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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO BOWMAN ANDROS PRODUCTS, L.L.C. Registration No. 80115

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Bowman Andros Products, L.L.C., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, the Permit and 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 State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Bowman" means Bowman Andros Products, L.L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Bowman is a "person" within the meaning of Va. Code § 10.1-1300.
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, as described in Va. Code § 10.1-1185.

5. "Facility" means the Bowman Andros Products, L.L.C. apple processing facility located at 10119 Old Valley Pike, Mount Jackson, Shenandoah County, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "NSR" means the New Source Review permit which was issued under the Virginia Air Pollution Control Law and the Regulations to Bowman on June 28, 2010.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "PCE" means Partial Compliance Evaluation by DEQ staff.
10. "Permit" means the State Operating Permit, which was issued under the Virginia Air Pollution Control Law and the Regulations to Bowman on July 8, 1998, and amended April 17, 2006, July 26, 2007 and April 10, 2012.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Bowman owns and operates an apple processing facility that is subject to the Permit dated July 8, 1998, amended April 17, 2006, July 26, 2007 and April 10, 2012. The April 10, 2012 Permit superseded a New Source Review (NSR) permit dated June 28, 2010.
2. On August 14, 2014, DEQ staff conducted a Partial Compliance Evaluation (PCE) of the Facility's semi-annual fuel certification report and observed the following:
 - a. The analysis of the # 6 fuel oil received on May 22, 2014 (Bill of Lading number 52911) shows the actual sulfur content of the fuel to be 0.69 %.
3. Permit Condition 8 states that "The residual oil shall meet the specifications below:

RESIDUAL OIL which meets ASTM D396 specifications for numbers 4, 5 or 6 fuel oil:
Maximum sulfur content per shipment: 0.5%"

4. Permit Condition 11 states that "Process Emission Limits (Bigelow Co. Boiler) - Emissions from the operation of the Bigelow Co. Boiler (Ref. No. 1) boiler shall not exceed the limits specified below...

Sulfur Dioxide	15.1 lbs/hr	14.7 tons/yr
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These emissions are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits may be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Condition numbers 5 and 8."

5. Permit Condition 12 states that "Process Emission Limits (York-Shipleigh Boiler) - Emissions from the operation of the York-Shipleigh boiler (Ref. No. 2) boiler shall not exceed the limits specified below...

Sulfur Dioxide	15.6 lbs/hr	18.2 tons/yr
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These emissions are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits may be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Condition numbers 6 and 8."

6. On August 19, 2014, based on the August 14, 2014 PCE, DEQ issued Notice of Violation (NOV) No. AVRO9012 to Bowman for accepting the shipment of fuel with a sulfur content of 0.69%.
7. On August 26, 2014, Bowman responded to the NOV by telephone and email. They stated that they had spoken with their vendor and planned to revise the vendor service agreement. In addition, the facility's operating procedure for receiving fuel oil will be revised so that fuel over the permitted maximum concentration will not be accepted at the facility. Operators will receive training on this new procedure.
8. On September 16, 2014, DEQ received confirmation that the facility operating procedure had been revised and employee training was complete.
9. On September 20, 2014, DEQ received confirmation that the vendor service agreement had been revised.
10. Based on the results of August 14, 2014 PCE, the Board concludes that Bowman has violated SOP Permit conditions 8, 11 and 12 as described in paragraph C(2) through C(5) above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Bowman, and Bowman agrees to:

1. Pay a civil charge of **\$4,809.00** 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

Bowman shall include its Federal Employer Identification Number (90-0683816) 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Bowman for good cause shown by Bowman, 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. 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, Bowman admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Bowman consents to venue in the Circuit Court of the City of Richmond, Virginia for any civil action taken to enforce the terms of this Order.
5. Bowman declares it has received fair and due process under the Administrative Process Act and the Virginia 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 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 Bowman 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. Bowman 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. Bowman shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Bowman 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 Bowman 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 Bowman. Nevertheless, Bowman 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 Bowman has completed all of the requirements of the Order;

- b. Bowman 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 Bowman.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Bowman 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 Bowman 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 Bowman 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 Bowman to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Bowman.
- 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, Bowman Andros Products, L.L.C. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7th day of October, 2014



Amy T. Owens, Regional Director
Department of Environmental Quality

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Bowman Andros Products, L.L.C voluntarily agrees to the issuance of this Order.

Date: 10/06/14 By: [Signature], VP of Manufacturing
Richard Kunkel Title
Bowman Andros Products, L.L.C.

Commonwealth of Virginia
City/County of Shenandoah

The foregoing document was signed and acknowledged before me this 6th day of Sept., 2014, by Richard Kunkel who is VP of Manufacturing of Bowman Andros Products, L.L.C., on behalf of Bowman Andros Products, L.L.C..

[Signature]
Notary Public
7513280

Registration No.
My commission expires: 3/31/2016

Notary seal:

