



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE

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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
HP Hood LLC
EPA ID No. VAR000528224**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and HP Hood LLC, regarding the HP Hood LLC facility for the purpose of resolving certain violations of the Virginia Waste Management Act 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 Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "CESQG" means a conditionally exempt small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-81-10.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
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. "Facility" or "Site" means the Hood facility located at 160 Hood Way in Winchester, Virginia.
7. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
8. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
9. "Hood" means IIP Hood LLC, a limited liability corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Hood is a "person" within the meaning of Va. Code § 10.1-1400.
10. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
13. "RCRA" means the Resource Conservation and Recovery Act, enacted in 1976.
14. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
15. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).
16. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
17. "Va. Code" means the Code of Virginia (1950), as amended.

18. "VAC" means the Virginia Administrative Code.
19. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.
20. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. HP Hood LLC (Hood) owns and operates a dairy products processing plant (Facility) located in Winchester, Virginia. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. Hood submitted a RCRA Subtitle C Site Identification Form, received January 30, 2014, that gave notice of regulated waste activity at the Facility as a SQG of hazardous waste. Hood was issued EPA ID No. VAR000528224 for the Facility.
3. At the Facility, Hood generates the following solid wastes which are also hazardous wastes. Each waste is listed with associated waste codes as described in 40 CFR § 261.24 and 261.31. Hazardous wastes, including those listed below, are accumulated in containers at the Facility after generation.

Ignitable Waste: D001
Corrosive Waste: D002
Spent non-halogenated solvents: F003

These wastes are primarily expired or extra flavorings, provided by Hood customers to be used in the products Hood produces. Hood asserts that these flavorings are considered an ingredient up until the time they are determined to be a waste, which is typically timed with the arrival of a hazardous waste hauler.

4. On April 29, 2015, DEQ staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

- a. Containers in the accumulation area were not properly marked with the words "Hazardous Waste" and were not dated with the time accumulation had begun.

40 CFR 262.34(a)(2) as required by 40 CFR 262.34(d)(4) and as referenced in 9 VAC 20-60-262 of the VHWMR requires that generators date each container when accumulation begins, and that the date is clearly marked and visible for inspection.

40 CFR 262.34(a)(3) as required by 40 CFR 262.34(d)(4) and as referenced in 9 VAC 20-60-262 of the VHWMR requires that generators label each container

with the Words "Hazardous Waste" while being accumulated on-site.

- b. Weekly inspections of the main accumulation area were not being performed.

40 CFR 265.174 as required by 40 CFR 262.34(d)(2) and as referenced in 9 VAC 20-60-262 and 265 of the VHWMR requires that at least weekly, the owner or operator must inspect areas where containers are stored.

- c. Hood did not notify DEQ of the exact location of the accumulation area when Hood became a Large Quantity Generator (LQG) of hazardous waste.

9 VAC 20-60-262(B)(4) of the VHWMR requires that a generator notify DEQ of each location where hazardous waste is accumulated.

- d. Facility records indicate that Hood generated more than 3,535 lb (1,603 kg) of hazardous waste in March 2014. Hood had not managed their Facility or their wastes according to the requirements of an LQG.

40 CFR 262.34(d) as referenced in 9 VAC 20-60-262 of the VHWMR states that a small quantity generator is a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status.

40 CFR 262.34(a)(4) as referenced in 9 VAC 20-60-262 of the VHWMR states that except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit provided that... the generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with § 265.16, and with all applicable requirements under CFR part 268.

- e. Hood generated LQG amounts of hazardous waste in 2014 and has not paid an annual fee or notified DEQ.

9 VAC 20-60-1283(E) of the VHWMR requires that each episodic large quantity generator of hazardous waste shall be assessed an annual fee as shown in 9 VAC 20-60-1285 G to be paid in accordance with 9VAC 20-60-1280.

9 VAC 20-60-315(D) of the VHWMR requires that anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record.

5. On June 9, 2015, DEQ issued Notice of Violation (NOV) No. 15-06-VRO-001 to Hood for the violations listed in paragraph 4, above.

6. On July 9, 2015, a meeting was held at DEQ VRO to discuss the NOV. The Facility reported that they were now labeling and dating waste containers. They also had created a weekly inspection checklist and were using that to document weekly inspections. Most of the hazardous waste typically generated by the Facility is either expired flavorings or excess materials purchased for process trials. The facility reported that they intend to remain in the SQG category and will manage their wastes better to avoid reaching LQG status.
7. Based on the results of the April 29, 2015 inspection, the Board concludes that Hood has violated 40 CFR 262.34(a)(2), 40 CFR 262.34(a)(3), 40 CFR 265.174, 9 VAC 20-60-262(B)(4), 40 CFR 262.34(d), 40 CFR 262.34(a)(4), 9 VAC 20-60-315(D) and 9 VAC 20-60-1283(E), as described in paragraph C(4), above.
8. Hood submitted documentation on July 9, 2015 that verifies that the violations described in paragraph C(4.a through 4.d), above, have been corrected.
9. In Order to complete its return to compliance, DEQ staff and representatives of Hood have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Hood, and Hood agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$21,000.00** 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, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Hood shall include its Federal Employer Identification Number, 04-1450950, with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Hood shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Hood for good cause shown by Hood, 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 and in NOV No. 15-06-VRO-001 dated June 9, 2015. 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, Hood admits the jurisdictional allegations, but neither admits nor denies the findings of fact, and conclusions of law contained herein.
4. Hood 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. Hood declares it has received fair and due process under the Administrative Process Act and the Virginia 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 modify, rewrite, amend, or enforce this Order.
6. Failure by Hood 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. Hood 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Hood shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hood shall notify the DEQ Regional 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 Regional Director verbally within 24 hours and in writing within three business days, 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 to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any 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 Hood. Nevertheless, Hood 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. The Director or his designee terminates the Order after Hood has completed all of the requirements of the Order;
 - b. Hood 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
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Hood.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hood 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 Hood 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 Hood certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and

legally bind Hood to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Hood.

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, Hood voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2015.

Amy T. Owens, Regional Director
Department of Environmental Quality

HP Hood LLC voluntarily agrees to the issuance of this Order.

Date: 10/5/15 By: Scott Blake, Senior Vice President of Operations
Scott Blake Title
HP Hood LLC

Commonwealth of Virginia
City/County of Frederick

The foregoing document was signed and acknowledged before me this 5th day of October, 2015, by H. Scott Blake who is Senior VP of Operations of HP Hood LLC, on behalf of the company.

Radniel Jayson
Notary Public

#284916
Registration No.

My commission expires: 3/31/19



**APPENDIX A
SCHEDULE OF COMPLIANCE**

1. Hazardous Waste Management Plan

Within 180 days of the effective date of this Order, Hood shall submit a draft Hazardous Waste Management Plan to DEQ for review. This Plan shall include identification of key personnel and their responsibilities in the Facility's waste management program, minimization of waste, proper handling and storage of wastes, characterizing new wastes and employee training. Hood shall submit the final Plan within 30 days of receiving comments from DEQ on the draft Plan.

2. Training

- a) Within 30 days of completion of the final Hazardous Waste Management Plan, Hood shall provide training to employees involved in the handling and management of hazardous waste on compliance with the Facility's Plan and the hazardous waste regulations.
- b) Within 10 days after the completion of training, Hood shall certify, in writing, to the Department that the training was provided to Facility personnel.

3. LQG Fee Payment

Within 30 days of the effective date of this Order, Hood shall pay the LQG annual fee of \$1,000.00 required by 9 VAC 20-60-1283 (E) for the year 2014. Payment shall be submitted to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

4. Contact

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

Karen Gail Hensley, P.E., Enforcement Team Leader
VA DEQ –Valley Regional Office
4411 Early Road
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7821 - phone
(540) 574-7878 - fax
karen.hensley@deq.virginia.gov