that are land applied, stored at other facilities, or sent to another wastewater treatment plant. Valley Proteins cannot pass over its waste to Denali Water Solutions, and fail to account for how the waste is then treated in its required reporting under the Permit. By hiring a contractor to dispose of the waste from the facility, Valley Proteins still is obligated to ensure the contractor, Denali Water Solutions, obtains, documents, and provides the level of detail necessary to meet the reporting requirements of the Permit.³⁹

ii. *Special Condition I. Sludge Management Plan*

Special Condition I requires the Facility to report annually to the Department the “quantity of sludge expected to be generated and how *all sludge generated at the facility shall be disposed of*. The Report shall include the quantities to be land applied under a nutrient management plan and the quantities to be disposed of by other methods.”⁴⁰ Valley Proteins has failed to comply with the terms of Special Condition I in its annual reporting. In the last three reports submitted to the Department in January of 2018, 2019, and 2020, Valley Proteins only reports the total wet tons of sludge removed from the Facility for the year prior. The reports do not contain any information regarding how the sludge is disposed of, what quantities are land applied, or disposed of by other methods. Valley Proteins hired Denali Water Solutions to remove waste solids from the Facility and dispose of the sludge. Denali Water Solutions land applies sludge to farms in the region. PIA records show that if the receiving farms do not have adequate storage facilities, the sludge is discharged at another wastewater treatment plant for processing. Valley Proteins is obligated under Special Condition I to report to the Department the quantity of sludge land applied for treatment and the quantity of sludge disposed of by other measures, including treatment at another wastewater treatment plant. Valley Proteins has failed to report this information to the Department

³⁸ *Id.* at 20, General Condition B.7.

³⁹ *Id.* a 5, Special Condition D.1.c. (“If disposal is handled by persons other than the permittee, identification of the contractor or subcontractor, their mailing address, and the information specified in a and b above.”)

⁴⁰ *Id.* at 6, Special Condition I.1 (emphasis added).

in the last three Special Condition I reports, or in the Removed Substances Reporting Forms required under Special Condition D.

Special Condition I also requires Valley Proteins to dispose of sludge under a Nutrient Management Plan, and to “update and implement the current nutrient management plan upon approval by the Department in accordance with changes in COMAR 15.20.08.”⁴¹ The Facility “operates under a nutrient management plan approved by the Department [and is required] to update and implement the plan” to comply with updated regulations.⁴² Upon reviewing documents provided by the Department, the Claimants have yet to locate the Nutrient Management Plan as required by Special Condition I, or any updated Nutrient Management Plans approved by the Department since the permit was issued in 2001. Updating Nutrient Management Plans is particularly important to comply with regulatory changes, especially the Phosphorus Management Tool, which was developed to manage risks to water quality associated with the excessive amounts of legacy phosphorus in Maryland soils.⁴³ The sludge from Valley Proteins contains phosphorus and the Nutrient Management Plan must appropriately manage it according to the phosphorus management requirements in Maryland’s nutrient management plan regulations.⁴⁴

Valley Proteins has failed to comply with this reporting condition of the Permit. Without detailed reporting as required under Special Condition D and Special Condition I, Valley Proteins cannot prove that its waste is “disposed of in a manner to prevent any removed substances or runoff from such substances from entering or from being placed in a location where they may enter the waters of the State.”⁴⁵

iii. Special Condition K. Prohibition on Application of Wastewater to Ground

Special Condition K prohibits the Facility from spray irrigation “or any other method of wastewater disposal to the ground that may result in the discharge of wastewater into the ground waters of the State.”⁴⁶ Valley Proteins has failed to comply with this condition by failing to prevent wastewater disposal that may discharge to groundwater. Records indicate that spray irrigation has not occurred on the property for over 20 years, yet elevated nitrate levels in onsite monitoring wells indicate a pathway of discharge to the groundwater via spills, leaks, leaching, or other means from onsite lagoons or other sources during and after the treatment process. A MDE inspection report from March 8, 2018, indicates that “some of the storm water flow and raw product drainage is exposed to ground water[;]” that a “barrier wall is not sealed properly and is allowing raw product drainage to be exposed to the surrounding ground area[;]” and that “some raw product placed over the barrier wall onto the ground area.”⁴⁷ The inspector noted that the Site must take

⁴¹ *Id.*, Special Condition I.2.

⁴² *See supra* note 7, Fact Sheet at 4.

⁴³ *See* Md. Code Regs. 15.20.08.09 (2021).

⁴⁴ *Id.*

⁴⁵ Valley Proteins - Linkwood Facility NPDES Permit, at 20, General Condition B.7.

⁴⁶ *Id.* at 6, Special Condition K.

⁴⁷ MDE Inspection Report, at 7 (Mar. 8, 2018).

corrective action to prevent the discharge to groundwater.⁴⁸ A follow up inspection on May 10, 2018, notes that the “barrier wall is not sealed and continues to allow raw product drainage to come in contact with the surrounding ground area.”⁴⁹ A further inspection on August 8, 2018, indicated that the “existing barrier wall is not sealed and will allow raw product drainage to come into contact with the surrounding ground.”⁵⁰ To the best of Claimants' knowledge and belief this source of groundwater contamination has not been fully remediated.

Additionally, in a letter sent to the Chesapeake Bay Foundation on April 8, 2019, MDE indicates that treatment lagoons at the Facility are likely unlined and the cause of high nitrate levels in some of the groundwater monitoring wells.⁵¹ Internal MDE emails from March 2019 indicate that at least one of the lagoons at the Site is unlined and that sludge is stored in the lagoon until it can be land applied. MDE's 2000 Summary Report and Fact Sheet indicates that “since the spray fields have not been used for years, the lagoons may be causing the problem [groundwater monitoring reports indicating high levels of nitrates that exceed groundwater criteria]” and that MDE was “concern[ed] about the high groundwater nitrates because of the proximity of unlined lagoons carrying high nitrate wastewater.”⁵² The Permit requires the Facility to plan and investigate the cause of the high nitrates in groundwater at the Facility.⁵³ As detailed below, that plan and investigation never commenced and the nitrate levels have remained elevated over the last 10 years. This evidence points to the Facility's illegal discharge of wastewater to groundwater in violation of this permit condition.

Valley Proteins has violated this Permit condition by repeated and continuous wastewater discharges to groundwater from the Site's lagoons and/or through other means at the Facility as identified above.

iv. General Permit Condition B.7. Removed Substances

As discussed in the facts for claims B.b.i-iii above, the wastes stored at the Facility and eventually taken off site for disposal are not handled in a manner that “prevent[s] any removed substances or runoff from such substances from entering or from being placed in a location where they may enter the waters of the state.”⁵⁴ The facts indicate that there is a pathway of groundwater contamination at the Facility from the onsite lagoons, or through other methods or sources. The Facility has failed to adequately analyze the source of this contamination and provide MDE with a report, plan, and schedule to address the contamination. The Facility has violated this condition

⁴⁸ *Id.*

⁴⁹ MDE Inspection Report, at 1 (May 10, 2018).

⁵⁰ MDE Inspection Report, at 2 (Aug. 8, 2018).

⁵¹ Letter from Ed Stone, Maryland Department of the Environment, to Alan Girard, Chesapeake Bay Foundation, 10-11 (Apr. 8, 2019) (on file with Chesapeake Bay Foundation).

⁵² Fact Sheet, at 5.

⁵³ Valley Proteins - Linkwood Facility NPDES Permit, at 7, Special Condition N.

⁵⁴ *Id.* at 20, General Condition B.7.

as it has not prevented wastes produced and stored onsite or runoff from such wastes from entering or being placed in a location where they may enter the waters of the State.

C. Violation of Other Permit Conditions

As stated above, Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A), entitles citizens to bring suit against “any person...alleged to be in violation” of an “effluent standard or limitation” established under the CWA. This includes conditions of NPDES permits. Based on a review of MDE PIA files obtained for this Facility and as detailed below and to the best of Claimants’ knowledge and belief, the Facility has failed to comply with the following Special Conditions since the Permit was approved and became effective on March 1, 2001. The Facility has been in violation of each one of these Special Conditions every day for the last five (5) years, March 2016 - March 2021, totaling 1,825⁵⁵ days of violation for each condition violated. There are five (5) conditions not complied with, resulting in a total of 9,125 individual days and violations of Permit conditions.⁵⁶ Each one of these violations is subject to a civil penalty not to exceed \$56,460 for each violation.⁵⁷

a. Special Condition L. Compliance Plan for Nitrogen

Valley Proteins has failed to comply with the Special Condition L as it has not submitted to the Department a “compliance plan for meeting the nitrogen limits in Special Conditions A and L.”⁵⁸ The PIA files did not include information pertaining to this plan or a schedule for its implementation.

b. Special Condition M. Compliance Plan for Groundwater Nitrates

Valley Proteins is required to develop “a plan and schedule for investigating the cause of high nitrates in the groundwater at the facility.”⁵⁹ A 2018 Inspection Report notes that Valley Proteins sent MDE a letter on February 23, 2003 “outlining its groundwater remediation plan” and stating that “[r]eview of the plan shows that it will allow the nitrate levels in the ground water to degrade naturally.”⁶⁰ Disclosed records did not include a plan and schedule for this required investigation. This stated strategy is not a “plan and schedule for investigating the cause of high nitrates in the groundwater at the facility.”⁶¹ Furthermore, it has been eighteen years since Valley Proteins’ natural attenuation strategy was “outlined” and reported data shows continued elevated levels of nitrates in the groundwater. A review of groundwater monitoring well reports details persistent

⁵⁵ 365 days x 5 years = 1,825 days.

⁵⁶ 1,825 days x 5 Permit Conditions violated = 9,125 individual daily violations of Permit Conditions.

⁵⁷ This results in a maximum penalty for these Conditions alone of \$515,197,500 (9,125 violations x \$56,460). See *supra* note 24.

⁵⁸ Valley Proteins - Linkwood Facility NPDES, at 7, Special Condition L.

⁵⁹ *Id.* at 7, Special Condition M.

⁶⁰ MDE Inspection Report, at 5 (Mar. 8, 2018).

⁶¹ Valley Proteins - Linkwood Facility NPDES Permit, at 7, Special Condition M.

and excessive nitrate levels in numerous monitoring wells where levels exceeded the 10 mg/L Maximum Contaminant Level (“MCL”) set by the U.S. EPA for drinking water a total of 115 times from January 2005 - December 2015. More recently, monitoring well data reported on EPA’s ECHO database and PIA records indicate that high levels of nitrates in the groundwater have continued to be present for at least the last five years, with twenty (20) sampling results from March 2016 - December 2020 indicating nitrate levels above the MCL.⁶² This does not include the four quarters for which monitoring data was not in the files disclosed via PIA request or on ECHO.⁶³ These facts demonstrate that Valley Proteins has not complied with this Permit Condition as it has not developed a “plan and schedule for investigating the cause” of the nitrates that have continued to exist in elevated levels at onsite groundwater monitoring wells.

c. Special Condition P. Biomonitoring Program

Valley Proteins has failed to comply with Special Condition P as it has not submitted to the Department for approval “a study plan to evaluate wastewater toxicity at Outfall 001 by using biomonitoring.”⁶⁴ The PIA records requested included all permits and related documents, which should have included the Site’s biomonitoring study plan. These documents were not included in the produced records and as such, based on Claimants’ information and belief, the Facility has failed to comply with this Permit condition.

d. General Condition B.3. Facilities Operation

The claims above and below demonstrate that the Facility is not in good working order or operating efficiently as demonstrated by the repeated effluent limit exceedances, failure to comply with a number of additional Permit conditions, and failure to prevent unpermitted discharges to groundwater. A review of inspection reports from 2015-2019 indicates repeated instances of the Facility failing to operate its treatment, control, and monitoring systems efficiently and in good working order. A September 2017 inspection report notes an overflow event on August 27, 2017. This event was caused by a loose aerator in the aeration tank causing sludge to spill over the tank wall. This was noted by the inspector to be a violation of the Site’s Permit. The March, May, and August 2018 inspection reports note exposure of raw product to groundwater caused by a failure to properly maintain structures to control that product.⁶⁵ Additionally, during an inspection on November 5, 2019, MDE noted another overflow when the “mechanical aerator floated over to the side of the tank and began to splash the contents over the sidewalk and onto the ground.”⁶⁶ This overflow was estimated to be about 2,000 gallons.⁶⁷ These reports and the facts contained therein

⁶² EPA, ECHO Pollutant Loading Report (DMR), NPDES Permit MD0003247, https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading?year=2021&permit_id=MD0003247 (“Select Reporting Year” > select Report F: “View NPDES Monitoring Data Download”); Quarterly Groundwater Monitoring Reports.

⁶³ See *supra* Claim I.B.a.

⁶⁴ Valley Proteins - Linkwood Facility NPDES Permit, at 7, Special Condition P.

⁶⁵ *Supra* notes 47, 48, 49, 50.

⁶⁶ MDE Inspection Report, at 1 (Nov. 5, 2019).

⁶⁷ *Id.* at 2.

indicate that the Facility is failing to operate its treatment, control, and monitoring facilities efficiently and in good working order in violation of General Condition B.3.⁶⁸

e. General Condition B.4. Adverse Impact

The claims above and below demonstrate that the Facility has not taken “all reasonable steps to minimize or prevent any adverse impact to waters of the State or to human health resulting from noncompliance with any effluent limitations specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.”⁶⁹ This is evidenced by the repeated effluent limit exceedances, the groundwater contamination, and repeated reporting and monitoring failures. The Facility has therefore not taken all reasonable steps to minimize or prevent adverse impact to waters of the State or to human health.⁷⁰

D. Unauthorized/Unpermitted Discharge to Transquaking River Via Shallow Groundwater.

As described above, it is unlawful to discharge pollutants to waters of the United States, such as the Transquaking River, without or in violation of the terms and conditions of a NPDES permit. 33 U.S.C. § 1311(a). The Site contains several industrial waste ponds that include two sludge storage lagoons in the northeast corner of the Site, and two storage ponds in the northwest corner of the Site. At least one of the sludge storage lagoons is aerated.⁷¹ The industrial waste ponds (or “sludge lagoons”) are located proximately to the Transquaking River, which runs east to west along the southern side of the Site and curves toward the northwest on the western side of the Site. The sludge lagoons are located approximately 350-400 feet from the edge of the River.⁷² As discussed above, these sludge lagoons contain industrial waste with concentrated nutrient levels, including nitrates. The soil around and between the sludge lagoons and the River is a sandy loam and sand mix, well-drained with high transmissivity.⁷³

The Site maintains groundwater monitoring wells (“MW”). MW2 & 3 are located on the south side of the Site; MW4, 4A, 8, 5 & 6 are located on the west side of the Site (from south to north); and MW1 & 7 are located on the east side of the Site. MW3 is less than 100 feet, and MW2, 4, 4A & 5 are less than 50 feet from the Transquaking River. After a decline from 2010 to 2017, nitrate levels recorded at MW5 increased to over 22 mg/L in 2019, and recently dropped again to 12 mg/L

⁶⁸ Valley Proteins - Linkwood Facility NPDES Permit, at 19, General Condition B.3.

⁶⁹ Valley Proteins - Linkwood Facility NPDES Permit, at 19, General Condition B.4.

⁷⁰ See *supra*, Claims II.A, II.B.a-b, II.C.a-e, II.D, III, and IV.

⁷¹ See Fact Sheet, at 2.

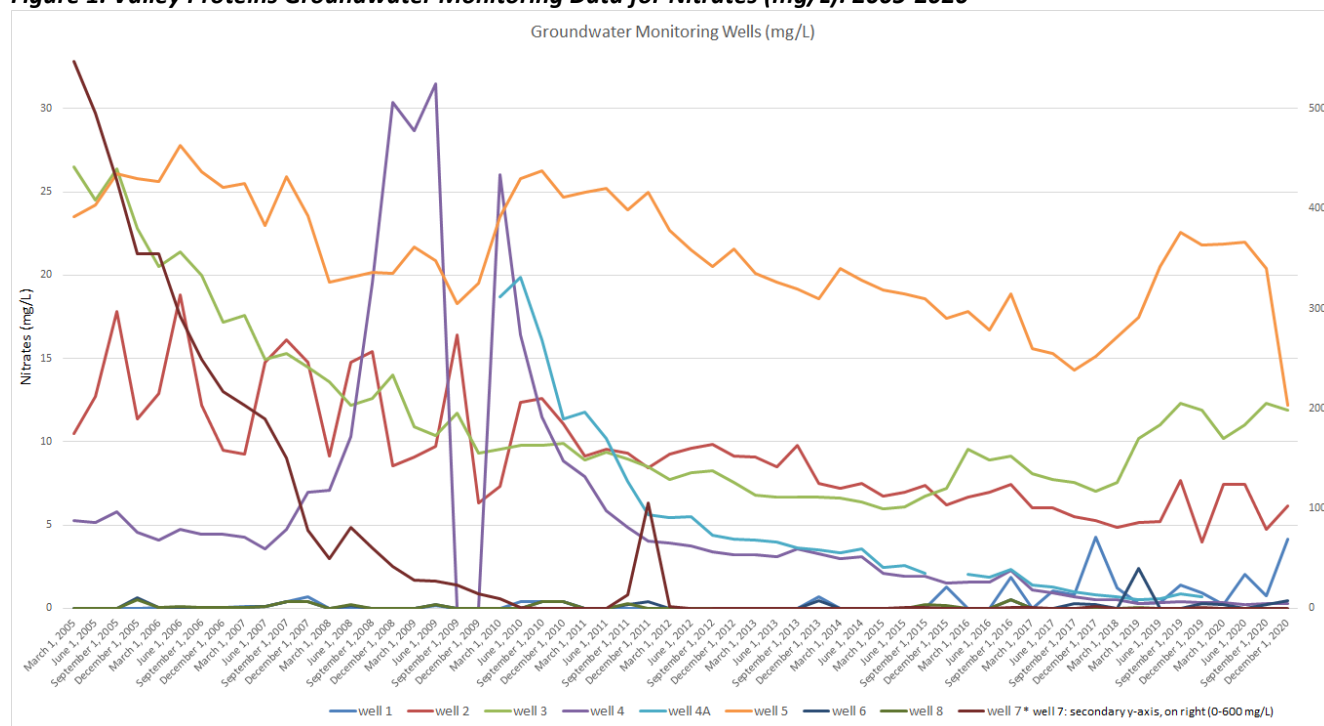
⁷² See Maryland's Environmental Resources and Land Information Network, <https://dnr.maryland.gov/Pages/Merlin.aspx>. (Using the measurement function at the bottom left-hand corner of the Map and measuring from the edge of the sludge lagoons to the approximate bank of the Transquaking River).

⁷³ See USDA Natural Resources Conservation Service, Web Soil Survey, <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> (insert facility address on the left-hand side of the website).

in December 2020. Similar increases were observed at MW3, which increased to 12 mg/L in 2019 and 2020. MW2 remains above 5 mg/L. The maximum contaminant level (“MCL”), established by EPA to protect drinking water, is 10 mg/L for nitrates.⁷⁴

Based on information and belief, and as described above, industrial waste from the Site’s sludge lagoons is discharging to the Transquaking River, via shallow groundwater, in violation of the Facility’s Permit. The sandy soil substrate provides a highly transmissible conduit for untreated industrial sludge pollutants to travel a short distance, with little to no attenuation before reaching the River.

Figure 1. Valley Proteins Groundwater Monitoring Data for Nitrates (mg/L): 2005-2020



III. VIOLATION OF THE RESOURCE CONSERVATION AND RECOVERY ACT

The contamination of groundwater via the unlined sludge lagoons at the Valley Proteins Site also constitutes a violation of the Resource Conservation and Recovery Act. 42 U.S.C. § 6901 *et seq.* Valley Proteins holds process wastewater that contains sludge in unlined lagoons located on the Site. Based on information and belief, pollutants contained in the process wastewater and sludge leach from the lagoons into the underlying groundwater. That discharge is defined as a “disposal” of “sludge,” a “solid waste,” into an “open dump” as those terms are defined by the Solid Waste Disposal Act (SWDA, also known as the Resource Conservation and Recovery Act or “RCRA”). 42 U.S.C. § 6903(3), (14), (26A), and (27). RCRA requires the disposal of waste “to minimize the present and future threat to human health and the environment.” 42 U.S.C. § 6902(b).

⁷⁴ See 40 C.F.R. § 141.62(b)(7).

The Valley Proteins Linkwood Facility sits atop several groundwater aquifers; the closest to the surface of the land is known as the Surficial Aquifer. The aquifer is “[p]redominantly an unconfined, water-table aquifer throughout its extent” and varies in depth from “more than 70 ft above sea level in southern Cecil County to 199 ft below sea level near Salisbury.”⁷⁵ On information and belief, including monitoring well data, the Facility’s groundwater wells monitor water in that aquifer. One of the pollutants contained within the Facility’s wastewater and sludge is nitrogen, which has been identified in groundwater beneath the Site at levels which exceed the EPA-established, human health-based maximum contaminant level (MCL) for nitrates in drinking water of 10 mg/l.⁷⁶ There are wells located in the vicinity of the Facility which may be used as drinking water wells.⁷⁷ High levels of nitrate in drinking water can cause methemoglobinemia (Blue Baby Syndrome) in infants and young children.⁷⁸

Further, based on information and belief, and as described in section II.D above, industrial waste from the Site’s unlined sludge lagoons is migrating offsite, via shallow groundwater, to the Transquaking River. High levels of nitrogen in surface waters lead to the growth of harmful algal blooms, which threaten both human and ecosystem health.⁷⁹ Thus, the disposal of sludge in the lagoons by Valley Proteins creates an imminent and substantial endangerment to health and the environment both in violation of RCRA and subject to suit by citizens. 42 U.S.C. § 6972(a)(1)(B).

IV. VIOLATION OF STATE LAW

State law prohibits the unauthorized discharge of pollutants to waters of the State. MD. CODE ANN., ENVIR. § 9-322. The definition of “Waters of this State” includes groundwater. MD. CODE ANN., ENVIR. § 9-101(l). The Facility has caused and is likely to cause discharges to waters of the State via the onsite sludge lagoons that are used in the treatment process and also used to store sludge before it is taken off site for disposal. As detailed above, in Parts II.B.b, II.D, and III, numerous documents and reports indicate a likely pathway of contamination or discharge from the lagoons or other sources to groundwater. The Facility’s current Permit does not authorize these

⁷⁵ Maryland Geological Survey, *Coastal Plain Aquifer Information: Surficial aquifer*, http://www.mgs.md.gov/groundwater/coastal_plain_aquifers_mobile.html, (last accessed Apr. 12, 2021).

⁷⁶ See 40 C.F.R. § 141.62(b)(7).

⁷⁷ See Maryland Geological Survey, *Coastal Plain Aquifer Information: Surficial aquifer*, http://www.mgs.md.gov/groundwater/coastal_plain_aquifers_mobile.html, (last accessed Apr. 12, 2021) (“The Surficial aquifer is a major source of water supply. The largest use is for seasonal irrigation (agriculture); however, some municipalities...as well as many domestic users, also utilize the Surficial aquifer.”).

⁷⁸ See, e.g., Deana M. Manassaram, et. al, *Nitrates in drinking water and methemoglobin levels in pregnancy: a longitudinal study*, 9 *Envtl. Health* 60 (2010), <https://link.springer.com/article/10.1186/1476-069X-9-60>; see also, EPA, *Drinking Water Requirements for States and Public Water System: Chemical Contaminant Rules*, <https://www.epa.gov/dwreginfo/chemical-contaminant-rules#rule-history> (last accessed Apr. 12, 2021) (“High levels of nitrate and nitrite are most serious for infants. The conversion of nitrate to nitrite by the body, can interfere with the oxygen-carrying capacity of the child’s blood, sometimes called Blue Baby Syndrome. This acute condition can occur rapidly over a period of days. Symptoms include shortness of breath and blueness of the skin.”).

⁷⁹ See, e.g., Patricia Gilbert, et. al, *Harmful algal blooms in the Chesapeake and Coastal Bays of Maryland, USA: Comparison of 1997, 1998, and 1999 events*, 24 *Estuaries* 875–883 (2001), <https://doi.org/10.2307/1353178>; U.S. Centers for Disease Control and Prevention, *Harmful Algal Bloom (HAB)-Associated Illness*, <https://www.cdc.gov/habs/illness.html> (last reviewed Dec. 13, 2017).

discharges and Claimants are unaware of any State groundwater discharge permit or other permit that would authorize these discharges. These discharges are not permitted and are therefore a violation of State law. Additionally, the Facility has failed to conduct any analysis or investigation into the source of the contamination or attempted to remediate it over the last five years. It is likely that these discharges have occurred consistently over the last five years in violation of State law.

V. PARTIES GIVING NOTICE

ShoreRivers is a nonprofit organization dedicated to protecting and restoring waterways on Maryland's Eastern Shore through science-based advocacy, restoration, and education. The organization hosts volunteers for environmental restoration projects, water quality monitoring, educational sessions, and more. ShoreRivers has established dedicated Watershed Advisory Boards for each major subwatershed within the organization's territory. Each board is chartered specifically to oversee grassroots restoration and protection of their individual watershed. ShoreRivers runs educational programs on the Transquaking River. The ShoreRivers' office is located at 114 South Washington Street, Ste. 301, Easton, MD 21601, and the main number is (443) 385-0511.

Dorchester Citizens for Planned Growth (DCPG) is a nonprofit organization founded in 2004 for the purpose of providing a public voice on land and water uses in Dorchester County, Maryland. The organization seeks to guarantee a public voice in issues of land and water use, and advocates for the promotion, maintenance, and conservation of the natural resources, farmland, and waterways of the county. The Board of Directors is made up of volunteers who live in Dorchester County and represent a variety of backgrounds and professions. Their mailing address is P.O. Box 576, Cambridge, MD 21613.

Chesapeake Bay Foundation, Inc. (CBF), founded in 1967, is the only independent organization dedicated solely to protecting the Chesapeake Bay and its rivers and streams by improving water quality and reducing pollution. CBF is headquartered in Annapolis, Maryland, with field offices in Maryland, Pennsylvania, Virginia, and Washington, D.C. CBF's staff of approximately 180 work to "Save the Bay" through education programs, environmental restoration projects, advocacy at the state and federal levels, and the use of targeted litigation. CBF has over 300,000 members, volunteers, and electronic subscribers. CBF operates numerous programs that are designed to protect and restore the quality of the Bay and its tributaries and seeks to restore and maintain sustainable populations of crabs, fish, and oysters; thriving water-based and agricultural economies; and a clean and healthy ecosystem for our children and grandchildren. CBF's headquarters is located at 6 Herndon Avenue, Annapolis, Maryland, 21403, and the main phone number is (410) 268-8816.

VI. CONCLUSION

Valley Proteins, Inc. has continually violated and will continue to violate the Clean Water Act, Resource Conservation and Recovery Act, and Maryland state law at the Valley Proteins Linkwood Facility located at 5420 Linkwood Road, Linkwood, MD 21835 unless the violations enumerated above are addressed. Accordingly, Claimants intend to file suit to enjoin and abate the aforementioned violations, ensure future compliance with the CWA, RCRA, and Maryland state law, obtain civil penalties, recover attorneys' fees and costs of litigation, and obtain other appropriate relief.

We would welcome an opportunity to discuss a resolution of this matter prior to the initiation of litigation if you are prepared to remedy the violations discussed above. If you have any questions regarding the allegations in this notice or believe any of the foregoing information may be in error, please contact us at the phone numbers or email addresses listed below.

Sincerely,

*Attorneys for Shore Rivers and
Dorchester Citizens for Planned Growth*



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IN THE CIRCUIT COURT FOR DORCHESTER COUNTY

STATE OF MARYLAND
DEPARTMENT OF THE
ENVIRONMENT,

*

*

Plaintiff,

*

SHORERIVERS, INC., DORCHESTER
CITIZENS FOR PLANNED GROWTH,
INC., and CHESAPEAKE BAY
FOUNDATION, INC.,

*

*

*

Plaintiff-Intervenors,

Civil Action No. C-09-CV-22-000022

*

v.

*

VALLEY PROTEINS, INC.

*

Defendant.

*

* * * * *

UNOPPOSED MOTION TO INTERVENE AS PLAINTIFFS
BY SHORERIVERS, DORCHESTER CITIZENS FOR PLANNED GROWTH,
AND CHESAPEAKE BAY FOUNDATION

Pursuant to Maryland Rule 2-214 and Maryland Environmental Article § 9-344.1, ShoreRivers, Inc. (ShoreRivers), Dorchester Citizens for Planned Growth (DCPG), and the Chesapeake Bay Foundation, Inc. (CBF), (collectively “Movants”) hereby move to intervene as party plaintiffs in the above-captioned matter filed by Maryland Department of the Environment (“MDE” or “Department”) against Valley Proteins, Inc. ShoreRivers, DCPG, and CBF move to intervene as a matter of right under Maryland Environment Article § 9-344.1. Movants have conferred with counsel for the parties and MDE and Valley Proteins consent to Movants’ motion to intervene.

INTRODUCTION

The Department has filed a complaint against Valley Proteins to enforce violations of the Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permit and corresponding state law, as well as violations of the state air permitting laws. MD. CODE ANN., ENVIR. §§ 2-401; 9-322. These violations occurred and are occurring at the processing facility owned and operated by Valley Proteins, which is located at 5420 Linkwood Road, Linkwood, Maryland 21835 within Dorchester County (“Facility”). The Facility is a chicken rendering plant that processes poultry waste products, such as offal, blood, and feathers, into products for sale. The Facility generates industrial wastewater and waste sludge. The wastewater is treated on site and then discharged to the Transquaking River (“River”).

Valley Proteins currently operates its facility under NPDES Permit No. MD0003247/State Discharge Permit No. 99-DP-0024 (“Permit”), pursuant to Section 402 of the CWA. 33 U.S.C. § 1342(b). The Permit was effective March 1, 2001 to February 28, 2006, and has been administratively continued by MDE since 2006. The Permit authorizes Valley Proteins to discharge water pollution from its poultry rendering facility to the Transquaking River in accordance with certain effluent limitations, monitoring requirements, and other conditions set forth in the Permit.

The Permit contains effluent limitations and monitoring requirements for the following pollutants: Fecal Coliform, Total Residual Chlorine, Dissolved Oxygen, Total Nitrogen, Total Phosphorus, pH, Biochemical Oxygen Demand (BOD₅), Total Suspended Solids (TSS), Ammonia (as N), and Oil and Grease. The Permit requires monitoring and reporting on compliance with these effluent limitations via quarterly Discharge Monitoring Reports (“DMRs”), which must be certified, signed, and submitted by the Permittee under penalty of law.

Valley Proteins has continuously and significantly violated the effluent limits in its NPDES Permit. From April 2019 to October 2021, there have been 40 exceedances of the effluent limits set in the NPDES Permit. In addition, inspection reports from the facility reveal over 370 violations of the total residual chlorine (“TRC”) limit from February 2019 to July 2021. Valley Proteins also repeatedly failed to file complete DMRs, and failed to report the TRC violations, among other reporting issues.

PROCEDURAL BACKGROUND

Movants issued a notice of intent to sue letter (“NOI”) to Valley Proteins for violations of the Clean Water Act and state law on April 13, 2021. *See* 33 U.S.C. § 1365(b) (requiring plaintiffs to provide notice sixty days prior to commencing a citizen suit under the Clean Water Act); Notice of Intent to File Citizen Suit for Violations of the federal Clean Water Act, the federal Resource Conservation and Recovery Act, and the Maryland Water Pollution Control Act at Valley Proteins, Inc. - Linkwood Facility NPDES Permit MD0003247 (State Permit 99-DP-0024) [hereinafter “NOI”]. The NOI alleged violations of Valley Proteins’ NPDES Permit, including 24 violations of effluent limits from July 2018 to November 2020, reporting requirements, and other Permit conditions. The NOI also raised concerns with groundwater pollution at the facility.

On February 2, 2022, Movants filed a complaint in federal district court in the District of Maryland under the Clean Water Act citizen suit provision. *ShoreRivers, et al., v. Valley Proteins, Inc.*, No. 1:22-00278 (D.Md. Feb. 2, 2022). The federal complaint alleges violations of Valley Proteins’ NPDES Permit, unpermitted discharges to the Transquaking River, and violations of the Resource Conservation and Recovery Act. The federal complaint seeks declaratory and injunctive relief of the Clean Water Act and the Resource Conservation and Recovery Act, civil penalties, and costs of litigation.

On February 2, 2022, the Department filed a complaint in Dorchester County Circuit Court, alleging violations of the Maryland Environment Article for effluent limit violations of Valley Proteins' water pollution discharge Permit ("State action"). Civil Action No. C-09-CV-22-000022. The State action also alleged violations of Valley Protein's air pollution permit. The State action seeks to enjoin Valley Proteins from further operations that violate Permit conditions and require Valley Proteins to remediate the environmental harm caused by the illegal discharges. The State action also seeks civil penalties.

On February 10, 2022, Movants issued a second notice of intent to sue letter to Valley Proteins for continued violations of the facility's NPDES Permit, as well as additional violations that came to light from citizen observations and during follow-up inspections by the Department.

Movants now timely file this motion to intervene as plaintiffs in this State action in the claims pertaining to violations of the wastewater discharge permit. Movants do not seek intervention in the claims pertaining to violations of the air quality permit. MDE and Valley Proteins consent to this motion.

STATEMENT OF INTEREST

ShoreRivers, Inc. is a 501(c)(3) nonprofit organization established in 2008 dedicated to protecting clean water on the Eastern Shore of Maryland. ShoreRivers is headquartered in Easton, Maryland with field offices in Chestertown, MD and Galena, MD. ShoreRivers' mission is to protect and restore Eastern Shore waterways through science-based advocacy, restoration, and education. ShoreRivers has over 2000 members, over 1000 of whom live on the Eastern Shore of Maryland. ShoreRivers supports its members by utilizing the CWA and other environmental laws to stop pollution that threatens public health, impairs water quality, damages ecosystems, and negatively impacts the ability of its members to use and enjoy the waterways on

the Eastern Shore. ShoreRivers' members include individuals who enjoy many recreational activities in and around the Transquaking River and its watershed including fishing, boating, birdwatching, canoeing, kayaking, and enjoyment of its aesthetic quality

Dorchester Citizens for Planned Growth, Inc., (DCPG) is a 501(c)(3) nonprofit organization founded in 2007 focused on ensuring sustainability and quality of life within the lands and waters of Dorchester County, Maryland. DCPG advocates for the promotion, maintenance, and conservation of the natural resources, farmland, and open spaces of Dorchester County. DCPG is headquartered in Cambridge, MD. DCPG's mission is to provide a public voice on land and water uses. DCPG has over 90 members including volunteers who monitor the Transquaking River and other waterways in Dorchester County. DCPG's members use the water and shoreline in and around the Transquaking River and Higgins Mill Pond for recreation including boating, paddling, fishing, wildlife watching, and enjoying aesthetic value.

CBF is a nonprofit corporation based in Annapolis, Maryland, with offices in Easton, Maryland; Harrisburg, Pennsylvania; and Richmond and Virginia Beach, Virginia. CBF operates education centers on the shores of the Chesapeake Bay in Maryland and Virginia. CBF is the only independent 501(c)(3) organization dedicated solely to restoring and protecting the Chesapeake Bay and its tributary rivers and streams by improving water quality and reducing pollution. CBF has over 200,000 members, volunteers, and electronic subscribers, including 71,900 members in the State of Maryland. CBF's members participate in resource restoration activities throughout the Chesapeake Bay and Transquaking River watersheds including shoreline protection projects, tree planting, and oyster cultivation and dispersal. In addition, CBF members use the waters of the Chesapeake Bay and Transquaking River for bird watching, boating, kayaking, sailing, fishing, swimming, and other aesthetic and recreational pursuits. CBF

has spent over 50 years working to reduce and mitigate pollution in the Chesapeake Bay region. Those efforts include advocacy, litigation, student and teacher education, lobbying, and restoration.

GROUND'S FOR INTERVENTION

I. MOVANTS HAVE AN UNCONDITIONAL RIGHT TO INTERVENE AS A MATTER OF LAW UNDER MARYLAND ENVIRONMENT ARTICLE § 9-344.1.

Maryland Rule 2-214 provides that “[u]pon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law[.]” Md. Rule 2-214(a)(1). The Maryland Environment Article provides Movants with an unconditional right to intervene as a matter of law, stating that:

a person who meets the threshold standing requirements under the federal Clean Water Act has an unconditional right and the authority to intervene in a civil action that the State initiates in State court to require compliance with ... [a]ny discharge permit, effluent limitation, or order issued by the Department in accordance with this subtitle.

MD. CODE ANN., ENVIR. § 9-344.1(a)(3). Movants meet the standing requirements under the federal Clean Water Act, and therefore have the right to intervene in this matter.

The citizen suit provision of the Clean Water Act broadly provides that “any citizen may commence a civil action on his own behalf” against “any person” alleged to be in violation of “an effluent standard or limitation” under the Act. 33 U.S.C. § 1365(a)(1). Citizen suits under the Clean Water Act are also subject to Article III standing requirements of the Constitution. “Thus, so long as a citizen plaintiff satisfies the constitutional standing requirements, there is standing to bring a suit under the Clean Water Act.” *See Ohio Valley Envtl. Coal., Inc. v. Maple Coal Co.*, 808 F. Supp. 2d 868, 879 (S.D. W.Va. 2011) (citing *Friends of the Earth v. Gaston Copper Recycling Corp.*, 629 F.3d 387, 396 (4th Cir. 2011) (noting the Clean Water Act “confers standing on any person or persons having an interest which is or may be adversely affected.”)).

To show Article III standing, a plaintiff must have suffered an “injury-in-fact” that is fairly traceable to the challenged action of the defendant and that can likely be redressed by a favorable decision by the court. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). To show injury-in-fact under the citizen suit provision of the Clean Water Act, a plaintiff may claim recreational or aesthetic injury. *See Friends of the Earth v. Laidlaw Env'tl. Servs., Inc.* 528 U.S. 167, 183 (2000). When the suit involves a defendant discharging pollutants into a body of water, plaintiffs can establish standing by demonstrating that they “use the affected area and are persons ‘for whom the aesthetic and recreational values of the area will be lessened’ by the challenged activity.” *Id.* (quoting *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972)).

An organization has Article III standing to sue on behalf of its members when (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1997); *Am. Canoe Ass’n, Inc. v. Murphy Farms, Inc.*, 326 F.3d 505, 517 (4th Cir. 2003).

Movant intervenors meet the standing requirements under the Clean Water Act, as established by Article III of the Constitution. Movants represent the interests of their members who live, recreate, and use the Transquaking River, and whose interests are harmed and/or threatened by the pollution discharged by the Facility. The interests of Movants’ members are germane to the purpose of the respective organizations—to protect local water quality and natural resources. *See* Affidavit of Alison Prost, ¶ 6; Affidavit of Matthew Pluta, ¶ 4; Affidavit of Fred Pomeroy, ¶ 3. Exhibit A. Additionally, CBF’s organizational interests in its education and restoration programming on the Transquaking River and the Chesapeake Bay is harmed by Valley

Proteins' illegal discharges. Prost Aff. ¶ 7. The harm to Movant' interests can be redressed by a favorable ruling from this court requiring Valley Proteins to comply with the Maryland Environment Article.

A. ShoreRivers has standing to sue on behalf of its members.

ShoreRivers, Inc. is a 501(c)(3) nonprofit organization established in 2017 dedicated to protecting clean water on the Eastern Shore of Maryland. ShoreRivers is headquartered in Easton, Maryland with field offices in Chestertown, MD and Galena, MD. ShoreRivers' mission is to protect and restore Eastern Shore waterways through science-based advocacy, restoration, and education.

ShoreRivers has over 2000 members, over 1000 of whom live on the Eastern Shore of Maryland. ShoreRivers supports its members by utilizing the CWA and other environmental laws to stop pollution that threatens public health, impairs water quality, damages ecosystems, and negatively impacts the ability of its members to use and enjoy the waterways on the Eastern Shore. ShoreRivers' members include individuals who enjoy many recreational activities in and around the Transquaking River and its watershed including fishing, boating, birdwatching, canoeing, kayaking, and enjoyment of its aesthetic quality. *See* Affidavits of Matt Pluta, Jake Shaner, Barbara Hale, and Franco Primavesi. Exh. A. ShoreRivers' member Jake Shaner regularly fishes and canoes on the Transquaking River and is concerned that "Valley Proteins is polluting a very nice tributary with good fishing." Shaner Aff. ¶¶ 4, 9. Although he enjoys swimming, Mr. Shaner does not swim in the Transquaking River because he is concerned about the poor water quality harming his health. Shaner Aff. ¶ 10. ShoreRivers' member Barbara Hale regularly boats on the Transquaking River with her family to birdwatch and enjoy the wildlife along the River. Hale Aff. ¶¶ 8, 10–11. Ms. Hale and her family do not swim in the Transquaking River for "fear that they

would get sick from the polluted water.” Hale Aff. ¶ 11. ShoreRivers’ member Franco Primavesi does not swim in the Transquaking or allow his family to swim there because “the water quality is so poor that it poses a health risk if we were to swim in it.” Primavesi Aff. ¶ 15.

ShoreRivers members who live near the Facility get drinking water from wells and are concerned about groundwater contamination that could impact their health. Shaner Aff. ¶ 6; Hale Aff. ¶¶ 2, 5. Mr. Shaner lives close to the facility, and often smells “a very pungent, terrible odor” outside his home. Shaner Aff. ¶ 6. Mr. Primavesi also lives nearby and for years has routinely smelled noxious odors at his properties that blow onto his property from a southwest direction. Primavesi Aff. ¶ 6–7. Mr. Primavesi has driven by the Facility and smelled “the exact same odor” that is routinely blown onto his properties from the southeast. Primavesi Aff. ¶ 7. The odors are so strong that at certain times Mr. Primavesi cannot leave his house and cannot go outside. Primavesi Aff. ¶ 9. Mr. Primavesi is concerned about impacts to his property value from the oppressive odors and impacts to the Transquaking ecosystem from the pollution coming from the Facility. Primavesi Aff. ¶ 9, 11, 14.

ShoreRivers’ members are harmed by the violations alleged in the state’s complaint. Pollution in the Transquaking River, its tributaries, and Higgins Mill Pond—including pollution from the Facility—impairs water quality, threatens public health, and harms river habitats and aquatic ecosystems. Valley Proteins violations of the Maryland state law have resulted in excess pollution, which impairs the water quality and contributes to algae blooms, fish kills, and unsafe swimming conditions in the Transquaking River and its tributaries. This pollution has diminished ShoreRivers’ members’ use and enjoyment of these waters by making it less likely that they will continue to enjoy recreating on and around them in the future. Pluta Aff. ¶¶ 13–14; Shaner Aff. ¶¶ 9, 11; Hale Aff. ¶¶ 16, 19; Primavesi Aff. ¶¶ 15, 17–18.

B. DCPG has standing to sue on behalf of its members.

Dorchester Citizens for Planned Growth, Inc., (DCPG) is a 501(c)(3) nonprofit organization founded in 2007 focused on ensuring sustainability and quality of life within the lands and waters of Dorchester County, Maryland. DCPG advocates for the promotion, maintenance, and conservation of the natural resources, farmland, and open spaces of Dorchester County. DCPG is headquartered in Cambridge, MD. DCPG's mission is to provide a public voice on land and water uses. DCPG has over 90 members including volunteers who monitor the Transquaking River and other waterways in Dorchester County.

DCPG's members use the water and shoreline in and around the Transquaking River and Higgins Mill Pond for recreation including boating, paddling, fishing, wildlife watching, and enjoying aesthetic value. *See* Affidavit of Barbara Hale, ¶ 10; Affidavit of Frederick Pomeroy, ¶¶ 11, 14; Affidavit of Richard Ball, ¶¶ 8–9. Exh. A. DCPG members have conducted water quality sampling on the Transquaking River for more than ten years and have documented high nutrient levels in the River. *See* Pomeroy Aff. ¶¶ 6, 13; Ball Aff. ¶ 4. DCPG member Frederick Pomeroy would regularly fish and kayak on the Transquaking River, but no longer does so because of the pollution from the facility. Pomeroy Aff. ¶¶ 11, 14–15. DCPG member Richard Ball no longer fishes or comes into contact with the Transquaking River because of poor water quality and potential threats to the environment and human health. Ball Aff. ¶ 10.

DCPG's members are harmed by the actions of Valley Proteins, Inc. and the violations raised by MDE in the underlying complaint. Excess nitrogen, phosphorus, fecal coliform, total residual chlorine, and biological oxygen demand—such as exceedances documented from the Facility—cause algae blooms, fish kills, and unsafe water quality. The interests of DCPG's members are negatively impacted by poor water quality in the Transquaking River and Higgins

Mill Pond because it has diminished their ability to recreate on and enjoy the aesthetic value in and around these waters. *See* Hale Aff. ¶ 19; Pomeroy Aff. ¶ 18; Ball Aff. ¶ 13.

C. CBF has standing on behalf of the organization and its members.

Chesapeake Bay Foundation, Inc. (CBF), founded in 1967, is a 501(c)(3) non-profit organization dedicated to protecting the Chesapeake Bay and its rivers and streams by improving water quality and reducing pollution. CBF is headquartered in Annapolis, Maryland, with offices in Easton, Maryland; Richmond and Virginia Beach, Virginia; and Harrisburg, Pennsylvania. CBF represents more than 200,000 members across the country, including more than 71,900 in Maryland. CBF's mission is to "Save the Bay" and keep it saved, as defined by reaching a 70 on CBF's Health Index. For over 50 years, CBF has worked to restore and protect the Chesapeake Bay through education, advocacy, restoration, and litigation.

CBF's programs, resources, and interests are harmed by the current operation of the Facility, including permit violations polluting surface water, groundwater contamination, and other activities at the Facility. CBF has spent millions of dollars restoring waterways; advocating at the local, state, and federal level for clean water protections; educating students and teachers about the value of the Chesapeake Bay and its tributaries. Prost Aff. ¶ 7. These efforts are harmed by the continuing pollution violations at the Valley Proteins Facility – a large, industrial polluter on the Eastern Shore of Maryland.

CBF's restoration efforts are threatened by the pollution discharged from the Facility to the Transquaking River. CBF conducts extensive restoration projects throughout the Bay watershed, including the installation of best management practices ("BMPs") such as tree plantings to create streamside buffers and wetlands restoration projects. Prost Aff. ¶¶ 12–13. One such project occurred in Dorchester County, Maryland along the Chicamacomico River, a

tributary of the Transquaking River. Over the course of two planting events in the fall of 2015 and the spring of 2016 with over 70 volunteers at each event, CBF planted over 1,800 trees and shrubs across ten acres of the banks of the Chicamacomico River to create a riparian buffer.

Prost Aff. ¶ 12. One of the purposes of the tree plantings is to reduce stormwater runoff and the pollution it carries to the River. CBF's restoration projects, which represent significant financial and staff resources, are undermined and potentially offset by continued pollution from the Facility.

CBF's education programming is harmed by the pollution discharged from the Facility. CBF operates its education programs in Maryland, Virginia, Pennsylvania, and the District of Columbia, taking students and teachers on trips to learn about Bay ecology and the threats facing the Bay's recovery. Prost Aff. ¶ 14. CBF spends over \$4 million a year on education programming. *Id.* CBF owns and operates the Karen Noonan Education Center in Crocheron, Maryland, located at the mouth of Fishing Bay, where the Transquaking River drains before entering the Chesapeake Bay. Prost Aff. ¶ 15. In fiscal year 2019, CBF's educators took approximately 2,000 students and teachers out on expeditions from the Karen Noonan Center. *Id.* These trips include boat trips in Fishing Bay and kayaking excursions on the Transquaking River. Prost Aff. ¶¶ 16–17.

Polluted waters significantly impact the efficacy of CBF's education trips. When waters are polluted, educators and students must limit contact with the water, thereby hampering the ability of students to investigate a given waterbody. Prost Aff. ¶ 18. Pollution from the Facility contributes to harmful algae blooms and high levels of bacteria in the Transquaking River, which in addition to harming water quality can pose a threat to human health. This pollution directly

impacts the CBF education program's use of the Transquaking River and the surrounding watershed. Thus, CBF has standing in its own right.

CBF's members are harmed by the operations at the Valley Proteins Linkwood Facility. CBF members engage in a wide array of activities around the Bay watershed's Eastern Shore, including fishing, crabbing, boating, swimming, hiking, bird watching, and oyster-gardening (growing oysters in baskets attached to a dock: <https://www.cbf.org/how-we-save-the-bay/programs-initiatives/frequently-asked-questions-about-oyster-gardening.html>). Prost Aff. ¶ 21. In this way, CBF members rely on a healthy Bay watershed for economic, recreational, and aesthetic interests.

CBF members who recreate in the Transquaking River are harmed by the operations at the Facility. Excess nutrient pollution in the surface water and the groundwater causes algal blooms in the River, leading to fish kills and unsafe water for human contact. Members are no longer able to use the Transquaking River in the way they desire. CBF member Richard Ball has fished the Transquaking River since 1966 but has "watched the River die over the last 30 years." Ball Aff. ¶ 9. Mr. Ball regularly takes water quality samples of the Transquaking River, and is "afraid to touch the water" and wears "vinyl gloves and high boots to avoid contact with the water." Ball Aff. ¶ 10. The nutrient and sediment pollution from Valley Proteins contributes to poor water quality in the Transquaking River watershed and downstream waterbodies, which threatens and/or harms CBF members' health, livelihoods, and interests in the Bay watershed. Thus, CBF has standing to represent its members.

ShoreRivers, DCPG, and CBF meet the requirements for Article III standing to bring a citizen suit under the Clean Water Act, and therefore meet the requirements of Maryland Environment Article § 9-344.1, which provides an "unconditional right to intervene as a matter of

law” as required by Maryland Rule 2-214(a)(1). Movants members’ recreational and aesthetic interests in the Transquaking River are harmed by Valley Proteins’ violations of its NPDES Permit. These interests may be redressed by a favorable ruling by this court requiring Valley Proteins to comply with the Maryland Environment Article.

CONCLUSION

Movants meet the requirements under Maryland Rule 2-214(a) to intervene as a matter of right. Therefore, the Movant intervenors respectfully ask this court to grant this unopposed motion to intervene as plaintiffs in the above-captioned case.

Dated: February 11, 2022

Respectfully submitted,

/s/ Patrick DeArmey

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 11th day of February, 2022, a copy of the forgoing Motion to Intervene was served by electronic means on all counsel of record by the Court's filing system. A copy was sent via first class mail to counsel for the Defendant.

/s/ Brittany Wright
Brittany Wright

IN THE CIRCUIT COURT FOR DORCHESTER COUNTY

STATE OF MARYLAND
DEPARTMENT OF THE
ENVIRONMENT,

*

*

and

*

CHESAPEAKE BAY FOUNDATION, INC.,

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and

*

DORCHESTER CITIZENS FOR PLANNED
GROWTH,

*

and

*

SHORERIVERS,

*

Plaintiffs,

*

*

v.

* Civil Action No. C-09-CV-22-000022

VALLEY PROTEINS, LLC.,

*

Defendant.

*

* * * * *

CONSENT DECREE

Plaintiff, the Maryland Department of the Environment (hereinafter the “Department”), Plaintiff Chesapeake Bay Foundation, Inc., Plaintiff Dorchester Citizens for Planned Growth, and Plaintiff ShoreRivers (collectively with the Department, “Plaintiffs”) and Defendant, Valley Proteins, LLC (“Defendant”), hereby represent and acknowledge that they agree to enter into this Consent Decree regarding certain alleged

violations of Maryland State environmental laws relating to the Defendant's permit authorizing the discharge of pollutants from its wastewater treatment plant ("WWTP") to waters of the State and its permit authorizing the emission of air pollutants, and hereby request that this Court enter this Consent Decree as follows:

I. FACTUAL BACKGROUND

1. Defendant owns and operates a poultry rendering facility in Linkwood, Maryland ("Facility").

National Pollutant Discharge Elimination System Permit

2. In 1999, the Department issued National Pollutant Discharge Elimination System (NPDES) Permit No. 99-DP-0024/MD0003247 (the "NPDES Permit") with an effective date of March 1, 2001, authorizing the discharge of pollutants under conditions set forth in the Permit to a prior owner of the Facility. The NPDES Permit expired on February 28, 2006. A timely renewal application was submitted, and the terms and conditions of the NPDES Permit continue in effect until the Department issues a new permit.

3. In 2013, the Defendant acquired the Facility, and the Department transferred the NPDES Permit to the Defendant.

4. The NPDES Permit authorizes discharges from the Facility through Outfall 001 to an unnamed tributary to the Higgins Mill Pond, which is part of the Transquaking River, hereinafter referred to as the "Transquaking Tributary" (Use I waters).

5. General Condition III(A) of the NPDES Permit requires the Defendant to summarize its monitoring results each month and to submit them to the Department on

Discharge Monitoring Reports (DMRs). DMRs must be submitted to the Department no later than the 28th day of the month following the reporting month.

6. The Department conducted inspections of the Facility on the following dates for compliance with terms and conditions of the NPDES Permit: March 8, 2018; May 10, 2018; August 8, 2018; January 15, 2019; July 20, 2021; July 22, 2021; October 25, 2021; October 28, 2021; December 10, 2021; December 13, 2021; December 14, 2021; December 16, 2021; December 17, 2021; December 20, 2021; December 21, 2021; December 27, 2021; January 6, 2022.

7. In the course of these inspections the Department made certain observations, and the Department alleged violations in connection with various matters which are described below.

Nitrates

8. Quarterly monitoring reports show instances where the nitrate levels in monitoring wells 3 (MW-3) and 5 (MW-5) have been higher than the groundwater target level of 10 mg/l. At least one well every quarter from March 2005 to March 2022 recorded nitrate levels above 10 mg/l, with most levels above target occurring in MW-5.

North Side Drainage Area

9. On the March 8, 2018 inspection, the Department observed several areas of raw product on the parking area near the transport containers and advised the Defendant to take corrective action. Defendant removed the product.

10. The Department also noted on March 8, 2018, in the area of a barrier wall adjacent to the north side drainage area and a swale directly upstream of the north side

drainage area, raw materials or product drainage could come into contact with the surrounding ground. The Department also noted on January 15, 2019, July 22, 2021, and October 25, 2021 that inspectors observed residual raw product on the ground near the barriers at the north side drainage area. Defendant avers that raw material was on the ground upland of the stormwater conveyance system to the stormwater infiltration pond.

11. In response to the Department's observations and recommendations, Defendant sealed the barrier wall, reworked the swale area, extended curbing at the head of the swale area near parking pad and contracted to replace and extend the barrier wall, all in furtherance of the capture and treatment of stormwater from this area.

12. Based on the observations relating to practices in the aforementioned areas, Plaintiffs allege that the Defendant placed pollutants in a position likely to pollute waters of the State in violation of the NPDES Permit and State law. Defendant avers that the materials were not likely to pollute waters of the State.

Stormwater Ponds

13. The Department noted on July 20, 2021 that raw material near the parking area and drainage pad could flow to the drainage swale of the stormwater pond on the west side of the Facility, and observed darker colored water in the drainage swale that leads to the stormwater infiltration pond.

14. To respond to the Department's observations and recommendations, Defendant placed hay bales in the area along the head of the stormwater swale to capture and divert flows, and revised work practices to wash the containers in another area.

15. Based on the observations of conditions in the aforementioned areas, Plaintiffs allege that the Defendant placed pollutants in a position likely to pollute, in violation of the NPDES Permit and State law. Defendant avers that the materials were not likely to pollute waters of the State.

Self-Reported Discharge of Partially Treated Wastewater

16. On October 25, 2019, at 1:40 p.m., the Defendant self-reported that an eye bolt assembly holding the #3 aeration tank's mechanical aerator cable in place failed, resulting in the mechanical aerator floating to the side of the tank and splashing 2,000 gallons of partially treated wastewater onto the ground with an undetermined amount entering Outfall 001, which discharges to the Transquaking Tributary. The Defendant also reported observing some accumulation of partially treated wastewater along the edge of the treatment tank. Defendant repaired the assembly and cleaned up the affected area.

Discharge Monitoring Reports (DMRs)

17. DMRs submitted by the Defendant for the period from April 30, 2019, to October 2021 revealed forty (40) instances where effluent exceeded the daily and/or monthly effluent limitations in the NPDES Permit for biochemical oxygen demand (BOD), nitrogen ammonia total (as N), total nitrogen, and total phosphorus that occurred over a period of 598 days. Defendant avers these self-reported exceedances stemmed from fewer incidents, some of which were simultaneous exceedances of daily and monthly average limits. Defendant avers it performed root cause investigations, corrected the causes, and submitted reports of its investigation to the Department for each of these incidents.

Facility Records

18. The Department also reviewed the records and reports of the Facility from July 2018 through July 2021 and alleges that operators' daily lab sheets showed noncompliance for total residual chlorine (TRC) for a total of 400 violations and the Facility's monthly worksheets incorrectly recorded BOD for a total of fifteen (15) times.

19. Defendant avers that the TRC issues stemmed from errors using the meter and from the Facility's lab sheets incorrectly noting that 0.1 mg/L was the limit. The actual limit is *less than* 0.1 mg/L (" <0.1 mg/L"). Defendant's personnel mistakenly treated the 0.1 mg/L readings as demonstration of compliance and did not report the 0.1 mg/L readings on its DMRs, although the values were still documented in the Facility's lab sheets. Defendant replaced the meter on August 8, 2021, and all subsequent readings were compliant.

20. The BOD reporting errors were corrected by Defendant shortly thereafter.

Wastewater Operator

21. On October 25, 2021, the Department noted the WWTP was operated by a certified Class 5-A operator from March 2, 2020, through October 31, 2021, not a certified Class 5 industrial wastewater operator as required by the NPDES Permit. The qualifications for a Class 5-A and Class 5-Industrial operator are essentially the same, and the NPDES Permit allows the WWTP to operate up to two (2) months without a Class 5-Industrial operator. The operator at the Facility applied for Class 5 industrial operator certification. The operator met the requirements for Class 5 industrial through his Class A certification,

and the Maryland Board of Water Works and Waste System Operators granted the Class 5 industrial certification on November 1, 2021.

Outfall 001 Samples

22. During inspections in December 2021 the Department and Defendant collected and analyzed grab samples at the Transquaking Tributary. Sample results indicated levels of pH and dissolved oxygen concentration that were outside the limits established in the NPDES Permit.

23. Plaintiffs allege that this was an unauthorized discharge of wastewater and requested the Defendant to stop discharging at the Outfall 001 location until such time that the NPDES Permit limitations were met. Defendant stopped discharging.

Sodium Hydroxide

24. On December 12, 2021, at around 3:30 p.m., Defendant reported that approximately 100 gallons of 50% sodium hydroxide spilled onto the ground in a gravel area north of the chlorine contact chamber.

25. The Department noted that the area of the spill had been treated with soda ash, and Facility employees were working to remove and replace stone and soil in the contaminated area. However, gravel from the site was piled adjacent to the spillage area awaiting disposal. After cleanup was complete, the Department observed that the contaminated material from the spill was being stored on site in a contained area. The Department advised the Defendant's representative to properly dispose of the contaminated material.

26. The Department observed raw product on the ground adjacent to the jersey barriers at the raw material pad in a position likely to pollute waters of the State. The Department requested that the raw material be properly cleaned up and lime applied. Defendant avers the materials were not likely to pollute waters of the State.

Oxic Tank #3 Overflow

27. On December 10, 2021, the Department observed foam and wastewater overflow from the Facility's Oxic Tank #3 in the berm around the tank, with overflow carried over onto the adjacent ground. During follow up inspections the Department noted the cleanup of the overflow was still underway.

28. Plaintiffs allege that this was an unauthorized discharge from the Oxic Tank #3. Defendant avers this was a rare occurrence and that the materials were not likely to pollute waters of the State.

Oxic Tank #3 Blockage and Discharge

29. On December 15, 2021, the Defendant reported an unauthorized discharge of unknown volume of partially treated wastewater from the Facility's Oxic Tank #3 into the Transquaking Tributary, which was caused by a blockage in Oxic Tank #3's discharge line. Further inspection by the Department showed that the unauthorized discharge impacted the Transquaking Tributary from the point of entry downstream to the confluence of the Transquaking River. Upon request by the Department, the Defendant began to clean and remove sludge material from the affected areas.

30. On December 16, 2021, the Department noted ongoing removal and cleanup of the area and documented that the area from Outfall 001 to the Transquaking Tributary had been properly cleaned.

31. On December 20, 2021, Department inspectors observed white solids in the Outfall 001 and the Transquaking Tributary downstream to the confluence of the Transquaking River. Defendant stated that the discharge occurred on December 18, 2021 and December 19, 2021 but that the discharge from Outfall 001 was stopped due to elevated ammonia levels in the discharge. The Department requested immediate action be taken to remove and properly dispose of the solids from the Transquaking Tributary. By the next day all the solids were removed.

Sludge Material

32. The Department observed sludge material adjacent to the Facility's biological nutrient removal/dissolved air flotation (BNR DAF) and requested the area be cleaned to prevent an unauthorized discharge. The December 15, 2021 inspection showed that the sludge material on the concrete pad adjacent to the secondary clarifier and BNR DAF had been cleaned. Defendant avers the materials were not likely to pollute waters of the State.

Additional Observations

33. On December 10, 2021, the Department observed a leak of wastewater to the ground from the recycle pumps located at the Facility's chlorine contact chamber. Upon request by the Department, the Defendant's representative stopped the leak and applied

lime to the ground where the wastewater had leaked. Defendant avers the materials were not likely to pollute waters of the State.

34. On December 10, 2021, Defendant advised the Department that a steam line in Oxid Tank #3 ruptured, causing foaming of partially treated wastewater in the tank and over the side into a contained area that is not impervious. The steam was shut off and the ruptured line repaired. Department inspectors observed on December 13, 2021 and December 14, 2021 that the material that had leaked onto the ground had not been cleaned up. Defendant avers the materials were not likely to pollute waters of the State.

Consent Orders

35. Defendant avers from December 19, 2021, to February 27, 2022, the Facility did not discharge wastewater through the permitted outfall. Instead, beginning on December 20, 2021, Defendant began hauling treated wastewater from its wastewater lagoons to a municipal sewage treatment plant and to off-site locations. These actions lowered levels in its wastewater lagoons sufficiently to allow for limited continued plant operations.

36. On December 23, 2021, the Department and Defendant executed an Interim Consent Order (“Consent Order”) requiring the Defendant to perform certain work and implement corrective actions at the Facility in response to the violations observed during the December inspections. The work to be performed included the following:

- a. Achieve and maintain at least two feet of freeboard in lagoons #1 and #2 by January 9, 2022;

- b. Resume operations associated with the meat process and placing wastewater in the lagoons as long as there is no discharge from Outfall 001;
- c. Notify the Department upon the occurrence of certain events;
- d. Ensure that a certified operator is at the Facility and actively overseeing the operations at all times when the Facility is discharging from Outfall 001; and
- e. Retain the services of a certified professional engineer to evaluate the treatment system to provide improvements and recommendations for the operation of the Facility to ensure compliance with the NPDES Permit. The Defendant was ordered to provide a report and plan for the Department's approval according to a certain schedule.

37. On December 29, 2021, Defendant notified the Department that it had retained the services of Reid Engineering Co., Inc. to complete the evaluation of the existing wastewater treatment system and submit a plan to ensure compliance with Defendant's NPDES Permit.

38. On January 10, 2022, the Consent Order was modified to extend the deadline for achieving and maintaining two (2) feet of freeboard in lagoons #1 and #2 to January 19, 2022.

39. On January 27, 2022, the Consent Order was modified to include the following:

- a. Define the term "substances" to include, but is not limited to, all liquids, solids, semi-solids, sludges, or other material removed from or resulting from treatment or Facility operations;

- b. Allow the Facility to resume operations associated with the feather line so long as there is no discharge from Outfall 001 and two (2) feet of freeboard is maintained in lagoons #1 and #2;
 - c. Require the Defendant to pump and haul all liquids from lagoons #1 and #2 to the Hurlock Wastewater Treatment Plant and all sludge and/or solids to permitted locations out of Maryland;
 - d. Allow the Facility to expand processing at the Facility to other customary inputs so long as there is no discharge from Outfall 001 and two (2) feet of freeboard is maintained in lagoons #1 and #2;
 - e. Maintain receipts and manifests for all removed substances, including liquids, solids, sludges, or wastewater, hauled from the Facility and provide copies of the receipts and manifests to the Department within five (5) days of the Department's request.
40. On February 28, 2022, the Facility resumed discharging through Outfall 001 to the Transquaking Tributary with approval by the Department based on compliance with terms of the Consent Order.

Air Emissions Permit

41. On November 1, 2017, the Department issued Operating Permit No. 019-0029 (the "Operating Permit") to Defendant authorizing the emission of air pollutants from the Facility pursuant to the terms and conditions set forth therein. At all times relevant to the complaint in this matter, the Operating Permit governed air emissions from the Facility.

42. The Operating Permit authorizes the operation of one meat rendering process line at the Facility (Installation no. 019-0029-8-0063), which is to include, in relevant part, a two-stage packed tower scrubber to treat gases generated during operation of the meat rendering process line.

43. The Operating Permit also authorizes the operation of one feather rendering process line at the Facility (Installation no. 019-0029-8-0064), which is to include, in relevant part, a two-stage packed tower scrubber and a room-air packed tower scrubber to treat gases generated during operation of the feather rendering process line.

44. Each of the two-stage packed tower scrubbers which control emissions from the meat and feather lines contains a primary and a secondary scrubber, operated in series, with each stage capable of being independently monitored for its oxygen reduction potential.

45. Under the following conditions of the Operating Permit, Defendant must

- a. Part C, Condition (1): maintain and operate all installations and their associated pollution control scrubber systems (including both two-stage packed tower scrubbers and the room-air packed tower scrubber), to ensure “full and continuous compliance” with the permit conditions.
- b. Part C, Condition (3): ensure that the recorded oxygen reduction potential of each pollution control scrubber system shall not fall below +125 millivolts (mV) based on a three-hour block average.
- c. Part E, Condition (6): “continuously record” the 3-hour block average oxygen reduction potential for each pollution control scrubber system.

- d. Part B, Condition (3)(f): comply with COMAR 26.11.06.09, which prohibits a person from causing or permitting the discharge into the atmosphere of gases, vapors, or odors beyond the property line in such a manner that a nuisance or air pollution is created.
 - e. Part B, Condition (3)(g): comply with COMAR 26.11.18.05D, which prohibits a person from causing or permitting any offal to be handled, transported, or stored, or to undertake the preparation of any offal without taking reasonable precautions to prevent odors from being discharged.
 - f. Part C, Operating Condition (6): take “all reasonable precautions” to prevent nuisance odors from leaving the property on which the Facility operates.
46. On August 17, 2021, the Department performed a compliance evaluation at the Facility and alleges that
- a. Between July 1, 2021 and August 22, 2021, the oxygen reduction potential for the two-stage scrubber system controlling the meat rendering process (i) fell below +125 mV on sixteen (16) days at the first stage scrubber; and (ii) fell below +125 mV on eighteen (18) days within the second stage scrubber.
 - b. Between July 1, 2021 and August 22, 2021, the oxygen reduction potential within the two-stage scrubber system and room-air packed tower scrubber controlling the feather rendering process line (i) fell below +125 mV on twenty-one (21) days within the first stage scrubber; (ii) fell below +125 mV on twenty-nine (29) days within the second stage scrubber; and (iii) fell below +125 mV on four (4) days within the room-air packed tower scrubber.

47. The Department alleges Defendant failed to continuously record the oxygen reduction potential for each scrubber, daily, between August 15, 2018 and August 17, 2021. Defendant avers its monitoring and recording the oxygen reduction potential once every two (2) hours satisfies the monitoring requirement since neither the permit nor the regulations define continuous monitoring. Defendant avers that within three (3) days of the Department's inspection, Defendant installed a monitoring and recording system for recording oxygen reduction potential in five-minute intervals, and avers that within seven (7) days, Defendant began a comprehensive review of scrubber system performance that led to repair and replacement of certain components, together with the training of operators on scrubber system troubleshooting.

48. Between July 25, 2019, and December 5, 2021, the Department received thirty-seven (37) complaints regarding odors emitted from the Facility. The Department received two (2) or more complaints from different individuals on the following days: September 14, 2019, and August 7, 17, September 14, 22, October 8, 29, November 11, and 21 in 2021.

49. During this time, Defendant avers it was only made aware of seven (7) odor complaint incidents, the receipt of which triggered immediate inspection of odor control processes and operations, which Defendant avers confirmed the systems to be operating in accordance with the Operating Permit and implementing regulations.

50. During inspections on April 16, July 14, August 5, and October 21, 2021, the Department alleges that an "offal-like odor" was detected on Linkwood Road, in front of the Facility and beyond the property line.

51. During an inspection on September 22, 2021, the Department alleges that an “offal-like odor” was detected on Red Hill Road and Route 14 (Mt. Holly Road).

52. During an inspection on October 25, 2021, the Department alleges that an “offal-like odor” was detected approximately one mile north of the plant on Linkwood Road.

53. During an inspection, one week prior to the temporary shutdown of the Facility on December 21, 2021, the Department observed raw chicken waste on the ground.

54. Defendant avers that the sources of odors were not immediately investigated by the Department and that during many of the times in question, farms were land-applying manure and other biosolids to enrich soil for agricultural purposes.

55. Defendant avers that in October and November 2021 it made an 800 number available to report odors directly to the Facility.

Statutory and Regulatory Authority

56. Title 2, Subtitle 6 of the Environment Article, Annotated Code of Maryland, provides that a person who violates any provision of Title 2, or any rule or regulation issued thereunder, is liable for a civil penalty up to \$25,000 per violation. Each day a violation continues is a separate violation.

57. Section 2-401 of the Environment Article authorizes the Department to adopt regulations that require a permit or registration before a person constructs, modifies, operates, or uses a source that may cause or control emissions into the air. Pursuant thereto, the Department has promulgated COMAR 26.11.02.13B(10), which prohibits a person

from operating or causing to be operated any rendering cooker or offal dryer without first obtaining and having in effect a state air permit to operate.

58. COMAR 26.11.02.05A prohibits a person from violating any term or condition of a permit issued under COMAR 26.11.02.

59. Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland, prohibits the discharge of any pollutant into the waters of the State unless authorized by a discharge permit issued by the Department. The term “discharge” includes the placement of a pollutant in a position where it is likely to pollute waters of the State. Title 9, Subtitle 3 also provides that any person who violates any provision of Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or permit adopted or issued by the Department thereunder, is liable for a civil penalty of up to \$10,000 per violation. Each day a violation occurs is a separate violation.

60. Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland, provides that a person who discharges a pollutant into the waters of the State must reimburse the Department for the reasonable costs incurred by the Department in conducting environmental health monitoring or testing, including the cost of collecting and analyzing soil samples, surface water samples, or groundwater samples for the purpose of assessing the effect on public health and the environment of the person’s discharge.

The Litigation

61. On February 2, 2022, the Department filed the above-captioned lawsuit in the Circuit Court for Dorchester County seeking relief under Title 2 and Title 9 of the

Environment Article, alleging that Defendant's operation of its Facility violated its air emissions permit and COMAR and its NPDES Permit and State water pollution laws.

62. On February 11, 2022, Plaintiff Chesapeake Bay Foundation, Plaintiff Dorchester Citizens for Planned Growth, and Plaintiff Shore Rivers (collectively, "Citizens") filed an Unopposed Motion to Intervene in the Department's action for Title 9 claims only pursuant to § 9-344.1 of the Environment Article allowing intervention in civil actions involving water pollution control.

63. On March 1, 2022, the Circuit Court for Dorchester County granted the Citizens' motion.

64. On April 28, 2022, Defendant was reincorporated as an LLC, and the stock of the Defendant was acquired by a new owner on May 2, 2022.

65. Plaintiffs have expended resources, including attorney resources, in bringing this suit.

66. To avoid protracted litigation of the alleged violations and the corrective action required, Plaintiffs and Defendant (collectively, "Parties"), have reached an agreement on the terms of this Consent Decree, prior to Defendant filing an answer or other response to the Complaint and Intervenor's Proposed Complaint. The Parties recognize that, and the Court by entering this Consent Decree finds that, this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable and in the public interest.

67. It is the mutual objective of the Parties, by entering into this Consent Decree, to provide for and achieve compliance with the environmental laws addressed by this Consent Decree in an expeditious manner to protect public health and the environment.

68. The Department believes that this Consent Decree is in the best interests of and will benefit the residents of the State of Maryland.

69. It is expressly understood that this Consent Decree pertains to the specific alleged violations described herein and that the Parties have made no promises or representations other than those contained in this Consent Decree and that no other promises or representations will be made unless in writing, and the Department makes no representations with regard to any criminal liability for the above-referenced allegations and has no authority over any criminal actions.

70. Entry of this Consent Decree represents a settlement of contested claims and Defendant denies many of the factual allegations and legal conclusions contained herein.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II. JURISDICTION AND VENUE

71. For purposes of this Consent Decree, Plaintiffs and Defendant agree that the Court has jurisdiction over the Parties and over the subject matter of this action pursuant to Title 2, Subtitle 6, and Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland. Venue is proper under § 6-201 of the Courts and Judicial Proceedings Article, Annotated Code of Maryland because Defendant carries out its business in Dorchester County, Maryland.

72. For purposes of this Consent Decree, or any action to enforce this Consent Decree, the Parties consent to this Court's jurisdiction over this Consent Decree and consent to venue in this judicial district.

III. WORK TO BE PERFORMED

A. Review and Approval Process

73. All documents required under Section III (Work to be Performed) of this Consent Decree to be submitted to the Department ("Submittal(s)"), other than those documents required under Section III.H (Air Quality Compliance Plan), shall be made simultaneously to Chesapeake Bay Foundation and Chesapeake Legal Alliance (attorneys for Plaintiffs Shore Rivers and Dorchester Citizens for Planned Growth). Electronic submission is preferred, where practicable. All documents shall be submitted in accordance with Section XIII (Notification). All instances in this Consent Decree where it is noted that the Department acts in consultation with the Citizens shall be for work related to Title 9 of the Environment Article only.

74. The Department shall promptly review each Submittal and may approve, disapprove, or require revisions to the Submittal. The Department shall consult with Citizens on all approvals, disapprovals, or required revisions, except for decisions on submittals required pursuant to Section III.H (Air Quality Compliance Plan), which shall be made at the Department's sole discretion.

75. The Department shall notify Defendant in writing within thirty (30) days of submission if it determines that a Submittal is substantially deficient or flawed and shall set forth the basis for that determination in such notification.

76. If the Department requires revisions to a Submittal, Defendant shall provide a revised Submittal within thirty (30) days of the Department's notice.

77. Consistent with Paragraph 73, Citizens shall have the right to review all Submittals, and provide the Department and Defendant with written comments within thirty (30) days of Citizens' receipt of the Submittal. The Department and Citizens shall consult and make best efforts to collaboratively resolve any disagreements or concerns that may arise regarding the adequacy of Defendant's Submittals.

78. All plans, studies, schedules, deadlines, and reports set forth in Submittals approved by the Department shall be incorporated by reference into this Consent Decree and enforceable as if fully set forth herein.

B. Status of the December 23, 2021 Interim Consent Order and Subsequent Modifications Under This Consent Decree

79. The Consent Order, as modified on January 10, 2022 and January 27, 2022 is hereby terminated and of no effect.

80. Within thirty (30) days of the Effective Date as that term is defined in Section XII (Effective Date), Defendant shall have retained two (2) Certified Operators ("COs") (employee or contractor) to provide direction and control of the WWTP operations at the Facility as required under COMAR 26.06.01.05.B. The COs shall have cell phones or other means of access via text, email, or phone at all times to receive notification of any problems or questions at the WWTP. Both COs shall schedule their "on-call" availability to provide for coverage 24 hours a day/7 days a week. The designated "on-call" CO must agree to promptly respond to the questions or problems identified by the onsite WWTP operators

and be at the Facility within one hour if necessary. The second CO would serve as backup in the event the designated “on-call” should be unavailable. This obligation shall terminate six (6) months from March 1, 2022 as long as there are six (6) consecutive months of DMRs with no Significant Noncompliance and no unauthorized discharge considered to be Significant Noncompliance from the operation of the WWTP. Significant Noncompliance has the meaning described in the September 21, 1995 EPA memo entitled “Revision of NPDES Significant Noncompliance (SNC) Criteria to Address Violations of Non-Monthly Average Limits.”

81. Defendant shall maintain at least two (2) feet of freeboard in the two (2) wastewater lagoons, except in significant storm events or in a true emergency at the treatment plant, in which case it will take steps to restore the two (2) feet of freeboard as soon as practicable. If there is a significant storm event or true emergency at the treatment plant, Defendant shall notify the Department within twenty-four (24) hours consistent with the notification requirements of General Condition B.2. in the NPDES Permit.

82. Defendant shall ensure that a board-certified operator is at the Facility and actively overseeing the operations at all times when the Facility is discharging from Outfall 001. This obligation shall terminate six (6) months from March 1, 2022 as long as there are six (6) consecutive months of DMRs with no Significant Noncompliance and no unauthorized discharge considered to be Significant Noncompliance from the operation of the WWTP.

83. Defendant shall perform visual inspections of the Facility as necessary to ensure compliance with permit discharging limitations, including walking along the stream

outfall for Outfall 001 to the confluence of the discharge to the Transquaking River to identify adverse impacts including excess solids, discoloration, or other evidence of unauthorized discharges. Unless prohibited by safety risks to the employees, when the Facility is operating and discharging from Outfall 001, these inspections should occur at least every eight (8) hours. Records of the outfall inspection log shall be maintained for review by the Department consistent with normal business practices. The inspection reports shall include the date, time, name of the Defendant's representative who conducted the inspection, and any observations recorded. If the inspection cannot be performed due to safety risks to the employee, the risks shall be fully documented, and the Department shall be immediately notified consistent with the notification requirements of General Condition B.2. in the NPDES Permit. If inspections consistently show no adverse impacts to the stream outfall for thirty (30) days after the Effective Date, they may be discontinued.

84. Defendant shall maintain receipts and manifests for all Removed Substances, including liquids, solids, sludges, or wastewater, hauled from the Facility and provide copies of these receipts and manifests to the Department or Citizens within thirty (30) days of the Department's or Citizens' request. "Removed Substances" is defined in the NPDES Permit, General Condition, B.7. Receipts and manifests shall not contain location-specific information for nutrients managed in accordance with rules of the Maryland Department of Agriculture. This provision shall be terminated three (3) months after the Effective Date.

C. Correction of Discharge Monitoring Reports (DMRs)

85. Within thirty (30) days of the Effective Date, Defendant shall submit to NetDMR the revised DMRs to correct the monitoring results for TRC from July 2018

through July 2021 collected at Outfall 001 as documented in the Department's inspection report dated September 8, 2021. In the revised DMRs, Defendant shall report the readings of 0.1 mg/l of TRC and all higher readings. Defendant may reference the Kleinfelder report dated December 8, 2021.

D. Addressing Stormwater Impacts

86. Within one hundred and twenty (120) days of the Effective Date, Defendant must complete the poured concrete wall designed to protect against material reaching the adjacent soil areas.

87. Within ninety (90) days of the Effective Date, Defendant shall develop and submit to the Department, for its review and approval, consistent with Paragraphs 73 and 74, an updated Stormwater Pollution Prevention Plan to address and correct

- a. The stormwater impact of raw material placed on the ground outside of the jersey containment wall located along the north side of the raw material drainage area.
- b. The stormwater impact of runoff from the parking area adjacent to the raw material drainage area on the drainage swale of the stormwater pond located on the west side of the Site (Outfall 003).

E. General Discharge Permit for Stormwater and Sampling

88. Defendant shall apply for coverage under one of the following permits, whichever is finalized earlier: the final and effective 20-SW General Permit for Discharges of Stormwater Associated with Industrial Activity ("20-SW General Permit") or under the

12-SW General Permit for Discharges (“12-SW General Permit”) pursuant to a new NPDES discharge permit.

89. Pending issuance of the final and effective 20-SW General Permit or 12-SW General Permit pursuant to a new NPDES discharge permit, Defendant shall conduct benchmark monitoring from Outfalls 003 and 004 quarterly for four (4) full calendar quarters, starting the first full calendar quarter of 2023 which begins in January 2023 to determine levels of pollutants in stormwater discharging from the Facility. If the annual average for any benchmark parameter listed below does not exceed the benchmark threshold included with it, Defendant monitoring shall be discontinued. If the annual average exceeds the benchmark for any parameter, Defendant shall continue the benchmark monitoring under this Consent Decree for that parameter until one of the permits referenced in Paragraph 88 becomes effective at which time the monitoring under this Consent Decree shall terminate. Defendant shall submit copies of the benchmark monitoring results for the benchmark monitoring year to the Department within twenty-eight (28) days of the end of the benchmark monitoring year. For averaging purposes use a value of zero for any individual sample parameter, which is determined to be less than the method detection limit. For sample values that fall between the method detection level and the quantitation limit (i.e., a confirmed detection but below the level that can be reliably quantified), use a value halfway between zero and the quantitation limit. The Benchmark parameters and the annual average for each is as follows:

PARAMETER	Benchmark/Units/Frequency/Sample
Biochemical Oxygen Demand (BOD5)	30 mg/L 1/quarter Grab

Nitrate plus Nitrite Nitrogen	0.68 mg/L 1/quarter Grab
Total Suspended Solids (TSS)	100 mg/L 1/quarter Grab
Chemical Oxygen Demand (COD)	120 mg/L 1/quarter Grab

F. Engineering Study, Plan, and Upgrade

90. Per the terms of the Interim Consent Order, Defendant was required to have a certified professional engineer evaluate the wastewater treatment system. As noted above, Defendant retained the services of Reid Engineering. Within sixty (60) days of the notice of engagement on December 29, 2021, the certified engineer was required to complete its evaluation. On February 28, 2022, Defendant submitted a report of Reid Engineering's evaluation, and by letter dated March 28, 2022 indicated that the evaluation contained its engineering plan ("Engineering Plan"). By letter dated April 21, 2022, the Department requested that Defendant revise the Engineering Plan to include a schedule of implementation of the recommended upgrades to Pond #1 and Anoxic Reactor #1B, as well as a schedule for development and implementation (including operator training) of a detailed standard operating procedure that will ensure that each component of the treatment system is operated sufficiently and the Facility is operated in compliance with its NPDES Permit.

91. Defendant submitted its compliance plan on May 6, 2022 ("Compliance Plan") and implementation schedule in response to the Department's April 21, 2022 letter and upon approval of same, shall implement the Engineering Plan as modified by the Compliance Plan.

92. On June 15, 2022, the Department sent a letter to Defendant approving the Compliance Plan except for the development and implementation of the wastewater treatment system standard operating procedure (“SOP”). The Department requested that Defendant revise the SOP within thirty (30) days of completion of the improvements, instead of four (4) months as proposed. The updated implementation schedule in the Compliance Plan was to be submitted by no later than June 30, 2022.

93. On June 21, 2022, Defendant requested sixty (60) days to revise the SOP instead of the thirty (30) days requested in the Department’s June 15, 2022 letter. The Department agreed to sixty (60) days. A revised implementation schedule with the 60-day submittal period for the SOP was submitted on June 23, 2022.

94. The Department has approved the Compliance Plan and the updated implementation schedule. Defendant began implementation of the approved Engineering Plan and complying with the approved Compliance Plan and implementation schedule on August 12, 2022.

95. The Department’s approval of the Compliance Plan and Engineering Plan does not in any way warrant that it will be successful in controlling water pollution originating from the Facility.

96. Defendant shall simultaneously submit to Citizens items due under the Special Condition regarding a Compliance Schedule for WWTP Upgrades in the final Permit Number 04-DP-0024, and Citizens shall have thirty (30) days to provide comments to the Department and Defendant.

G. Groundwater Study, Report, and Plans

97. Within ninety (90) days of the Effective Date, Defendant shall submit to the Department for review and approval, in consultation and coordination with Citizens, a study plan and schedule (“Groundwater Study”) to evaluate 1) the existing above ground portions of the secondary wastewater treatment system, 2) the wastewater treatment lagoons, and 3) the septic system to determine if these are the sources for excessive levels of total dissolved solids (TDS), fecal coliform, nitrates, and total nitrogen in the groundwater at the site, and for leakage. The Groundwater Study may rely and build on prior studies undertaken by the Defendant and shall consider the following:

- a. Testing procedures and methodology.
- b. Identification of the groundwater water elevations, gradients (vertical and horizontal), and flow direction.
- c. Identification and characterization of aquifers underlying the wastewater treatment lagoons and the septic system.
- d. Utilizing publicly available information, identify registered potable water supply wells drawing within a 1-mile radius of the Facility.
- e. Use of environmental tracers to determine the source of any leaks.
- f. A plan for evaluating seasonal variation in groundwater elevations.
- g. A plan on how the leakage assessment will be performed on each of the lagoons.
- h. Quality assurance and quality control.
- i. Data analysis.

- j. A geotechnical investigation to determine the condition of the lagoon lining and site conditions around the lagoons.

If the above items are not included in the proposed Groundwater Study, the Defendant must explain therein why these items will not be included in the Study.

98. Within thirty (30) days of the Department's approval of the Groundwater Study, Defendant shall implement the Groundwater Study and complete the Groundwater Study in accordance with the approved schedule.

99. Within sixty (60) days of completion of the Groundwater Study, Defendant shall submit a report ("Groundwater Report") to the Department and Citizens. The Groundwater Report shall include the following:

- a. A summary of the findings, including any leakage identified, and any recommendations.
- b. If leakage is confirmed, a Corrective Action Plan ("CAP") and schedule for review and approval by the Department.
- c. If leakage is confirmed, a Continued Monitoring Plan and schedule ("Groundwater Monitoring Plan") to confirm the effectiveness of the CAP for review and approval by the Department.

100. Within thirty (30) days of the Department's approval, in consultation and coordination with the Citizens, of the Groundwater Monitoring Plan and the CAP if applicable, Defendant shall implement the Groundwater Monitoring Plan and CAP if applicable, and complete the Groundwater Monitoring Plan and CAP if applicable in accordance with the approved schedule.

101. All sampling and monitoring undertaken in connection with the Groundwater Study, and/or submitted pursuant to this Consent Decree, shall be analyzed using applicable EPA approved groundwater methods with reporting limits sufficiently sensitive to clearly determine whether the result exceeds the applicable groundwater standard.

H. Air Quality Compliance Plan

102. Within thirty (30) days of the Effective Date, Defendant shall contract with a consultant/contractor (“Air Consultant”) with expertise in odor and related control systems for rendering operations to evaluate and prepare a single report (“Air Consultant Report”) on the performance of certain odor control systems and opportunities to reduce the Facility’s odor profile from certain activities. The Air Consultant may be the same entity hired to conduct the Engineering Study pursuant to Section III.F of this Consent Decree. The subject evaluation shall include but not be limited to a review of the following:

- a. The physical integrity and capacity of current odor control systems;
- b. The functionality of the odor control equipment in terms of liquid and air flowrates, fan performance, chemical feed systems, performance monitoring, packing media condition, and related aspects;
- c. Management of raw material from the point it is scaled and begins delivery into the conversion process;
- d. Housekeeping practices associated with raw material management;
- e. Opportunities to enhance how liquids generated by raw material handling and associated housekeeping are managed;

- f. Staging of incoming raw materials in connection with meeting customer needs and managing process interruptions; and
- g. Staging of waste residuals outside of the processing areas.

103. Within one hundred and twenty (120) days of the Effective Date, Defendant shall submit to the Department the Air Consultant Report. The Report shall include the Air Consultant's recommendations for improvements to the Facility's odor profile and odor control systems and include a discussion of each of the focused areas described in Paragraph 102. To the extent the focused areas of evaluation have no recommendations for improvement, the Report shall provide some perspective on why (e.g., unnecessary, impracticable, or similar). The Report, where appropriate, shall include recommendations regarding additional training, maintenance, monitoring, or record keeping that may help ensure the odor profile at the property line is minimized. In conjunction with the Air Consultant Report, the Defendant shall submit to the Department for its approval a schedule for implementation of the agreed to recommendations for improvement. For any recommendation made by the Air Consultant which Defendant does not propose to undertake, Defendant shall include an explanation as to why the Consultant's recommendation was rejected.

104. Within thirty (30) days of the Department's approval of the implementation schedule, Defendant shall begin implementation. In accordance with Paragraph 78 of this Consent Decree, the agreed to recommendations and schedules provided shall be incorporated by reference into this Consent Decree and enforceable as if fully set forth herein. The Department's approval of the implementation schedule does not in any way

warrant that it will be successful in controlling odor or air pollution in accordance with the Operating Permit's terms.

I. Quarterly Progress Reports

105. Defendant shall submit quarterly progress reports from the Effective Date detailing the implementation of any corrective actions and work performed under the Consent Decree.

J. Final Confirmation Report

106. Within ninety (90) days of completion of the activities identified in the Work to be Performed section, Defendant shall submit a Final Confirmation Report.

107. The Final Confirmation Report shall include a report on the implementation of the Groundwater Study, including the results of groundwater sampling and analysis, and if any leakage was confirmed, the CAP and Groundwater Monitoring Plan; the Compliance Plan and Engineering Plan; and the Air Consultant Report.

108. The Final Confirmation Report is subject to review and approval pursuant to Section III.A (Review and Approval Process). The Final Confirmation Report is not intended to impose requirements beyond those outlined in Section III. Notwithstanding the foregoing, the portion of the Final Confirmation Report detailing work performed pursuant to Section III.H (Air Quality Compliance Plan) shall not be subject to Citizens' review and shall be approved by the Department in its sole discretion.

109. After consultation with Citizens and review of the Final Confirmation Report, the Department shall provide a written Completion of Work Acknowledgement to Defendant if the Department agrees, in consultation and coordination with Citizens, with

Defendant's determination that the work is complete. The Department shall provide the Completion of Work Acknowledgement together with its approval of Defendant's Final Confirmation Report.

K. Modification of Work To Be Performed

110. Any request to modify an approved submittal under Section III (Work to be Performed) shall be made in writing at least ten (10) days prior to expiration of the required deadline.

111. Except as provided below, any request to modify an approved Submittal shall be made to both the Department and Citizens and shall be subject to the review and approval process in Section III.A (Review and Approval Process). Notwithstanding the foregoing, any request to modify an approved air implementation schedule shall be made only to the Department and subject to its approval in its sole discretion.

112. Any request to modify work shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Consent Decree and/or as set forth in any approved Submittals during the pendency of the Department's consideration of the request, nor shall it stay the accrual of stipulated penalties unless agreed to by the Parties.

L. Additional Necessary Approvals

113. Nothing in this Consent Decree relieves Defendant of any obligation to obtain any local, State, or federal approvals or permits that may be required to accomplish the work in Section III (Work to be Performed).

IV. ACCESS TO THE FACILITY

114. The Department and any authorized representatives of the Department, including contractors, are authorized to enter the Facility property subject to the rights of quiet enjoyment held by any tenants on the Facility, at all reasonable times for the purposes of, *inter alia*, interviewing Defendant's personnel and contractors performing work under this Consent Decree, inspecting non-privileged records related to the work performed hereunder, reviewing the progress of Defendant in carrying out the terms of the Consent Decree, conducting such tests, sampling, or monitoring as the Department deems necessary, using a camera, sound recording, or other documentary-type equipment, and verifying reports and data submitted to the Department. Defendant shall permit such representatives of the Department to inspect and copy non-privileged records, files, photographs, documents, and other writings, including sampling and monitoring data, that pertain to the work undertaken pursuant to this Consent Decree. Nothing herein shall be interpreted as limiting the inspection authority of the Department under Maryland law. The Department agrees that it and its representatives will comply with all applicable laws, regulations, ordinances, or procedures related to access to the Facility, including, but not limited to, all security laws, regulations, or procedures, and any site-related health and safety protocols and procedures established by Defendant.

115. To the extent that work required by the Consent Decree, or any plans submitted hereunder, must be conducted on property that is not owned by Defendant or for which a third-party has relevant property rights, Defendant shall use their reasonable best efforts to obtain access agreements from the property right holder(s) as appropriate within

thirty (30) days of receipt of notice of the Department approval of any plan submitted hereunder requiring such work. “Reasonable best efforts” shall include, at a minimum, but shall not be limited to, sending a certified letter to the property right holder requesting an access agreement to permit Defendant and the Department to enter such property.

116. In the event that access agreements cannot be obtained within the time period set forth above, Defendant shall promptly notify the Department in writing, indicating all efforts made to obtain such agreements, and the Department may, consistent with its legal authority, assist Defendant in obtaining access. In the event that the Department obtains such access, Defendant shall be obligated to reimburse the Department for any costs judicially awarded or reasonably incurred in exercise of its authority. If the Department does not obtain such access, the relevant approved work to be performed shall be modified with input from all Parties.

117. In each Submittal under Section III (Work to be Performed), Defendant shall include provisions for providing a minimum of at least five (5) business days’ notice to the Department and Citizens before commencing each milestone of the workplan. Defendant shall also provide the Department and Citizens with at least five (5) business days’ notice before conducting any sampling pursuant to this Consent Decree. If notice is impracticable, notification shall be provided as soon as possible. At the request of the Department, Defendant shall allow the Department, or an authorized representative of the Department, to take split or duplicative samples of any sample collected by Defendant pursuant to this Decree. Similarly, at the request of Defendant, the Department shall allow Defendant to take split or duplicative samples of any sample collected by the Department. The

Department shall notify Defendant at least five (5) business days before conducting any sampling pursuant to this Consent Decree unless an emergency makes advance notice impracticable.

118. Nothing herein shall be interpreted as limiting the sampling authority of the Department under any federal or State law or regulation.

V. STIPULATED PENALTIES

119. Beginning on the Effective Date and continuing until the Department provides Defendant a written Completion of Work Acknowledgement, upon thirty (30) days of written demand by the Department, Defendant shall pay stipulated penalties in accordance with the following criteria: If Defendant fails to meet any deadline or schedule under this Consent Decree, including those set forth in plans incorporated herein, Defendant shall pay \$250 per day of non-compliance for the first one (1) to seven (7) days of noncompliance, \$500 per day of non-compliance between eight (8) and one hundred twenty (120) days, and \$1,000 per day of non-compliance thereafter until the requirement is met.

120. Failure to meet more than one (1) date shall subject Defendant to cumulative penalties for each day that each separate requirement is not met by its due date.

121. Payment of stipulated penalties shall be made by check payable to the Maryland Department of the Environment and mailed to the following address: Maryland Department of the Environment, P.O. Box 2057, Baltimore, Maryland 21230-2057. The following must be noted on the check: MDE v. Valley Proteins, LLC., PCA: 13710, OBJ: 7545, SFX: 408 GL: 0544, MDE Case No. CJ-23-2819.

122. All stipulated penalties begin to accrue on the date that complete performance was due, or a violation occurs and shall continue to accrue through the final day of noncompliance. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

123. Stipulated penalties shall continue to accrue as provided in this Section during Dispute Resolution pursuant to Section XX (Dispute Resolution) but need not be paid until thirty (30) days after final resolution of the dispute, including resolution of any judicial appeal.

124. Except as otherwise expressly set forth in this Consent Decree, none of the stipulated penalties in this Consent Decree shall be construed as an election of remedy or other limitation on the Department's discretion to seek in lieu of stipulated penalties any other remedy or sanction available to it for violations of this Consent Decree or any other violation of State law or regulation not expressly made the subject of this Consent Decree. The Department's failure to demand any stipulated penalty under this Consent Decree does not constitute a waiver of the Department's right to make such a demand.

125. Except as otherwise expressly set forth in this Consent Decree, payment of any stipulated penalty shall not relieve Defendant from the obligations imposed by this Consent Decree, or any permit that may be issued or any other statute or regulation, nor shall such payment limit the right of the Department or Citizens to seek enforcement, including all judicially available remedies, of the terms of this Consent Decree or any other statute or regulation.

126. The Department may, in its discretion, reduce or waive any stipulated penalty if it determines that noncompliance is due to an event of *force majeure* as set forth in this Consent Decree, or for any other reason deemed appropriate by the Department.

127. Failure to pay any stipulated penalty as required by this Consent Decree may result in this case being referred to the State of Maryland's Central Collection Unit ("Central Collection Unit") as a debt owed to the State. The Central Collection Unit is authorized to collect outstanding debts resulting from unpaid penalties. The Central Collection Unit will add a collection fee of 17%, plus interest, to the amount owed by Defendant. In addition, § 3-304(c) of the State Finance and Procurement Article authorizes the Central Collection Unit to report the debt to consumer reporting agencies.

VI. CIVIL PENALTIES

128. As settlement and compromise of this matter, the Department hereby assesses a Civil Penalty in the amount of \$540,000.

129. Within thirty (30) calendar days of the entry of this Consent Decree, Defendant shall pay to the Department the penalty with a check made payable to the "Maryland Department of the Environment," and mailed to: Maryland Department of the Environment, P. O. Box 2057, Baltimore, Maryland 21230-2057. The check and any accompanying correspondence must reference MDE v. Valley Proteins, LLC., PCA: 13710, OBJ: 7545, SFX: 408, GL: 0544, MDE Case No. CJ-23-2819.

130. An invoice for payment of the penalty will be mailed to the Defendant. The lack of receipt of an invoice has no effect on Defendant's obligation to make timely payments under the Consent Decree.

131. Failure to pay any civil penalty as required by this Consent Decree may result in this case being referred to the Central Collection Unit as a debt owed to the State. The Central Collection Unit is authorized to collect outstanding debts resulting from unpaid penalties. The Central Collection Unit will add a collection fee of 17%, plus interest, to the amount owed by Defendant. In addition, § 3-304(c) of the State Finance and Procurement Article authorizes the Central Collection Unit to report the debt to consumer reporting agencies.

VII. ATTORNEYS' FEES

132. Defendant will reimburse Citizens \$255,000 for their reasonable attorneys' fees, costs, and expert fees and expenses regarding the respective claims alleged. Within thirty (30) days of the Effective Date, Citizens agree to send to Defendant an invoice or invoices. Defendant shall pay the amount in the invoice(s) within thirty (30) days of receipt of the invoice(s).

VIII. RECOVERY OF RESPONSE COSTS

Recovery of Past Response Costs

133. Defendant agrees to reimburse the Department for its past response costs at the Facility in the amount of \$2,438.60. The Department shall send an invoice to Defendant. Defendant shall pay the amount in the invoice within thirty (30) days of receipt of the invoice.

134. Within thirty (30) days of the Effective Date, Citizens agree to send to Defendant an invoice for water quality sampling/monitoring conducted during litigation

and negotiations of this Consent Decree, in the amount of \$15,000. Defendant shall pay the amount in the invoice within thirty (30) days of receipt of the invoice.

Recovery of Future Response Costs

135. Defendant agrees to reimburse the Department for any future response costs up to a maximum of \$5,000 for the first year after the Effective Date and \$2,500 per year thereafter until the termination of this decree. The Department shall send a quarterly invoice to Defendant with the amount of costs. Defendant shall pay the amount in the invoice within thirty (30) days of receipt of the invoice.

136. Within thirty (30) days of the Effective Date, Citizens agree to send to Defendant an invoice, for oversight costs regarding Consent Decree compliance monitoring, and/or river sampling, and/or analysis of data collected pursuant to this Consent Decree in the amount of \$25,000. Defendant shall pay the amount in the invoice within thirty (30) days of receipt of the invoice.

137. Within thirty (30) days of the Effective Date, Citizens agree to send Defendant an invoice for \$135,000 for the Transquaking River Watershed Fund, to be administered by Citizens in furtherance of water quality improvements in the Transquaking River watershed. Defendant shall pay the amount in the invoice within thirty (30) days of receipt of the invoice.

IX. PERSONS BOUND BY ORDER

138. This Consent Decree applies to, is binding upon, and inures to the benefit of the Plaintiffs (and their successors, assigns, and designees) and the Defendant (and its successors, assigns, and designees). This Consent Decree shall be applicable and binding

upon any subsequent purchaser(s) of the Facility. Any change in the ownership of the Facility or the corporate status of Defendant, including, but not limited to, any transfer of the Defendant's assets or real or personal property shall not alter Defendant's responsibilities under this Consent Decree. Defendant shall condition all contracts or agreements in connection with the transfer of the Facility on compliance with the terms of this Consent Decree. Defendant is obligated to ensure necessary instruction to the employees regarding the employees' scope of work involving compliance with this Consent Decree and laws and regulations applicable to the Facility.

139. Defendant shall provide at least twenty (20) days in advance written notice to the Department and Citizens prior to the transfer or change in ownership of the Facility. Defendant shall provide a written agreement, indicating the specific date of the proposed transfer, which acknowledges the responsibilities of the current owner and new owner for compliance with the terms and conditions of this Consent Decree.

140. Defendant shall provide at least fifteen (15) days in advance written notice to the Department and Citizens prior to the filing of any petition or the commencement of any proceeding arising under the Bankruptcy Code, 11 U.S.C. §§ 1101 through 1195.

X. RELEASE

141. Upon the full completion of all the obligations set forth in this Consent Decree, the Department and Citizens agree to release the Defendant of any civil liability for the violations described herein. Upon entry by the Court of this Consent Decree, the Department and Citizens agree to refrain from pursuing or continuing any civil enforcement action against Defendant for violations described in this Consent Decree or

alleged in any of the complaints filed by Plaintiffs in this action or in *ShoreRivers, Inc. et al v. Valley Proteins, Inc.*, United States District Court for the District of Maryland, Case 1:22-cv-00278-SAG, including any amendments, or arising out of the facts or circumstances recited in this Consent Decree or alleged in any related complaint, including any amendments. Citizens will dismiss with prejudice *ShoreRivers, Inc. et al v. Valley Proteins, Inc.*, Case 1:22-cv-00278-SAG within thirty (30) days of entry of this Consent Decree. The Department and Citizens reserve, and this Consent Decree is without prejudice to, all rights against Defendant with respect to the following matters: (a) civil and administrative enforcement actions for violations that occur after April 8, 2022, including the release of fat from the above ground 60,000 gallon tank that occurred on July 10, 2022 and the chicken material spill that occurred on August 7, 2022 unless those violations are subject to stipulated penalties or other remedies pursuant to this Decree; (b) civil and administrative enforcement actions for violations existing at the time of the Consent Decree that are not described herein, including violations that may be discovered during work performed pursuant to this Consent Decree; (c) criminal enforcement actions; (d) violations of any other State law or regulation that do not arise out of the facts or circumstances recited in this Consent Decree; or (e) any violation of the terms of this Consent Decree.

142. It is expressly understood that this Consent Decree pertains to the civil violations described herein, and that the Plaintiffs have made no promises or representations other than those contained in this Consent Decree and that no other promises or representations will be made unless in writing. The Department has made no

promises or representations with regard to any criminal liability for the above-referenced violations and has no authority over any criminal actions.

143. Notwithstanding any other provision of this Consent Decree, no action or decision by the Department or any authorized representative of the Department pursuant to this Consent Decree shall constitute final agency action giving rise to any right of judicial review prior to the Department's initiation of a judicial action to enforce this Consent Decree, including an action for penalties or an action to compel Defendant's compliance with the terms and conditions of this Consent Decree.

144. Nothing in this Consent Decree shall limit the authority of the Department to issue any orders or to take any action it deems necessary to protect public health, safety, or the environment.

145. All factual information provided by the Defendant to the Department that forms the basis of this Consent Decree is to the best of their knowledge. To the extent that any of the factual information that is material to this Consent Decree provided by the Defendant is not true and accurate, the Department and Citizens reserve the right to declare this Consent Decree null and void and to seek any available legal, equitable, administrative and/or judicial remedies.

XI. THIRD PARTIES

146. Defendant and Plaintiffs intend that nothing in this Consent Decree shall be construed as a release or covenant not to sue any third party not a signatory to this Consent Decree. Nothing contained in this Consent Decree shall affect any right, claim, cause of action or defense of any party hereto with respect to third parties. The Parties specifically

reserve any and all rights, defenses, claims, demands, and causes of action, which the Parties may have against any third parties relating in any way to the subject matter of this Consent Decree.

147. This Consent Decree does not and is not intended to create any, or limit existing, rights, claims, or benefits for any third party. No third party shall have any legally enforceable rights, claims, or benefits under this Consent Decree. No act of performance by the Parties, nor forbearance to enforce any term of this Consent Decree by the Department or Citizens, shall be construed as creating any rights, claims, or benefits for any third party.

148. Neither the terms nor the conditions of this Consent Decree, nor any act of performance by the Parties, shall collaterally estop the Department in any other proceeding with any third party not a signatory to this Consent Decree.

XII. EFFECTIVE DATE

149. The Department and Citizens shall execute this Consent Decree following Defendant's execution. This Consent Decree shall become effective as a contract upon execution by all Parties ("the Effective Date"). This Consent Decree shall become effective as a Court Order upon entry by the Circuit Court Judge.

XIII. NOTIFICATION

150. Unless otherwise specified, all workplans, reports, correspondence, approvals, notices, or other submissions required by or relating to this Consent Decree shall be submitted via e-mail or, upon request, by one of the following methods: (a) hand delivery; (b) first class mail; or (c) overnight mail by private courier. In the event of a

change to any of the contacts listed below, the party making the change shall notify the other contacts below within ten (10) days of the change. Notice shall be sent to the following:

The Department

Sharon Talley, Program Manager, WSA Compliance Program

Megan Kennedy, Environmental Compliance Specialist, WSA Compliance Program

Frank Courtright, Program Manager, Air Quality Compliance Program

Office of the Attorney General

Patricia Tipon

Matthew Zimmerman

Cynthia Weisz

Chesapeake Bay Foundation

Ariel Solaski

Josh Kurtz

Chesapeake Legal Alliance

Patrick DeArmey

Defendant

Corporate Environmental Affairs, c/o William McMurtry, Darling Ingredients Inc.

General Counsel's Office, c/o Nick Kemphaus, Darling Ingredients Inc.

Alexandra Dapolito Dunn, Baker Botts, LLP

John Griffith, DLA Piper LLP (US)

XIV. GENERAL PROVISIONS

151. Each undersigned representative of the Parties to this Consent Decree certifies that he or she is fully authorized by the party to enter into and execute the terms and conditions of this Consent Decree and to legally bind such party to this Consent Decree.

152. Defendant agrees to undertake and complete all actions required by the terms and conditions of this Consent Decree. In any action by the Department or Citizens to enforce the terms of this Consent Decree, Defendant consents to and agree not to contest the authority or jurisdiction of the Department or Citizens to issue or enforce this Consent Decree and agree not to contest the validity of this Consent Decree or its terms or conditions. Defendant agrees this Consent Decree is a contract and upon entry by the Court, a final order enforceable in a judicial forum.

153. This Consent Decree is not intended to be, nor shall it be construed to be a permit. Defendant acknowledges and agrees that the Department's approval of the work and/or work plan does not constitute a warranty or representation that the work and/or work plan will achieve the required cleanup or performance standards. Compliance by Defendant with the terms of this Consent Decree shall not relieve Defendant of their obligation to comply with any other applicable local, State, or federal laws and regulations.

154. In the event that Defendant fails to comply with any provision of this Consent Decree, including but not limited to failure to complete the work or pay the civil penalty or any stipulated penalties demanded hereunder, the Department shall have the right to seek any and all legal and equitable remedies available to it for any such failure, and all other provisions of this Consent Decree shall remain in full force and effect.

155. This Consent Decree is the entire agreement between the Department, Citizens, and the Defendant in this case. This Consent Decree constitutes the complete, final, and entire understanding of the Parties hereto, and they shall not be bound by any terms, conditions, covenants, or representations not expressly herein contained.

156. The Parties represent that prior to signing this Consent Decree, each has read it, understood its terms and conditions, and consulted with counsel, and that each party has voluntarily signed it.

157. This Consent Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

158. This Consent Decree shall be construed without regard to any presumption or other rule requiring construction against the party causing the Consent Decree to be drafted.

159. This Consent Decree is governed by, and interpreted according to, the laws of the State of Maryland without regard to conflict of laws principles.

XV. SUBSEQUENT MODIFICATION

160. The terms of this Consent Decree are contractual and not mere recitals. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. This Consent Decree may only be modified by the mutual written agreement of all the Parties. Upon approval by the Court, this Consent Decree is not only contractual but constitutes a court order. Any

modification, other than minor modifications made through written agreement of the Parties, must be approved by the Court in writing.

XVI. SEVERABILITY

161. If any provision or authority of this Consent Decree or the application of this Consent Decree to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision or authority to other parties or circumstances and the remainder of this Consent Decree shall not be affected thereby and shall remain in full force.

XVII. TERMINATION

162. Except for the Release contained in Section X (Release), this Consent Decree shall terminate and be of no further force and effect upon the occurrence of the following events: (a) the Defendant's payment of the full civil penalty as set forth in Section VI (Civil Penalties); (b) the Defendant's payment of all stipulated penalties that may be demanded by the Department under this Consent Decree; (c) the Department's determination, with input from Citizens with regard to all work except that performed pursuant to Section III.H (Air Quality Compliance Plan), that Defendant has completed all obligations set forth in and contemplated by the scope of this Consent Decree between the Department, Citizens, and the Defendant; (d) the payment of agreed upon attorneys' fees as set forth in this Decree; and (e) the payment of all recovery and response costs as detailed in Section VIII of this Consent Decree. The Department's approval of the Final Confirmation Report, pursuant to Section III.J (Final Confirmation Report) of this Consent Decree, the issuance of a Completion of Work Acknowledgement, and the completion of any continued

monitoring if required by the Groundwater Study and Report shall constitute the Department's determination that Defendant has completed all obligations under this Consent Decree. Notwithstanding the foregoing in this Paragraph, the Parties may terminate this Consent Decree at any time by mutual written agreement and the approval of the Court.

XVIII. RECORD RETENTION

163. Defendant will retain all documents, including paper and electronic files, relating to this matter for at least three (3) years after termination of this Consent Decree.

XIX. FORCE MAJEURE AND EXCUSABLE DELAY

164. Defendant shall perform the requirements of this Consent Decree in the manner and within the time limits set forth herein, unless the performance is delayed by events or circumstances arising from causes not reasonably foreseeable or beyond the reasonable control of Defendant, which cannot be avoided or overcome by due diligence, and which delays or prevents performance in the manner or by a date required by this Consent Decree.

165. Circumstances beyond the reasonable control of Defendant include earthquake, flood, hurricane, severe weather or other act of God, war, riot, injunction, fire, pandemic, and compliance with any law, rule, or Decree of any governmental body either existing now or hereafter created that conflicts with the requirements or obligations of this Consent Decree. Such circumstances do not include increased costs of performance, changed economic circumstances, normal inclement weather, or failure to obtain federal,

State, or local permits unless Defendant has made timely and complete application for such permits.

166. The mere existence of a novel coronavirus and COVID-19 in the state in which the work contemplated by this Consent Decree and plans submitted hereunder does not excuse performance. Defendant must take all reasonable steps to mitigate any delay that may occur as a result of the novel coronavirus or COVID-19. Delays attributable to the novel coronavirus or COVID-19 may only constitute a *force majeure* where Defendant could not reasonably have taken the known circumstances associated with COVID-19 into account when developing plans and implementation schedules.

167. Within ten (10) business days after becoming aware that an event Defendant believes constitutes an unforeseeable event or circumstance beyond their reasonable control may prevent or delay performance of an obligation under this Consent Decree, Defendant shall notify the Department and Citizens of such event. Defendant's notification shall describe in detail the precise cause or causes of the delay, the anticipated length of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay, and a timetable by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize any such delay. Defendant shall include in the notification a request to extend the deadline associated with any obligation under this Consent Decree whose performance may be prevented or delayed by unforeseeable events or circumstances beyond Defendant's reasonable control.

168. Failure by Defendant to comply with the notice requirements set forth in the preceding Paragraph constitutes a waiver of Defendant's right to request an extension of

the applicable deadline associated with an obligation to be performed under this Consent Decree.

169. If the Department determines, with input from Citizens, that the event or anticipated event which has caused or will cause the delay constitutes an unforeseeable event or circumstance beyond the control of Defendant, the time for performance hereunder shall be extended for an appropriate period of time as determined by the Department, with input from Citizens, but not less than a period of time substantially equal to the length of the necessary delay, and any stipulated penalty shall not accrue. The Department shall inform Defendant in writing of its approval or denial and provide Citizens a copy of such notification.

170. In the event the Department, with input from Citizens, and Defendant cannot agree that a delay or failure has been or will be caused by a *force majeure* or Excusable Delay event or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with Section XX (Dispute Resolution).

XX. DISPUTE RESOLUTION

171. The dispute resolution procedures of this Section shall be the exclusive mechanism for the Parties to raise and resolve disputes arising under or with respect to this Consent Decree. Nothing herein shall be construed to prohibit the Department or Citizens from exercising any other remedy available at law or in equity to enforce the terms of this Consent Decree.

172. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Department,

Citizens, and Defendant in an attempt to resolve the dispute in a good faith and expeditious manner. A dispute shall be considered to have arisen when one party sends all other parties a written Notice of Dispute. Electronic mail is the preferred delivery method for a Notice of Dispute to the Parties.

173. The Parties shall have thirty (30) days following receipt of a Notice of Dispute to reach agreement. The Parties shall have the right to jointly meet during this thirty (30) day period. If the Parties cannot reach agreement on the disputed issue, the Department shall serve on the disputing party a written statement setting forth its proposed resolution of the dispute within fifteen (15) days after expiration of the initial thirty (30) day period. The dispute shall be resolved in accordance with the Department's proposed resolution unless, within sixty (60) days after receipt of such proposed resolution, the disputing party files a petition for resolution of the dispute with the Court. Any such petition shall describe the nature of the dispute and the disputing party's proposal for resolution of the dispute. The Department and the non-disputing party shall have thirty (30) days after service of such petition to file a response to the petition.

174. The Court shall have exclusive and continuing jurisdiction to issue any Decree or resolve any dispute arising between or among the Parties with respect to matters within the scope of this Consent Decree. With respect to the resolution of any dispute pursuant to a petition to the Court, the Court shall resolve the dispute in accordance with applicable law, deciding for itself the extent to which it should defer to any administrative determination by the Department with respect to any matters of fact or law, but in no event

shall the Court be precluded from holding evidentiary hearings, considering testimony, or otherwise making determinations of fact if it deems such to be appropriate.

175. The existence of any dispute initiated under the process provided by this section shall not excuse, toll, or suspend any compliance obligation or deadline required, or stipulated penalty accruing, pursuant to this Consent Decree during the pendency of the dispute resolution process.

XXI. RESERVATION OF RIGHTS

176. The signing of this Consent Decree and each Party's consent shall not limit or otherwise preclude the Department from taking additional action pursuant to the powers granted to it under State and federal law to address violations of laws or regulations not otherwise addressed by this Consent Decree, or to reduce or eliminate risks to public health or the environment that were not known to the Department at the time of approval of this Consent Decree or at the time of approval of work to be performed hereunder.

177. The signing of this Consent Decree and each Party's consent shall not limit or otherwise preclude Citizens from taking action pursuant to the citizen suit provisions under federal law and any other actions pursuant to State and federal law to address violations of laws or regulations not otherwise addressed by this Consent Decree, or to reduce or eliminate risks to public health or the environment that were not known to Citizens at the time of approval of this Consent Decree or at the time of approval of work to be performed hereunder.

XXII. U.S. INTERNAL REVENUE SERVICE REPORTING REQUIREMENTS

178. The Parties to this Consent Decree recognize and acknowledge that the Maryland Department of Environment is required to report certain fines, penalties, and other amounts to the United States Internal Revenue Service pursuant to 26 U.S.C. § 6050X. The Parties agree to cooperate with the Maryland Department of Environment in meeting its reporting obligations, to promptly provide information requested by the Maryland Department of Environment, and to complete the Information Form attached hereto as Attachment A. The Parties acknowledge that this Consent Decree is not fully executed until a completed Attachment A is attached.

179. Penalty payments under this Consent Decree pursuant to Section V (Stipulated Penalties) or Section VI (Civil Penalties are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i), and Defendant shall not deduct any penalties paid under this Consent Decree pursuant to Section V (Stipulated Penalties) or Section VI (Civil Penalties) in calculating its federal income tax.

180. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2)(iii)(A), performance of Section III (Work to be Performed), Section VII (Attorneys' Fees), and Section VIII (Recovery of Response Costs) is restitution, remediation, or required to come into compliance with the law.

IT IS SO DECREED AND ORDERED this 20th day of October,
2022:

10/20/2022 11:43:17 AM

A handwritten signature in black ink, appearing to read "William H. Jones", written over a horizontal line.

William H. Jones

Judge, Circuit Court for Dorchester County

Signature Page for Consent Decree in *Maryland Department of the Environment v. Valley Proteins, LLC*

FOR THE MARYLAND DEPARTMENT OF THE ENVIRONMENT

September 9, 2022

DATE



Lee Currey

Director

Water & Science Administration

Christopher R
Hoagland

 Digitally signed by Christopher R
Hoagland
Date: 2022.09.09 11:01:09 -04'00'

DATE

Chris Hoagland

Director

Air & Radiation Administration

Approved as to form and legal sufficiency this 9th day of September, 2022.



Patricia V. Tipon

Assistant Attorney General

Signature Page for Consent Decree in *Maryland Department of the Environment v. Valley Proteins, LLC*

FOR CHESAPEAKE BAY FOUNDATION, INC.:



September 9, 2022

DATE

Jon A. Mueller
Chesapeake Bay Foundation, Inc.
Counsel for Chesapeake Bay
Foundation
6 Herndon Ave.
Annapolis, MD 21403
(443) 482-2162

Signature Page for Consent Decree in *Maryland Department of the Environment v. Valley Proteins, LLC*

FOR SHORERIVERS and DORCHESTER CITIZENS FOR PLANNED GROWTH:

9/9/2022

DATE

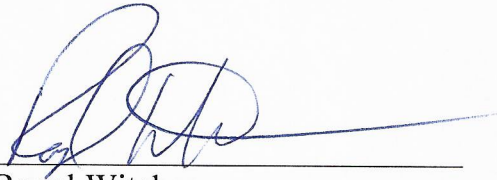


Patrick DeArmey
Chesapeake Legal Alliance
Counsel for ShoreRivers and
Dorchester Citizen for Planned Growth

Signature Page for Consent Decree in *Maryland Department of the Environment v. Valley Proteins, LLC*.

FOR THE DEFENDANT:

9-9-22
DATE



Royal Witcher
Senior Vice President
Valley Proteins, LLC

Attachment A

Information Form

Settling Party's Information:

Full Legal Name: Valley Proteins, LLC.

Tax ID Number: 54-0606187

Address: 151 Valpro Drive, Winchester, VA 22603

City: Winchester

State: VA

Zip Code: 22603

Phone: 540-877-2590

Court & Case Information:

Court/Jurisdiction: Circuit Court for Dorchester County

Case Name/Caption: State of Maryland, Department of the Environment and Chesapeake Bay Foundation, Inc. and Dorchester Citizens for Planned Growth and Shore Rivers (Plaintiffs) v. Valley Proteins, LLC.

Case Number: Civil Action No. C-09-CV-22-000022

Settlement Terms:¹

Amount to be paid as a penalty: \$540,000.00

Cost of remediation or restitution: \$442,438.60 (estimate)

Cost for compliance: \$1,700,000.00 (estimate)

Total: \$2,682,438.60

Date 9-9-22

Signature



Title: Senior Vice President

¹ If these amounts are not specified in the settlement agreement, provide your best estimate based upon the information available to you at this time. You will report your actual expenditures on your tax returns.

Chapter 341

(Senate Bill 354)

AN ACT concerning

Bay Restoration Fund – Intended Use Plans and Privately Owned Wastewater Facilities

FOR the purpose of requiring the Department of the Environment to provide a certain intended use plan to the General Assembly within a certain period of time; altering the definition of “privately owned wastewater facility” as it relates to the awarding of grants from the Bay Restoration Fund; requiring the Department of the Environment and the Department of Planning to report on and the Department of the Environment to provide certain information regarding funding for privately owned wastewater facilities to the General Assembly and the Department of Budget and Management; prohibiting the Department of the Environment from providing funding from the Bay Restoration Fund’s Clean Water Commerce Account Fund to privately owned wastewater facilities if a determination is made that the facility was not in compliance with a certain discharge permit for a certain period of time; *prohibiting this Act from being construed to apply to a certain industrial wastewater facility that is connecting to a publicly owned wastewater facility*; and generally relating to funding from the Bay Restoration Fund, intended use plans, and privately owned wastewater facilities.

BY repealing and reenacting, with amendments,

Article – Environment

Section ~~9–1605(a)(1)~~, 9–1605(a)(1) and 9–1605.2(i)(1) and (2)(i) and (k), and 9–1605.4(e) (k)

Annotated Code of Maryland

(2014 Replacement Volume and 2021 Supplement)

BY adding to

Article – Environment

Section 9–1605(f) and 9–1605.2(i)(12)

Annotated Code of Maryland

(2014 Replacement Volume and 2021 Supplement)

~~BY repealing and reenacting, without amendments,~~~~Article – Environment~~~~Section 9–1605.2(i)(2)(i)~~~~Annotated Code of Maryland~~~~(2014 Replacement Volume and 2021 Supplement)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Environment

9–1605.

(a) (1) **(I)** There is a Maryland Water Quality Revolving Loan Fund.

(II) The Water Quality Fund shall be maintained and administered by the Administration in accordance with the provisions of this subtitle and such rules or program directives as the Secretary or the Board may from time to time prescribe.

(F) THE DEPARTMENT SHALL PROVIDE TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2–1257 OF THE STATE GOVERNMENT ARTICLE, A COPY OF EACH INTENDED USE PLAN THAT THE DEPARTMENT SUBMITS TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO REQUEST FEDERAL CAPITALIZATION GRANTS AND AWARDS IN ACCORDANCE WITH TITLE VI OF THE FEDERAL WATER POLLUTION CONTROL ACT FOR USE IN THE WATER QUALITY FUND WITHIN 5 DAYS AFTER THE DEPARTMENT PUBLISHES THE PLAN FOR PUBLIC COMMENT.

9–1605.2.

(i) (1) (i) In this subsection the following words have the meanings indicated.

(ii) “Eligible costs” means the additional costs that would be attributable to upgrading a wastewater facility to enhanced nutrient removal, as determined by the Department.

(iii) “Privately owned wastewater facility” means a wastewater facility that is owned by a private entity **AND PROVIDES WASTEWATER TREATMENT OR DISPOSAL SERVICES TO MULTIPLE RESIDENTIAL DWELLING UNITS.**

(iv) “Publicly owned wastewater facility” means a wastewater facility that is owned by this State or a political subdivision, municipal corporation, or other public entity.

(2) Funds in the Bay Restoration Fund shall be used only:

(i) 1. To award grants for up to 100% of eligible costs of projects relating to planning, design, construction, and upgrade of a publicly owned wastewater facility for flows up to the design capacity of the wastewater facility, as approved by the Department, to achieve enhanced nutrient removal in accordance with paragraph (3) of this subsection; and

2. ~~To~~ **SUBJECT TO PARAGRAPH (12) OF THIS SUBSECTION, TO** award grants for up to 50% of eligible costs of projects relating to

planning, design, construction, and upgrade of a privately owned wastewater facility for flows up to the design capacity of the wastewater facility, as approved by the Department, to achieve enhanced nutrient removal in accordance with paragraph (3) of this subsection;

(12) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE DEPARTMENT MAY NOT PROVIDE FUNDING UNDER THIS SECTION TO THE OWNER OF A PRIVATELY OWNED WASTEWATER FACILITY IF THE DEPARTMENT OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY HAS DETERMINED IN THE 2 YEARS IMMEDIATELY PRECEDING THE DATE ON WHICH THE OWNER APPLIED FOR FUNDING UNDER THIS SECTION THAT THE FACILITY DID NOT COMPLY WITH A DISCHARGE PERMIT ISSUED BY THE DEPARTMENT UNDER THIS TITLE.

(II) THE DEPARTMENT MAY PROVIDE FUNDING UNDER THIS SECTION TO THE OWNER OF A PRIVATELY OWNED WASTEWATER FACILITY THAT WOULD NOT BE ELIGIBLE FOR FUNDING UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IF ~~THE~~:

~~1. THE~~ ~~THE~~ DEPARTMENT DETERMINES, BASED ON PROOF SUBMITTED BY THE OWNER OF THE FACILITY WHEN APPLYING FOR FUNDING UNDER THIS SECTION, THAT:

~~1. A. 1. THE~~ ~~THE~~ OWNER OF THE FACILITY LACKS THE FINANCIAL CAPACITY TO PURCHASE OR UPGRADE A WASTEWATER TREATMENT SYSTEM THAT WOULD BRING THE FACILITY INTO COMPLIANCE WITH THE DISCHARGE PERMIT ISSUED BY THE DEPARTMENT.

~~2. B. 2. THE FACILITY IS INDEPENDENTLY OWNED AND OPERATED; AND~~

~~3. C. 3. THE OWNER OF THE FACILITY IS NOT A SUBSIDIARY OF ANOTHER BUSINESS; OR~~

~~2. A. THE PROJECT FOR THE PRIVATELY OWNED WASTEWATER FACILITY HAS RECEIVED FUNDING FROM THE BAY RESTORATION FUND UNDER THIS SUBSECTION IN THE FISCAL YEAR 2023 CAPITAL BUDGET OR ANY PRECEDING FISCAL YEAR; AND~~

~~B. THE FUNDING IS PROVIDED FOR A PERCENT OF ELIGIBLE COSTS OF THE PROJECT THAT DOES NOT EXCEED THE PERCENT OF ELIGIBLE COSTS OF THE PROJECT PROVIDED IN THE FISCAL YEAR 2023 CAPITAL BUDGET OR ANY PRECEDING FISCAL YEAR.~~

(iii) 1. THE DEPARTMENT SHALL INCLUDE WITH ITS ANNUAL OPERATING BUDGET PROPOSAL SUBMITTED TO THE DEPARTMENT OF BUDGET AND MANAGEMENT A LIST OF EACH FACILITY TO WHICH THE DEPARTMENT PROVIDED FUNDING UNDER SUBPARAGRAPH ~~(H)~~ ~~(H)1~~ (II) OF THIS PARAGRAPH IN THE IMMEDIATELY PRECEDING 12 MONTHS AND THE REASONS FOR PROVIDING THE FUNDING.

2. IF THE DEPARTMENT PROVIDES THE LIST UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH TO THE DEPARTMENT OF BUDGET AND MANAGEMENT, THE DEPARTMENT SHALL IMMEDIATELY PROVIDE THE LIST TO THE GENERAL ASSEMBLY IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE.

~~SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:~~

~~**Article—Environment**~~

~~**§ 1605.2.**~~

(k) (1) [Beginning January 1, 2009, and every year thereafter,] **EACH YEAR** the Department and the Department of Planning shall jointly report on [the]:

(I) THE impact that a wastewater treatment facility that was upgraded to enhanced nutrient removal during the calendar year before the previous calendar year with funds from the Bay Restoration Fund had on growth within the municipality or county in which the wastewater treatment facility is located; **AND**

(II) EACH PRIVATELY OWNED WASTEWATER FACILITY TO WHICH THE DEPARTMENT PROVIDED FUNDING UNDER ~~§ 9-1605.4(q)(3)(H) OF THIS SUBTITLE~~ SUBSECTION (I)(12) OF THIS SECTION IN THE IMMEDIATELY PRECEDING 12 MONTHS AND THE REASONS FOR PROVIDING THE FUNDING.

(2) (i) In preparing the report required under paragraph (1) of this subsection, the Department of the Environment and the Department of Planning shall:

1. Include the number of permits issued for residential and commercial development to be served by the upgraded wastewater treatment facility; and
2. Determine what other appropriate information is to be included in the report.

(ii) In determining the information that should be included in the report under subparagraph (i) of this paragraph, the Department of the Environment and the Department of Planning shall act:

1. In consultation with the Bay Restoration Fund Advisory Committee; and

2. With the assistance of the municipality and county in which an upgraded wastewater treatment facility is located.

(3) The Department and the Department of Planning shall submit the report required under paragraph (1) of this subsection to the President of the Senate, the Speaker of the House, the Senate Budget and Taxation Committee, the Senate Education, Health, and Environmental Affairs Committee, the House Appropriations Committee, the House Environment and Transportation Committee, and the Governor, in accordance with § 2-1257 of the State Government Article.

~~9-1605.4.~~

~~(q) (1) (i) Subject to subparagraph (ii) of this paragraph, a project or practice that is partially financed with another source of State funds may be funded under this section.~~

~~(ii) Funding provided to a project or practice under this subsection shall be prorated to cover only the portion of the environmental benefit not funded by another State source.~~

~~(2) (i) An environmental outcome that is funded entirely with public funds is not eligible to be purchased with funds from the Account.~~

~~(ii) If an environmental outcome is partially funded with public funds and is verified under subsection (l) of this section, funds from the Account may be used to purchase the remaining portion of the environmental outcome that is not funded with public funds.~~

~~(3) (i) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE DEPARTMENT MAY NOT PROVIDE FUNDING UNDER THIS SECTION TO THE OWNER OF A PRIVATELY OWNED WASTEWATER FACILITY, AS DEFINED IN § 9-1605.2(i) OF THIS SUBTITLE, IF THE DEPARTMENT OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY HAS DETERMINED IN THE 2 YEARS IMMEDIATELY PRECEDING THE DATE ON WHICH THE OWNER OF THE FACILITY SUBMITTED A FUNDING PROPOSAL UNDER THIS SECTION THAT THE FACILITY DID NOT COMPLY WITH A DISCHARGE PERMIT ISSUED BY THE DEPARTMENT UNDER THIS TITLE.~~

~~(ii) THE DEPARTMENT MAY PROVIDE FUNDING UNDER THIS SECTION TO THE OWNER OF A PRIVATELY OWNED WASTEWATER FACILITY THAT~~

~~WOULD NOT BE ELIGIBLE FOR FUNDING UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IF THE DEPARTMENT DETERMINES, BASED ON PROOF SUBMITTED BY THE OWNER OF THE FACILITY WHEN SUBMITTING A FUNDING PROPOSAL UNDER THIS SECTION, THAT:~~

~~1. THE OWNER OF THE FACILITY LACKS THE FINANCIAL CAPACITY TO PURCHASE OR UPGRADE A WASTEWATER TREATMENT SYSTEM THAT WOULD BRING THE FACILITY INTO COMPLIANCE WITH THE DISCHARGE PERMIT ISSUED BY THE DEPARTMENT;~~

~~2. THE FACILITY IS INDEPENDENTLY OWNED AND OPERATED; AND~~

~~3. THE OWNER OF THE FACILITY IS NOT A SUBSIDIARY OF ANOTHER BUSINESS.~~

~~(HH) 1. THE DEPARTMENT SHALL INCLUDE WITH ITS ANNUAL OPERATING BUDGET PROPOSAL SUBMITTED TO THE DEPARTMENT OF BUDGET AND MANAGEMENT A LIST OF EACH FACILITY TO WHICH THE DEPARTMENT PROVIDED FUNDING UNDER SUBPARAGRAPH (H) OF THIS PARAGRAPH IN THE IMMEDIATELY PRECEDING 12 MONTHS AND THE REASONS FOR PROVIDING THE FUNDING.~~

~~2. IF THE DEPARTMENT PROVIDES THE LIST UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH TO THE DEPARTMENT OF BUDGET AND MANAGEMENT, THE DEPARTMENT SHALL IMMEDIATELY PROVIDE THE LIST TO THE GENERAL ASSEMBLY IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be construed to apply to any privately owned industrial wastewater facility that is connecting to a publicly owned wastewater facility and has been awarded grant funding for this purpose from the Bay Restoration Fund in the Fiscal Year 2023 Capital Budget or any preceding Capital Budget.

SECTION ~~2~~ 2 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2022. ~~Section 2 of this Act shall remain effective until the taking effect of the termination provision specified in Section 3 of Chapters 694 and 695 of the Acts of the General Assembly of 2021. If that termination provision takes effect, Section 2 of this Act shall be abrogated and of no further force and effect. This Act may not be interpreted to have any effect on that termination provision.~~

Approved by the Governor, May 12, 2022.