



**COMMONWEALTH of VIRGINIA**  
*DEPARTMENT OF ENVIRONMENTAL QUALITY*

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

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Robert G. Burnley  
Director

Gerard Seeley, Jr.  
Piedmont Regional Director

**WASTE MANAGEMENT BOARD ENFORCEMENT ACTION  
ORDER BY CONSENT  
ISSUED TO  
Wella Manufacturing of Virginia Inc.  
EPA ID Number VAD988174827**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and Wella Manufacturing of Virginia Inc. for the purpose of addressing certain alleged violations of the Virginia Waste Management Act and the Virginia Solid Waste Management 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 Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 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.

6. "Wella" means Wella Manufacturing of Virginia Inc., a corporation certified to do business in Virginia and its affiliates, subsidiaries, and parents.
7. "Facility" means the Wella Manufacturing of Virginia Inc. manufacturing facility located at 4650 Oakley's Lane, in Henrico County, Virginia.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "VHWMR" means the Virginia Hazardous Waste Management Regulations 9 VAC 20-60-12 *et seq.*

### **SECTION C: Findings of Fact**

1. Wella owns and operates a hair-care product manufacturing plant located at 4650 Oakley's Lane in Henrico County, Virginia. This facility is a large quantity generator of hazardous waste.
2. On July 23, 2004, DEQ conducted an inspection of the Facility. Based upon observations made during this inspection, DEQ issued a Notice of Violation (NOV) No. 2004-09-PRO-601 on September 17, 2004. The NOV listed the following alleged violations:
  - Failure to determine if waste is hazardous [40 CFR 262.11].
  - Failure to label hazardous waste properly [40 CFR 262.34(a)(2)].
  - Failure to comply with satellite accumulation area requirements [40 CFR 262.34(c)(1), 40 CFR 261.33(e)].
  - Failure to notify DEQ of location of hazardous waste accumulation areas [40 CFR 262.34].
  - Failure to maintain and operate facility in a manner that minimizes the possibility of fire, explosion, or any unplanned sudden or non-sudden releases of hazardous waste [40 CFR 265.31].
  - Failure to keep manifest copies for three years [40 CFR 262.40(a)].
  - Failure to have a written contingency plan [40 CFR 265.51].
  - Failure to make appropriate arrangements with local officials [40 CFR 265.54].
  - Failure to properly train all employees with hazardous waste responsibilities [40 CFR 262.34(d)(5)(iii), 40 CFR 265.16].
  - Failure to perform weekly inspections of hazardous waste accumulation areas [40 CFR 265.174].
  - Failure to provide job descriptions for employees with hazardous waste responsibilities [40 CFR 265.16].
  - Failure to provide and/or retain copies of Land Disposal Restriction (LDR) forms with manifests [40 CFR 268.7].

3. Wella worked cooperatively with DEQ staff following the inspection and presented its comments on the NOV in writing on September 30, 2004, and during an October 15, 2004, meeting with DEQ.
4. On December 20, 2004, the Department was provided sampling data that indicated there was no environmental harm resulting from the spills noted during the July 23, 2004 inspection.

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

Accordingly, the Board, by virtue of the authority granted in Va. Code § 10.1-1455 orders Wella and Wella voluntarily agrees to pay a civil charge of \$20,580 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. When making payment, Wella shall reference this Order and shall include its Federal Identification Number. Payment shall be made by check payable to the "Treasurer of Virginia," deliverable to:

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

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

1. The Board may modify, rewrite, or amend the Order with the consent of Wella, for good cause shown by Wella, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Wella by DEQ on September 17, 2004. 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, Wella admits the jurisdictional allegations, but does not admit to the factual findings and conclusions of law contained herein.
4. Wella 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. Wella declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Waste Management Act 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 Wella 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. Wella 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. Wella shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Wella 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 the parties intend to assert will result in the impossibility of compliance, shall constitute a 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. This Order shall become effective upon execution by both the Director or his designee and Wella. Notwithstanding the foregoing, Wella agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall terminate upon payment of the civil charge required by Section D of this Order. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Wella 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, Wella voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16<sup>th</sup> day of March, 2005.

Robert G. Burnley Jr. (for)  
Robert G. Burnley, Director  
Department of Environmental Quality

Wella Manufacturing of Virginia Inc. voluntarily agrees to the issuance of this Order.

By: Matt McIlroy  
Date: 1/24/05

Commonwealth of Virginia  
City/County of Henrico

The foregoing document was signed and acknowledged before me this 24<sup>th</sup> day of January, 2005, by maria morris-Baskin, on behalf of Wella Manufacturing of Virginia Inc.  
(name)

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

