



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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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

Valley Proteins, Inc.
Registration #: 80144

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 Valley Proteins, 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.

inspection, VP had not yet conducted a visible emissions evaluation (VEE) on B-4. A VEE was conducted by VP on February 7, 2006 and no visible emissions were observed.

8. Condition 39 of VP's permit provides: "Visible Emissions Evaluation - Visible Emission Evaluations (VEE) in accordance with 40 CFR Part 60, Appendix A, Method 9, shall be conducted by the permittee on the Superior boiler (Ref. B-4) when burning residual oil as fuel. Each test shall consist of ten sets of 24 consecutive observations (at 15 second intervals) to yield a six minute average. The details of the tests are to be arranged with the Director, Valley Regional Office. The evaluation shall be performed, reported and demonstrate compliance within 60 days after achieving the maximum production rate at which the boiler will be operated but in no event later than 180 days of startup. One copy of the test results shall be submitted to the Director, Valley Regional Office, within 60 days after test completion and shall conform to the test report format enclosed with this permit. (9 VAC 5-50-30 and 9 VAC 5-80-1180)."

9. VP failed to perform required fuel sampling of the residual oil tank. Condition 12 of VP's permit provides: "Fuel Certification - The permittee shall sample and analyze the residual oil tank(s) serving the boilers (Ref. B-4 and B-6) initially before startup of the boilers and immediately after each shipment of residual oil is added to the tank in accordance with 40 CFR 60.46c (d)(2). The permittee shall maintain records of all oil analyses and of all oil shipments purchased. These records shall be available for inspection by the DEQ. Such records shall be current for the most recent five years. (9 VAC 5-80-1180 and 40 CFR 60.44c (g))."

10. VP came into compliance with VEE requirements on February 26, 2006 and returned to compliance with fuel requirements on January 20, 2006. DEQ staff met with VP representatives on March 7, 2006 to discuss the violations and corrective action taken by VP, as well as the assessment and calculation of economic benefit of noncompliance incurred by VP's use of a lower cost fuel and avoidance of performing fuel delivery sulfur content testing.

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 VP, and VP voluntarily agrees to the following conditions in settlement of the violations cited in this Order:

1. VP agrees to pay a civil charge of **\$16,915.00** 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 VP'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 VP, for good cause shown by VP, or on its own motion after notice to VP 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, VP admits to the jurisdictional, but does not admit the other allegations, in Section C of this Order.
4. VP 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. VP 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 VP to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by VP 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. VP 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. VP shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. VP 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 VP 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 VP.
11. This Order shall continue in effect until:
 - a. VP petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that VP has satisfied all the requirements of the Order is a case decision within the meaning of the Virginia Administrative Process Act; or
 - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to VP.
12. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve VP from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. By appropriate signature below, VP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Nov 7, 2006.

R. Bradley Churning
R. Bradley Churning, Regional Director
Valley Regional Office
Department of Environmental Quality

VP voluntarily agrees to the issuance of this Order.

By: Thomas A. Gibson Jr
Date: 11 / 2 / 06

Commonwealth of Virginia

City/County of Frederick

The foregoing document was signed and acknowledged before me this 2 day of
November, 2006, by Thomas A Gibson Jr, who is
(name)

Director of
Environmental Affairs of VP, on behalf of VP
(title)

[Signature]
Notary Public

My commission expires: February 28, 2010