



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

HOUFF'S FEED & FERTILIZER COMPANY, INC.

(VPA Permit No. VPA01566)

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code § 62.1-44.15(8a) and (8d) between the State Water Control Board and Houff's Feed & Fertilizer Company, Inc. to resolve certain violations of environmental laws and regulations.

SECTION B: Definitions

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

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "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 DEQ.
5. "VRO" means the Valley Regional Office of the DEQ.

6. "Houff's" or "the Company" means Houff's Feed & Fertilizer Company, Inc.
7. "VPA" means Virginia Pollution Abatement.
8. "VPA Permit Regulation" means 9 VAC 25-32-10 *et seq.*
9. "The Permit" means VPA Permit No. VPA01566 issued to Houff's on June 23, 1999 with an expiration date of June 23, 2009.
10. "VDH" means the Virginia Department of Health
11. "O&M Manual" means the operations and maintenance manual.
12. "Order" means this document, also known as a Consent Special Order.
13. "NOV" means Notice of Violation.
14. "Site" means the field where the unauthorized land application took place.

SECTION C: Findings of Fact and Conclusions of Law

1. Houff's VPA Permit authorizes the management of sludge from various industrial and municipal facilities on a number of fields in Augusta, Rockingham and Rockbridge Counties. The Permit was issued on June 23, 1999, with an expiration date of June 23, 2009. Included in the number of permitted fields under Houff's Permit, there are 5 fields that Houff's owns in the general area of the Site located near Weyers Cave in Rockingham County.
2. On June 25, 2008, Houff's land applied seven wet tons of food processing sludge to a 1.2 acre, unpermitted field at the Site.
3. Part I.B.6. of the Permit requires that sludge shall be applied only at sites either identified in the approved O&M Manual or subsequently approved by both DEQ and VDH in accordance with Part I.C.9. of the Permit.
4. DEQ issued NOV-08-07-VRO-001 on July 7, 2008, to Houff's for application of material without a permit in violation of VA Code § 62.1-44.5 and § 62.1-44.16.
5. On August 19, 2008, DEQ met with representatives of Houff's to discuss the NOV and the events that led up to the violation.
6. Houff's explained to DEQ staff that it was evaluating the food processing sludge in order to develop a potential contract to land apply that sludge. In order to develop a contract, Houff's asserts it needed to experiment with the land application of the sludge to ensure

no significant odor problems or effects on a field's grass/hay. Houff's considered these issues important in the development of a contract, but which are difficult to evaluate without first hand experience via actual land application experiments.

7. Houff's had previously sampled and analyzed food processing sludge to characterize its chemical constituents and its strength. Houff's asserts that the sludge characteristics met regulatory requirements and that the sludge was applied to 1.2 acres at proper agronomic rates.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Houff's and Houff's voluntarily agrees, to pay a civil charge of **\$3640** within **30 days** of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

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

Either on a transmittal letter or as a notation on the check, Houff's shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Houff's, for good cause shown by Houff's, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein in Section C. 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 the 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, Houff's admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Houff's 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. Houff's declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Houff's 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. Houff's 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. Houff's shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Houff's 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.

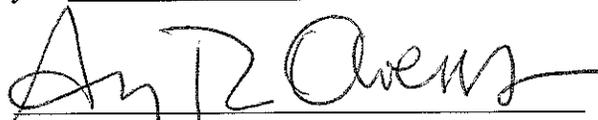
Failure to so notify the Director of the VRO within 24 hours of learning of any condition above, which Houff's intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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 Houff's. Notwithstanding the foregoing, Houff's 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. Houff's petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
 - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Houff's.

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

12. The undersigned representative of Houff's certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Houff's to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Houff's.
13. By its signature below, Houff's Feed & Fertilizer Company, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8th day of December, 2008.


Amy T. Owens, Regional Director

Department of Environmental Quality

Houff's Feed & Fertilizer Company, Inc. voluntarily agrees to the issuance of this Order.

By: *Neil Houff*

Date: 10/6/08

Commonwealth of Virginia

City/County of Augusta

The foregoing document was signed and acknowledged before me this 6 day of

October, 2008 by Neil Houff, who is
(name)

President,
Houff's Feed & Fertilizer of Houff's Feed & Fertilizer Company, Inc. on behalf of the
Company.
(title)

Kelly B. Swalter
Notary Public

My commission expires: 9/08/2011

KELLY B. SWALTER
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7139599
My Commission Expires Feb. 28, 2011