



To DEP Re Garden State Growers Major Threat In Need of DEP Action

May 9, 2008

Lisa Jackson, Commissioner
NJ Department of Environmental Protection
401 E. State St.
P.O. Box 402
Trenton, NJ 08625

Re. Garden State Growers, Quaker Valley Farms, David den Hollander, Franklin Township, Hunterdon County, NJ

Dear Commissioner Jackson:

We write in order to bring evidence of several potentially significant and ongoing environmental issues related to Garden State Growers/Quaker Valley Farms (GSG/QVF) and David den Hollander (den Hollander) to your attention and to request action by your Department. These issues relate to both new and past environmental concerns at GSG/QVF, are beyond the scope of the State Agricultural Development Committee's (SADC's) current legal action against GSG/QVF and den Hollander and require urgent investigation and action by the Department in order to stop environmental degradation in the region, including the Lockatong Creek and its watershed.

History of DRN's Advocacy

As you know, Delaware Riverkeeper Network (DRN) has submitted numerous letters and reports to the Department over the past few years concerning GSG/QVF and den Hollander. Additionally, DRN notified the Department and provided documentation related to our 2005 Notice of Intent to Sue (Notice of Intent to File a Citizen Suit Pursuant to the New Jersey Environmental Rights Act, N.J.S.A. § 2A:35A-1 et seq., dated May 12, 2005, copy attached, attachment 1) against the above-referenced operation.

DRN has also logged several environmental complaints over the last several years with the New Jersey Department of Environmental Protection (DEP) Hotline (1-877-WARNDEP) when we have observed or received reliable reports of pollution incidents occurring at or as a result of activities at the GSG/QVF commercial horticulture operation. We have also reported environmental problems at this facility to the Hunterdon Soil Conservation District, the Hunterdon County Agricultural Development Board, the NJ Department of Agriculture and the SADC.

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In the last year, letters filed with your Department in February, April, August and November 2007 and in January and February of 2008 brought to your attention our concerns about ongoing environmental problems regarding operations at the properties. Our letter dated August 3, 2007 highlighted a lack of progress on the Department's part in following through on its 2005 AONOCAPA against GSG/QVF (AONOCAPA, EA ID#: PEA030002- 1010-02-0002.1, May 16, 2005) (2005 AONOCAPA); these included violations that had led to DRN's Notice of Intent to Sue, filed prior to the Department's action.

DRN's letters from November 30, 2007, January 23, 2008, and February 1, 2008 addressed new soil destruction activities on the operation's preserved parcel, Block 37, Lot 42. As you know, these earthmoving, cut and fill, soil destruction, compaction and removal operations led to SADC's action in New Jersey Superior Court against GSG/QVF and den Hollander. Concurrently, administrative hearings are ongoing at the Hunterdon County Agricultural Development Board as a result of a complaint filed by Franklin Township against GSG/QVF and den Hollander.

This letter is intended to highlight several potentially significant environmental issues of which you may not be aware, to request investigative action by your Department, and to request a status update on certain past violations.

Stream Encroachment Concerns

The Lockatong Creek is designated a Category One stream under New Jersey's Surface Water Quality Standards. (N.J.A.C. § 7:9B). The Creek flows to the Delaware River and the Delaware and Raritan Canal. The Delaware River is a drinking water source for 2.9 million people downstream (page 8, "Lower Delaware Monitoring Program: 2000-2003 Results and Water Quality Management Recommendations", 2004). The Canal supplies 500,000 water users in Central New Jersey with water from the Delaware River and its tributary streams.

Past violations at GSG/QVF included stream encroachment of the Lockatong Creek or a tributary of the Lockatong Creek and stream crossing violations under the Flood Hazard Area Control Act. The Department's records show possible violations that were reported by Department enforcement inspectors as far back as 1996, 1998 and through to 2005. These violations included encroaching closer than stream encroachment and wetlands protection rules allow, driving vehicles through the stream and its tributaries, removal of trees and other vegetation, grading of riparian areas along the Lockatong Creek, placement of fill, retaining walls, rip-rap and structures within 25 feet of the stream, and illegal stream crossing structures. Several of these violations were cited by DRN in our Notice of Intent to Sue. Although we are aware that the Department verified all or most of these violations in its 2005 AONOCAPA, we are unaware of the outcome of the Department's actions. Please identify how these violations were addressed by DEP and/or GSG/QVF.

We are also aware that new violations (from 2005 through to 2008) on GSG/QVF/den Hollander properties have been noted in DEP inspection reports and that Department action is pending on several of these violations. Several of these violations resulted from Department inspections due to environmental complaints reported by DRN. For your information, enclosed are photos of current stream encroachments that may be in violation of these rules (CD attached, attachment 2; photos dated 5.7.08, attachment 3). We request that the Department investigate these sites.

Wetlands Concerns

Other past violations at GSG/QVF related to freshwater wetlands and wetland transition area violations and the lack of a NJDEP "Letter of Interpretation" for the site under the Freshwater Wetlands Protection Act. These included wetlands and wetlands transition area destruction, grading of wetlands and wetland transition areas, placement of fill material and dumping solid waste and tree parts in wetlands, cultivation of foreign plants in forested wetlands, placement of a road in wetlands/wetlands transition areas, removal of wetland vegetation and destruction of plant life which would alter the existing pattern of vegetation in wetlands. Several of these violations were cited by DRN in our Notice of Intent to Sue. Although we are aware that many, if not all, of

these violations were verified by the Department in its 2005 AONOCAPA, we are unaware of the outcome of these violations. Please identify how these violations were addressed by DEP and/or GSG/QVF.

Recent aerial photos (CD attached, February 2008, attachment 4) and photographs taken on May 7, 2008 of the GSG/QVF facility (attachments 3, 5, 6, 7) suggest that wetlands at GSG/QVF remain unrestored. An area previously identified as a regulated wetland area by the Department in 1999, and which was identified in the Department's 2005 AONOCAPA as a wetland where fill material was placed and vegetation destroyed in violation of regulations, appears unrestored in these photographs. This wetland area was also one of the wetland violations that led to DRN's Notice of Intent to Sue. The area that was denuded of vegetation, filled and compacted is a bare field and a portion of the area seems to be under a roadway and/or stockpiled material. Plastic mulch fabric is still covering the portion of the wetlands that is forested adjacent to the Lockatong Creek. We are concerned and surprised at the possibility that such serious violations could remain unresolved three years after the issuance of DEP's 2005 AONOCAPA. Please verify how these violations will be addressed. Further, new wetlands encroachment may have occurred since 2005 and be ongoing today. Attached are additional photos showing possible wetlands violations (CD attached, attachment 2). We request that the Department investigate these sites.

Water Resource Concerns

DRN reported to the Bureau of Water Allocation that there may be ongoing illegal well water use by these facilities. (DRN letter to Diane Zalaskus, 4.12.06, copy attached, attachment 8) We are aware that the Department investigated this report but we are not aware of any enforcement action taken by the Department. Please advise us as to any enforcement action taken by the Department regarding these wells and any mitigation or reparations made.

The report made by DRN was regarding six wells that were installed on Block 42 Lot 5 (David and Cindy den Hollander, 130 Old Franklin School Road, Pittstown, NJ). These wells were hooked up by pipelines in 2006 under Old Franklin School Road to adjoining parcels including but not necessarily limited to Block 37, Lot 42, the preserved farmland. Enclosed are photos of the pipe connections under the roadway (photos attached, attachments 9 and 10).

We are aware of an Agricultural/Horticultural Certification allowing the diversion of groundwater from 5 wells and the imposition of limits to the total use of water from all wells on the property. This Certification (HN0005) was renewed in 2002 and presumably in 2007, when it was due to expire. The Department denied a 2003 application (HN0017) from Quaker Valley Farms for greater water use by these operations based on evidence that the proposed increase in water use would negatively impact the regional aquifer and existing wells in the area. We are not aware of any use permit issued by the Department for the six wells installed since 2005. Please provide DRN with the Department's view of whether the use of these "new" wells may result in the negative impacts previously forecasted by the Department in its decision to reject the prior proposed increase. DRN also requests that the Department advise on the impact of present or potential use of all wells together (numbering 10 or 11 wells) on the regional aquifer, neighboring wells, and surface water features.

Department documents indicate that water is purchased by Garden State Growers from adjacent Quaker Valley Farms, which is the entity that holds the Agricultural/Horticultural Certification. Recent records indicate that Quaker Valley Farms may also deliver water to Garden State Growers. We question whether this may constitute a violation of any permits held by either of these facilities. We are also concerned about the opportunity for abuse presented by improperly metered or monitored wells and/or pipe connections to deliver water from these wells to the irrigation fields throughout the horticulture operation.

We urge the Department to sort out the difficulties presented by the numerous wells, pipe connections and possible inadequate monitoring of the water supply systems at these properties in order to assure that the groundwater resources (and neighboring wells), wetlands, and streams are being adequately protected.

In addition to these wells, DRN has received information that there was and may still be pumping of a well or wells at the facility that discharges into a pond on site. The pond discharges to the Lockatong Creek or its tributary. These wells may not be permitted for this use, which seems to be a perennial pumping operation. The well(s) are connected to the pond by plastic piping. Attached is a CD showing the piping connection (CD of photos, attachment 2). We request that the Department investigate this use. We also request an update advising DRN whether there is a permit for this use, and how the use is monitored.

Pesticide Concerns

DRN has received information that there is an unpermitted discharge of pesticide residue onto the ground surface behind the trailer where pesticide equipment is cleaned. There is a permanent pipe installed which spills the wash water and pesticide residue directly onto the ground (photo of trailer and pipe on CD attachment 2 and hard copy attachment 11). This area drains to either the above mentioned pond or indirectly to a tributary or main stem of the Lockatong Creek. The pond discharges to the Lockatong Creek. We request that the Department investigate this illegal pollution discharge.

DRN also reported pesticide mishandling at the facility to the Department in 2004. This report was based on a DRN staff member witnessing the handling of chemicals by workers at the site without protective equipment, or secondary containment (potential violation of N.J.A.C. 7:30-10.2(b) and 7:30-10.2(e)). A subsequent inspection by the Department resulted in a finding that the facility was out of compliance due to lack of adequate record keeping. Attached is a list of chemicals used at the facility in the past (attachment 14). DRN is extremely concerned about possible mishandling of potentially dangerous chemicals routinely used at this horticulture operation. Our concerns are based on the cited report of DRN staff, as well as multiple incidents witnessed by DRN staff and local residents of spraying of materials in high winds, drifts of noxious sprays, foul smells, illness and other potential health impacts (potential violation of N.J.A.C. 7:30-10.2(d) and 7:30-10.2(f)).

Solid Waste Concerns

DRN has received information that there is a solid waste site on the facility. The solid waste accumulated for years in a pile on bare ground and includes pallets, concrete rubble, drums, pesticide containers, plastic, tree stumps and wood, and general trash (photos of solid waste, pallets and debris, CD attachment 2 and hard copy attachment 12). This site is an environmental hazard. We request that the Department investigate this solid waste accumulation.

DRN has received information that unlabeled rusty barrels are sitting at the GSG/QVF facility. These barrels have apparently been sitting at the GSG/QVF facility for at least three years. Whether these barrels contain anything or have any residue in them is unknown (photos of drums, CD attachment 2 and hard copy attachment 13). We request that the Department investigate these barrels and have them removed.

Stormwater Policy Concerns

DRN has serious concerns about the lack of stormwater controls at GSG/QVF and wishes to engage in a dialogue with NJDEP regarding possible solutions.

The Lockatong Creek is protected from degradation by major development through New Jersey's Stormwater Regulations (N.J.A.C. 7:8) by the requirement for a 300 foot buffer on each side of the stream. This special water resource protection area is particularly important for major development projects such as GSG/QVF. While we realize that certain prior agricultural uses are exempt, major development on this property should be required to adhere to stormwater regulations so that the goal of protection of the stream and its water supply and ecological resources can be accomplished. Yet, Franklin Township has been precluded from applying its municipal stormwater ordinance due to a claim to Right to Farm protections by Mr. den Hollander and application of the Supreme Court's decision in *Township of Franklin v. Den Hollander*, 172 N.J. 147 (2002).

Given this framework, the only stormwater controls in place at GSG/QVF merely address portions of fields under a Soil Erosion & Sediment Control Act Plan (a/k/a Chapter 251 Plan) approved by the Hunterdon County Soil Conservation District. We are aware that den Hollander recently applied to the Department for a General Stormwater Permit. However, the past several years have seen major development at GSG/QVF, development which is encroaching on the Lockatong Creek without buffer protection and without an adequate stormwater management plan. DRN has serious concerns that the GSG/QVF facilities have fallen between regulatory cracks regarding stormwater management, resulting in inadequate protection of the Lockatong Creek.

Addressing stormwater pollution is a DRN priority, and for good reason. The U.S. Environmental Protection Agency (EPA) lists agriculture as the leading pollutant source, by far, for stormwater runoff in the surveyed river miles across the Nation (EPA, The National Water Quality Inventory, 1996 Report to Congress, EPA 841-R-97-008. Office of Water. Washington, D.C., 1998). Stormwater pollution generated by the GSG/QVF facilities must be addressed in a manner that is protective of the Category One status of the receiving waterway, the Lockatong Creek. This is not being accomplished through present environmental controls. Ultimately, the Department must ensure that the Lockatong Creek and its watershed and the downstream waterways are protected as intended by New Jersey Surface Water Quality regulations and Stormwater Management rules. We invite you to engage in a dialogue with DRN on this issue.

DRN's Monitoring Efforts

As you may know, DRN regularly undertakes monitoring efforts to further its protective efforts. In the past, monitoring of the Lockatong Creek by DRN and others revealed impairment at the location of GSG/QVF's horticultural operations. Further testing is currently underway by DRN monitoring specialists. As we complete our stream monitoring efforts, we intend to share the results with you and your Department.

Aerials and Visual Notes

For the Department's use is a CD of photos taken by DRN staff in June 2003 (attachment 15). Comparisons of forested areas, stream buffers, development intensity and ponds with the February 2008 aerial photo CD (attachment 4) is instructional. We point out the color in the 2008 aerials (CD, attachment 4, hard copy of photo, attachment 16) of one of the ponds and foamy texture and color of another one of the ponds (CD, attachment 4, hard copy of photo, attachment 17). We request that the Department investigate these apparent surface water quality issues.

Conclusion

Delaware Riverkeeper Network is extremely concerned about the past and current environmental problems at these facilities and the environmental degradation that has resulted and continues to result. It is unfortunate that these problems have become seemingly intractable and continued unabated. We look forward to working with the Department to resolve these issues.

Sincerely,

*Maya K. van Rossum
the Delaware Riverkeeper*

*Tracy Carluccio
Deputy Director*

*Cc: Hunterdon County Board of Chosen Freeholders
Hunterdon County Agricultural Development Board
Department of Agriculture Secretary Charles Kuperus
Hunterdon County Soil Conservation District
Senator Leonard Lance
Representative Marcia A. Karrow
Representative Michael J. Doherty
William A. Schnurr, Deputy Attorney General*

Township of Franklin

William Caldwell, Esq.

Guy DeSapio, Esq.

Elizabeth Koniers Brown, Esq.

Attachments

- 1. *DRN Notice of Intent to File a Citizen Suit Pursuant to the New Jersey Environmental Rights Act, N.J.S.A. § 2A:35A-1 et seq., dated May 12, 2005*
- 2. *CD, site photographs, 2005*
- 3. *Photographs, 5.7.08*
- 4. *CD, aerial photographs, 2.08*
- 5. *Photographs, 5.7.08*
- 6. *Photographs, 5.7.08*
- 7. *Photographs, 5.7.08*
- 8. *DRN letter to Diane Zalaskus, NJDEP, 4.12.06*
- 9. *Photograph, 2006*
- 10. *Photograph, 2006*
- 11. *Photograph, 2005*
- 12. *Photograph, 2005*
- 13. *Photograph, 2005*
- 14. *List of chemicals used on site*
- 15. *CD, aerial photographs, 2003*
- 16. *Aerial photograph, 2.08*
- 17. *Aerial photograph, 2.08*