



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO RECKITT BENCKISER INC.

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Reckitt Benckiser Inc. for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable regulations.

SECTION B: Definitions

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

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Consumer Product" means consumer product as defined in 9VAC5-45-300.
3. "Consumer Product Rules" means 9VAC5 Chapter 45 Article 3.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Northern Virginia" means the Northern Virginia and Fredericksburg VOC Emission Control Areas as designated in 9VAC5-20-206.

7. "Reckitt Benckiser" or "Reckitt" means Reckitt Benckiser Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Reckitt Benckiser Inc., is a "person" within the meaning of Va. Code § 10.1-1300.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9VAC5 chapters 10 through 80.
10. "Single-phase aerosol air freshener" means single phase aerosol air freshener as defined in 9VAC5-45-300.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
14. "VOC" or "Volatile Organic Compound" means volatile organic compound as defined in 9VAC5-10-20.
15. "VOC Emissions Control Areas" or "Control Areas" are designated in 9VAC5-20-206.

SECTION C: Findings of Fact and Conclusions of Law

1. Reckitt owns and operates a manufacturing facility in Belle Mead, New Jersey that produces a Consumer Product, a single phase air freshener, called Air Wick® Freshmatic® Ultra Air Freshener ("product"), which is subsequently sold, supplied, or offered for sale in Northern Virginia and is subject to the Consumer Product Rules.
2. 9VAC5-45-310(A) requires that "Except as provided in 9VAC5-45-290, 9VAC5-45-320 and 9VAC5-45-330, no owner or other person shall (i) sell, supply, or offer for sale a consumer product manufactured on or after the applicable compliance date specified in 9VAC5-45-360 or (ii) manufacture for sale a consumer product on or after the applicable compliance date specified in 9VAC5-45-360, that contains volatile organic compounds in excess of the limits specified in Table 45-3A."
3. Table 45-3A of 9VAC5-45-310(A) provides a 30% VOC content limit by weight for single-phase aerosol air fresheners.
4. On May 23, 2010, Reckitt submitted a request for enforcement discretion due to a disruption in the supply of a primary constituent (Isopar M) of the product as a result of the BP/Deepwater Horizon oil spill in the Gulf of Mexico. Therefore, Reckitt proposed to sell, supply, or offer for sale an alternative noncompliant product (using other constituents) containing greater than 30% VOC by weight in Northern Virginia.

5. On June 18, 2010, DEQ responded via email requesting Reckitt immediately notify DEQ once the noncompliant product is sold, supplied, or offered for sale in Northern Virginia,
6. On July 9, 2010, Reckitt indicated via email that a noncompliant product with 69.3% VOC by weight had been sold in Virginia for the previous three week period.
7. On July 14, 2010, Reckitt submitted a draft waiver request to DEQ for review and comment before finalizing.
8. On August 10, 2010, Reckitt provided via email a statement from their supplier indicating the supply disruption of Isopar M had ended, and correspondence withdrawing Reckitt's waiver request.
9. Based on Reckitt's May 23, 2010 correspondence, and Reckitt's notification received on July 9, 2010 the Board concludes that Reckitt violated 9VAC5-45-310(A), because the noncompliant product was sold, supplied, or offered for sale in Northern Virginia as described in paragraphs C2, C3, and C6, above.
10. In order for Reckitt to return to compliance, DEQ staff and representatives of Reckitt have agreed to a schedule of compliance as incorporated in Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Reckitt, and Reckitt agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Reckitt for good cause shown by Reckitt, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Reckitt admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Reckitt 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. Reckitt declares it has received fair and due process under the Administrative Process Act and the Virginia 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 to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Reckitt 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. Reckitt 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. Reckitt shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Reckitt shall notify the DEQ Enforcement Director verbally within 24 hours and in writing within three business days 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 Enforcement Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Reckitt 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 Reckitt. Nevertheless, Reckitt 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. Reckitt petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Reckitt.

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

12. Any plans, reports, schedules or specifications attached hereto or submitted by Reckitt and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Reckitt 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 Reckitt to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Reckitt.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Reckitt voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 9th day of September 2010.


Melanie D. Davenport, Enforcement Director
Department of Environmental Quality

Reckitt Benckiser Inc. voluntarily agrees to the issuance of this Order.

Date: 9/11/10 By: David J. Long VP
(Person) (Title)
Reckitt/Benckiser Inc.

State of New Jersey
County of Morris

The foregoing document was signed and acknowledged before me this 1st day of September,
2010, by David J. Long who is
Vice President of Reckitt Benckiser Inc., on behalf of the
corporation.

Donna M. Wilkie-Alvarez
Notary Public

n/a
Registration No.

My commission expires: October 26, 2012

Notary seal:

DONNA M. WILKIE-ALVAREZ
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 10/26/2012

APPROVED
AS TO FORM
RB LEGAL DEPT
BY MA

**APPENDIX A
SCHEDULE OF COMPLIANCE**

1. Compliance Report

Within 30 days of the execution of this order Reckitt shall submit in writing a report including but not limited to:

- a. A statement documenting final compliance.
- b. The period of time noncompliant product was sold, supplied, or offered for sale in Northern Virginia.
- c. The quantity of VOCs from noncompliant product emitted in Northern Virginia in excess of the standard.
- d. A summary of efforts, including alternative formulation, to ensure a similar violation is avoided in the future.

2. Certification of Documents and Reports

In accordance with 9 VAC 5-20-230(A), in all documents or reports, without limitation, submitted to DEQ pursuant to this Consent Order, Reckitt shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

3. DEQ Contact

Unless otherwise specified in this Order, Reckitt shall submit all requirements of Appendix A of this Order to:

Todd M. Alonzo
Air Compliance Engineer
VA DEQ – Office of Air Compliance Coordination

Address: 629 E. Main Street, Richmond, VA 23219
Phone: 804-698-4280
Fax: 804-698-4510
Email: todd.alonzo@deq.virginia.gov