

IN THE CIRCUIT COURT FOR DORCHESTER COUNTY

STATE OF MARYLAND  
DEPARTMENT OF THE  
ENVIRONMENT,

\*

\*

and

\*

CHESAPEAKE BAY FOUNDATION, INC.,

\*

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 Oxidation 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 Intervenors' 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 \_\_\_\_\_ day of \_\_\_\_\_, 2022:**

\_\_\_\_\_  
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 DeArme  
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:<sup>1</sup>

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

---

<sup>1</sup> 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.