

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

**SPECIAL ORDER BY CONSENT**

**ISSUED TO**

**NATIONAL FRUIT PRODUCT COMPANY, INCORPORATED  
WINCHESTER PLANT**

*(VPA Permit No. VPA01514)*

**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 National Fruit Product Company, Incorporated, to resolve certain alleged 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. "NF-WP" or "the Company" means the Winchester Plant of National Fruit Product Company, Incorporated, a Virginia corporation in good standing located at Winchester, Virginia.
7. "VPA" means Virginia Pollution Abatement.
8. "VPA Permit" means VPA Permit No. VPA01514 issued to NF-WP on December 28, 1999.
9. "VPA Permit Regulation " means 9 VAC 25-32-10 *et seq.*
10. "Order" means this document, also known as a Consent Special Order.
11. "1994 Order" means the Consent Special Order issued to NF-WP on November 8, 1994.
12. "2001 Order" means the Consent Special Order issued to NF-WP on December 13, 2001.
13. "NOV" means Notice of Violation.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. NF-WP operates a fruit processing facility near Winchester in Frederick County, Virginia. Under the terms of the VPA Permit, NF-WP land applies fruit processing wastewater on two spray field sites.
2. Part I.C.9 of the VPA Permit provides that no irrigation of wastewater shall occur between November 15<sup>th</sup> and March 15<sup>th</sup> of each year or as determined by an approved Nutrient Management Plan ("NMP"). The NMP for NF-WP does not provide for irrigation outside of the window prescribed in the VPA Permit.
3. On March 19, 2003, DEQ staff conducted an inspection of the NF-WP spray field sites after receiving a citizen complaint alleging that wastewater was running off of the spray fields. DEQ staff did not observe wastewater leaving the permitted spray fields. DEQ staff reviewed the spray field records on site and recorded the dates, times and volumes of wastewater that had been irrigated onto the spray fields before March 15, 2003. Based on NF-WP's spray field records, the company irrigated a total of 760,333 gallons of wastewater during seven separate days prior to March 15, 2003. This action allowed NF-WP to benefit economically through noncompliance with the VPA Permit and the 2001 Order. The civil charge included in the Order recovers a significant portion of this economic benefit of noncompliance.
4. On April 3, 2003, DEQ issued NOV No. W2003-04-V-0001 to NF-WP citing the following

alleged violations of the VPA Permit and the VPA Permit Regulation:

- a. Irrigation of wastewater outside of the period for irrigation authorized under the VPA Permit in alleged violation of Part I.C.9 of the VPA Permit; and,
  - b. Failure to comply with all conditions of the VPA Permit in alleged violation of 9 VAC 25-31-80(A) of the VPA Permit Regulation
5. Under the terms of the 2001 Order, NF-WP shall implement the following alternative method(s) of wastewater disposal during times when NF-WP's storage facilities are full and/or when spray irrigation is prohibited under the terms of the VPA Permit:
- a. Wastewater shall be pumped and hauled from the NF-WP storage facilities to the Opequon Water Reclamation facility; and/or,
  - b. Wastewater shall be pumped and hauled from the NF-WP storage facilities to the Conococheague Industrial Pretreatment facility; and/or,
  - c. Production shall be reduced and the product mix modified as necessary to meet storage and treatment system capacity.

Through commencing land application and ceasing to implement these alternative measures seven days prior to March 15, 2003, NF-WP benefited economically through noncompliance with the Permit and the 2001 Order. As noted above, the Order recovers a significant portion of this economic benefit of noncompliance.

6. NF-WP has recently expanded its permitted land application area by over 25 percent from its previous area. The expansion acreage became available for use for the first time in the 2003 irrigating season. This expansion area is expected to prevent a similar wastewater storage capacity shortfall prior to March 15, 2004.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders NF-WP, and NF-WP agrees:

1. That this Order cancels and supersedes the 1994 Order and the 2001 Order;
2. To perform the actions described in Appendix A of this Order; and,
3. To pay a civil charge of **\$8,000** within 30 days of the effective date of the Order in settlement of

the alleged violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

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

NF-WP shall include its Federal Identification Number with the civil charge payment and shall note on the check that the payment is being made pursuant to this Order.

### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of NF-WP, for good cause shown by NF-WP, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged 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 alleged 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. NF-WP consents to this Order by virtue of its desire to compromise and resolve all alleged violations specifically identified herein. NF-WP denies such alleged violations and NF-WP's consent to this Order and its payment of the civil charge described herein is without any admission of the herein stated Findings of Fact and Conclusions of Law and is without any acknowledgement of any non-compliance, violations or other wrong doing. For purposes of this Order and subsequent actions with respect to this Order, NF-WP admits the jurisdictional allegations in the Order.
4. NF-WP 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. NF-WP 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 NF-WP 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. NF-WP 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. NF-WP shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NF-WP 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 NF-WP 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 NF-WP. Notwithstanding the foregoing, NF-WP agrees to be bound by any compliance date which precedes the effective date of this Order.
11. 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 NF-WP. Termination of this Order, or any

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

12. By its signature below, NF-WP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

NF-WP voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_, who is (name)

\_\_\_\_\_ of National Fruit Product Company, Incorporated, on behalf of (title) the corporation.

Notary Public

My commission expires: \_\_\_\_\_.

**APPENDIX A  
SCHEDULE OF COMPLIANCE**

**NATIONAL FRUIT PRODUCT COMPANY, INCORPORATED  
WINCHESTER PLANT**

1. NF-WP shall implement the following alternative method(s) of wastewater disposal during times when spray irrigation is prohibited under the terms of the VPA Permit:
  - a. Wastewater shall be pumped and hauled from the NF-WP storage facilities to any facility permitted to accept the wastewater for treatment/disposal including but not limited to: (i) the Opequon Water Reclamation facility; and/or, (ii) the Conococheague Industrial Pretreatment facility.
  - b. Unless ceased pursuant to the provisions of Part I.C.3 of the VPA Permit and Paragraph 2 of this Appendix, production operations resulting in the generation of wastewater shall be reduced and the product mix modified as necessary to meet storage and treatment system capacity.
2. NF-WP shall ensure that all wastewater storage ponds maintain a minimum freeboard of 2 feet at all times. Should the 2-foot freeboard not be maintained and inclement weather and/or the approved irrigation schedule contained in the Operations and Maintenance Manual preclude spray irrigation, NF-WP shall immediately cease production operations resulting in the generation of wastewater and notify DEQ's, Valley Regional Office, describing the problem and the corrective measures taken. Within 5 days of the notification, NF-WP shall submit to DEQ, Valley Regional Office, a written statement of explanation and corrective measures.