



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801

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www.deq.virginia.gov

Preston Bryant
Secretary of Natural Resources

David K. Paylor
Director

R. Bradley Chewning, P.E.
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION

ORDER BY CONSENT ISSUED TO

Ariake USA, Inc.
Registration #: 81104

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and Ariake USA, Inc., for the purpose of resolving certain alleged violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Order, and incorporates the additional terms and conditions as set out in Appendix A to this document.
6. "Ariake" means Ariake USA, Inc., owner and operator of a rendering and meat by-product processing facility, licensed to do business in Virginia.
7. "Facility" means the Ariake rendering and meat by-product processing facility located at 1711 North Liberty Street, Harrisonburg, VA.
8. "VRO" means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
9. "CFR" means Code of Federal Regulations.

SECTION C: Findings of Facts and Conclusions of Law

- 1) Based on information provided on a Form 7 Air Permit Application received at VRO on June 7, 2006, a DEQ site visit on June 22, 2006, and subsequent information received on July 21 and August 24, 2006, Ariake appears to have modified an existing Cleaver Brooks gas-fired boiler to burn both natural gas and distillate oil without first obtaining a permit from DEQ. According to Ariake's Form 7 Application, this modification occurred on or about July 8, 2004.

Virginia Regulations for the Control and Abatement of Air Pollution state:
9 VAC 5-80-1120. A. No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source.

Ariake was issued a Stationary Source Permit to Construct and Operate on November 9, 2006.

- 2) Ariake failed to report distillate oil throughput on its 2005 Annual Emission Inventory Update and appears to have incorrectly reported natural gas throughput based on company records obtained on July 21, 2006. On its 2005 Annual Emission Inventory Update, Ariake certified a total natural gas throughput of 60.0 million cubic feet for calendar year 2005, while company records indicated a natural gas throughput of 68.3 million cubic feet for the same time period.

Virginia Regulations for the Control and Abatement of Air Pollution state:
9 VAC 5-50-50. H. Upon request of the board, the owner of a new or modified source subject to the provisions of this chapter shall provide notifications and reports, maintain

records or report performance test or monitoring results in a manner and form and using procedures acceptable to the board.

Ariake submitted a revised 2005 Annual Emissions Inventory Update on November 1, 2006.

- 3) Ariake failed to submit construction and startup notifications and fuel supplier certifications to demonstrate compliance with fuel sulfur limits as required by federal New Source Performance Standards. These reports are required to be submitted to DEQ and in duplicate to EPA.

These requirements are specified in 40 CFR 60.4 and in § 60.48c Reporting and Recordkeeping Requirements of 40 CFR 60 Subpart Dc – Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units and have been incorporated into Ariake's Stationary Source Permit to Construct and Operate, dated November 9, 2006.

- 4) Based on the information set out above, DEQ issued a Notice of Violation to Ariake on September 20, 2006. DEQ staff met with Ariake representatives on November 1, 2006 to review the violations and corrective action taken since the issuance of the NOV. Ariake is presently in full compliance with State Air Pollution Control Law.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1186(2), 10.1-1309, and 10.1-1316(C), orders Ariake, and Ariake voluntarily agrees to the following conditions in settlement of the violations cited in this Order:

1. Ariake agrees to pay a civil charge of **\$6,358.00** within 30 days of the effective date of this Order. Payment must indicate that the civil charge is paid pursuant to this Order, and shall include Ariake's Federal Identification Number. Payment shall be by check, certified check, money order, or cashier's check payable to "**Treasurer of the Commonwealth of Virginia**" and sent to:

**Receipts Control
Department of Environmental Quality
P. O. Box 1104
Richmond, Virginia 23218**

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Ariake, for good cause shown by Ariake, or on its own motion after notice to Ariake and its opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Ariake admits to the allegations in Section C of this Order.
4. Ariake consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Ariake declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right of Ariake to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Ariake to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Ariake shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Ariake shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Ariake shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

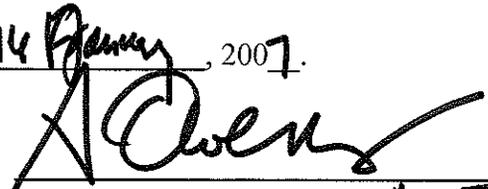
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Ariake intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Ariake. Notwithstanding the foregoing, Ariake agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. Ariake petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to Ariake.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Ariake from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. By appropriate signature below, Ariake voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 14 January, 2007.



~~R. Bradley Chowning, P.E.~~ Amy Thadler Eanes
Department of Environmental Quality

Ariake voluntarily agrees to the issuance of this Order.

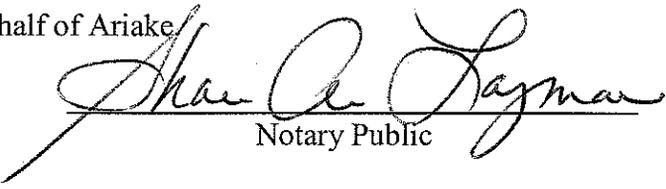
By: Jamie R. Eanes

Date: 01-16-07

Commonwealth of Virginia
City/County of Harrisonburg

The foregoing document was signed and acknowledged before me this 16th day of
January, 2007, by Jamie R. Eanes, who is
(name)

Director of Ariake, on behalf of Ariake
(title)



Notary Public

My commission expires: October 31, 2008