



COMMONWEALTH of VIRGINIA

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO H. P. HOOD, LLC dba CROWLEY FOODS VPA PERMIT NO. VPA02503

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d), between the State Water Control Board and H. P. Hood, LLC dba Crowley Foods, for the purpose of resolving certain violations of the State Water Control Law 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 §§ 10.1-1184 and 62.1-44.7.
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 Special Order.
6. "Company" means H. P. Hood, LLC, certified to do business in Virginia and its affiliates, partners, subsidiaries and parents, including Crowley Foods.

7. "Facility" means the milk processing facility located at 2537 Catherine Street, Bristol, Virginia.
8. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
9. "VPA" means Virginia Pollution Abatement.
10. "Permit" means VPA Permit No. VPA02503, which was reissued on November 19, 2001, modified February 21, 2003, to reflect a change in ownership, and will expire on November 19, 2011.
11. "O&M" means operation and maintenance.

SECTION C: Findings of Facts and Conclusions of Law

1. The Company operates a milk processing facility in Bristol, Virginia which is subject to VPA Permit No. VPA02503. The Permit authorizes the disposal of whey by land application at one farm in Scott County, Virginia. The Permit was reissued on November 19, 2001, modified February 21, 2003, to reflect a change in ownership, and will expire on November 19, 2011.
 2. On February 18, 2005, SWRO staff visited the Sally Heltzel farm in Washington County, Virginia in response to pollution complaint IR 2005-S-0329 which reported the land application of a clear liquid on property located on Cowan Drive, Bristol, Virginia. The investigation revealed that the Company apparently disposed of whey on the Sally Heltzel farm, which is not an approved land application site in VPA Permit No. VPA02503, Part I, Section B, Article 2.
 3. VPA Permit Regulation 9 VAC 25-32-80 A. states that any permit noncompliance is a violation of the law.
 4. VPA Permit Regulation 9 VAC 25-32-30 B.1. states that except in compliance with a VPA permit, or another permit issued by the Board, it shall be unlawful for any person to discharge into, or adjacent to, state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substance.
 5. DEQ and the Company met on April 13, 2005 to resolve the apparent violations.
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SECTION D: Agreement and Order

Accordingly the Board, by virtue of the authority granted it pursuant to Va. Code § 62.1-44.15 (8a) and (8d), orders the Company, and the Company agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders the Company, and the Company voluntarily agrees to pay a civil charge of **\$5,000.00** 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 or money order payable to the "Treasurer of Virginia", and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check or money order, the Company shall indicate that this payment is submitted pursuant to this Order and shall include the Company's Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Company, for good cause shown by the Company or on its own motion after notice and opportunity to be heard.
 2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or 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; and/or (3) taking subsequent action to enforce the terms of 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, the Company admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
 4. The Company consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
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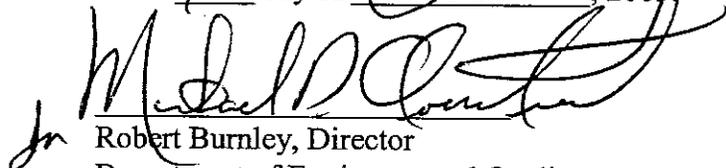
5. The Company declares it has received fair and due process under the Administrative Process Act, Code § 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review 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 the Company 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. The Company 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 act of God, war, strike, or such other occurrence. The Company must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Company shall notify the Director of the SWRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of 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 notify by phone the Director of the SWRO within 24 hours of learning of any condition listed above, which the Company intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of 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. Any plans, reports, schedules or specifications attached hereto or submitted by the Company 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.
11. This Order shall become effective upon execution by both the Director or his designee and the Company. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Company. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Company from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. The undersigned representative of the Company 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 the Company to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Company.
14. By its signature below, the Company voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7th day of October, 2005


Robert Burnley, Director
Department of Environmental Quality

H. P. Hood, LLC dba Crowley Foods voluntarily agrees to the issuance of this Order.

Name: Steve P. Green
Title: PLANT MANAGER
Date: 5-13-05

State of Virginia
City/County of Washington

The foregoing instrument was acknowledged before me this 13 day of May, 2005,
by Steve Green, who is Plant Manager of H. P. Hood, LLC dba
(name) (title)
Crowley Foods on behalf of the Limited Liability Company.

Jimmy D. Vance
Notary Public

My commission expires: 12/31/07

APPENDIX A

In order to comply with the provisions of the State Water Control Law and Regulations, the Company agrees to implement the following actions:

1. The Company shall report to the SWRO any unusual or extraordinary discharge of waste at the processing plant as quickly as possible upon discovery, but in no event later than 24 hours. This report shall be included as part of the Company's emergency response program.
 2. The Company shall revise and maintain the Operations and Maintenance (O & M) Manual for the treatment works/pollutant management system. This manual shall detail practices and procedures, including applicable Best Management Practices, which will be followed to ensure compliance with the requirements of VPA Permit No. VPA02503. Included in the revision of the O & M Manual will be information re: the one farm approved for land application (Virgil Cross farm), and submittal of information required for review of any proposed land application sites, as required in VPA Permit No. VPA02503, Part I, Section B, Article 2. Also included in the submittal shall be template examples of those items required by the Comprehensive Whey Disposal Plan required in Item 3 below. The revised O & M Manual shall be submitted to the SWRO for review and approval no later than 90 days from the effective date of the Order.
 3. The Company shall utilize a Comprehensive Whey Disposal Plan ("CWDP") to include the following:
 - a. A hauling manifest shall be developed and utilized by the hauler to fully ascertain the exact location of whey disposal. This should include a map indicating location and directions to each approved site.
 - b. A daily record of whey disposal showing the gallons hauled and disposal site of each load.
 - c. A monthly summary of whey disposal showing the monthly total gallons spread at each approved site, a year to date calculation and a column showing the maximum amount of annual disposal for each approved site. The monthly report shall be submitted to the SWRO by the 10th day of the following month for a period of 24 months from the effective date of the Order.
 - d. Notation of conditions that may prevent the spreading of whey at each site, such as wet weather or frozen soil.
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- e. A discussion of alternate means of whey production, handling and disposal to include such items as; 1) storage capabilities, 2) feed for animals, 3) operation techniques or treatment to reduce the amount of whey produced, 4) a change in operating days during wet weather and 5) conversion of liquid whey into a dry product, as a means to reduce volumes of whey produced during periods of inclement weather.

The CWDP shall be submitted to the SWRO, as part of the revised O & M Manual, within 90 days of the effective date of the Order.

4. All employees who are involved or may be involved with whey disposal, including the contract hauler, shall be trained utilizing the CWDP within 30 days of approval of the revised O & M Manual. The training attendance record shall be submitted to the SWRO within 15 days of the date of the training.
 5. All reports to be submitted to the SWRO shall be mailed to the attention of Ruby Scott, Compliance Auditor, P. O. Box 1688, Abingdon, VA 24212.
 6. None of the above items modify or change the permit and all requirements of VPA Permit No. VPA02503 shall remain in effect.
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