



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 FAX (804) 527-5106

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

James Golden
Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
AVAIL VAPOR, LLC
EPA ID No. VAD003112059**

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 Avail Vapor, LLC, 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. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
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" or "Site" means the Avail Facility located at 820 Southlake Boulevard in North Chesterfield, Virginia.

6. “Generator” means a person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
7. “Hazardous Waste” means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
8. “LQG” means large quantity generator, a hazardous waste generator that generates 1,000 kilograms (2,200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
9. “Avail” means Avail Vapor, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Avail is a “person” within the meaning of Va. Code § 10.1-1400.
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
11. “Order” means this document, also known as a “Consent Order” or “Order by Consent.”
12. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
13. “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 effected 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.
14. “Solid Waste” means any discarded material meeting the definition provided in 40 CFR § 261.2.
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. “Va. Code” means the Code of Virginia (1950), as amended.
17. “VAC” means the Virginia Administrative Code.
18. “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.

19. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

SECTION C: Findings of Fact and Conclusions of Law

1. Avail owns and operates the Facility in North Chesterfield, Virginia. The Facility manufactures nicotine vaping liquid to sell at its retail stores. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. At the Facility, Avail generates various nicotine-containing wastes and waste mixtures. These wastes are regulated as solid wastes pursuant to the Virginia Waste Management Act and the Regulations. Also, pursuant to 40 CFR §261.33, waste nicotine is regulated as a P075 listed acute hazardous waste. Upon generation, the nicotine-related hazardous wastes generated at the Facility are accumulated in containers. Hazardous waste generation began at the Facility in 2015.
3. Avail failed to submit a RCRA Subtitle C Site Identification Form giving notice of regulated waste activity at the Facility when it became a hazardous waste generator. In a notification of hazardous waste activity form received by DEQ on March 29, 2017, Avail gave notice as an LQG of hazardous waste at the Facility. Avail was issued EPA ID Number VAD003112059. According to Avail, prior to March 29, 2017, it was under the mistaken understanding that it had been a conditionally exempt small quantity generator but realized the mistake and notified as a LQG accordingly.
4. On May 24, 2017, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection, information provided during the inspection, a review of Facility manifests, and follow-up information provided to the Department, Department staff made the following observations:
 - a) Since approximately 2015, Avail had been generating acute hazardous waste in quantities exceeding 1 kg (2.2 pounds) per month, and so had been operating as a LQG of hazardous waste. Prior to March 2017, Avail did not properly determine its generator status and failed to timely submit a RCRA Subtitle C Site Identification Form giving notice of LQG activity at the Facility. An LQG fee for 2015 was not paid and the Biennial Report, due March 31, 2016, for hazardous wastes generated in 2015 was not submitted.

9 VAC 20-60-262.B.8 states, large quantity generators are required to pay an annual fee. 40 CFR §265.75 states in part, "The owner or operator must prepare and submit a single copy of a biennial report to the Regional Administrator by March 1 of each even numbered year . . ."

- b) Avail stored on-site without a permit or interim status acute hazardous waste that was generated in quantities exceeding 1 kg (2.2 pounds) in a calendar month for greater than 90 days.

40 CFR §262.34(b) states in part “A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §§261.31 or 261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264, 265, and 267 and the permit requirements of 40 CFR part 270 unless he has been granted an extension to the 90-day period.”

- c) At the time of the inspection, greater than one quart of acutely hazardous waste was accumulated in the laboratory satellite accumulation area, and the generator did not date or move the excess within three days of the date of excess accumulation. Avail did not notify the Department of the exact location of all <90-day accumulation areas at the Facility.

40 CFR §262.34(c)(1) states in part that, “. . . a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in §261.31 or §261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status.”

40 CFR §262.34(c)(2) states “A generator who accumulates either hazardous waste or acutely hazardous waste listed in §261.31 or §261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter. During the three day period the generator must continue to comply with paragraphs (c)(1)(i) and (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.”

9 VAC 20-60-262 requires LQGs when establishing accumulation areas to notify the Department and document in the operating record of the intent to accumulate hazardous waste in accordance with 40 CFR 262.34 prior to or immediately upon establishment of each 90-day accumulation areas. The notification must specify the exact location of the 90-day accumulations area.

- d) As of approximately April 26, 2016, a new waste services company began to manage the disposal of hazardous waste generated at the Facility. In connection with this change, the waste stream generated by testing nicotine products in the laboratory changed identification from D001, P075 to D001, F003, even though unused nicotine remained a part of the laboratory waste stream. As a result, Avail

had failed to properly identify its hazardous waste using the proper waste codes. Upon receipt of the NOV, Avail corrected the identification of the laboratory waste stream.

40 CFR §262.11 states that “A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method: (a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4. (b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261. NOTE: Even if the waste is listed, the generator still has an opportunity under 40 CFR 260.22 to demonstrate to the Administrator that the waste from his particular facility or operation is not a hazardous waste.(c) For purposes of compliance with 40 CFR part 268, or if the waste is not listed in subpart D of 40 CFR part 261, the generator must then determine whether the waste is identified in subpart C of 40 CFR part 261 by either: (1) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.”

40 CFR §261.20 states “ (a) A solid waste, as defined in §261.2, which is not excluded from regulation as a hazardous waste under §261.4(b), is a hazardous waste if it exhibits any of the characteristics identified in this subpart. (b) A hazardous waste which is identified by a characteristic in this subpart is assigned every EPA Hazardous Waste Number that is applicable as set forth in this subpart. This number must be used in complying with the notification requirements of section 3010 of the Act and all applicable recordkeeping and reporting requirements under parts 262 through 265, 268, and 270 of this chapter.

- e) Personal protective equipment (PPE) including disposable gloves are worn in the “clean room” to handle nicotine-containing bottles prior to the bottles being sealed. Disposable gloves are also worn to clean the inside of the mixing container that previously held nicotine product. Gloves used for protection in the clean room can also come into contact with nicotine product if used for product handling. At the time of the inspection, these gloves were being discarded with Facility trash. Avail corrected the violation by managing the gloves and other protective equipment potentially contaminated with nicotine product as a hazardous waste.

40 CFR §262.11 states “A person who generates a solid waste, as defined in 40 CFR 261.2, must determine if that waste is a hazardous waste using the following method: (a) He should first determine if the waste is excluded from regulation under 40 CFR 261.4. (b) He must then determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261. NOTE: Even if the waste is listed, the generator still has an opportunity under 40 CFR 260.22 to demonstrate to the Administrator that the waste from his particular facility or operation is not a hazardous waste.(c) For purposes of compliance with 40 CFR part 268, or if the

waste is not listed in subpart D of 40 CFR part 261, the generator must then determine whether the waste is identified in subpart C of 40 CFR part 261 by either: (1) Testing the waste according to the methods set forth in subpart C of 40 CFR part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or (2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.”

- f) At the time of inspection, hazardous Waste containers in the <90 -day accumulation room were not dated with the first date of accumulation and were not labeled with the words “Hazardous Waste.”

40 CFR §262.34(a) states in part “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 or without having interim status, provided that: . . . (2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; (3) While begin accumulated on-site, each container and tank is labeled or marked clearly with the words, “Hazardous Waste.”

- g) At the time of the inspection, two hazardous waste boxes in the <90 -day accumulation area were open. Small bottles of returned and expired nicotine vape product were contained in the boxes and being managed as hazardous waste. The bottles were placed into plastic bags, which were then placed inside the fiberboard boxes. The combined plastic bag and fiberboard box form the method of hazardous waste containment for the bottles.

40 CFR §265.173(a) states, “A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.”

- h) Satellite accumulation containers in the laboratory were not labeled with the words “Hazardous Waste” or with other words that describe the contents.

40 CFR §262.34(c)(1) states a in part, “[a] generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in §261.31 or §261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) of this section provided he: . . . (ii) Marks his containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.

- i) There was inadequate aisle space in the <90 day accumulation room. Pallets of boxes of hazardous waste were lined up next to each other with no space in between, and stacked on top of each other. Boxes in the interior of the area could not be properly inspected.

40 CFR §265.35 states “The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.”

- j) The Facility did not have a written training program meeting the requirements of 40 CFR 265.16(d)(3). Facility personnel were not trained within 6 months of being hired. An annual refresher of the training was not being offered. According to the Facility representative, any training that was provided to Facility personnel was not directed by a person trained in hazardous waste management procedures, and did not include instruction teaching Facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed. On July 26, 2017, Avail staff received RCRA training from a third party environmental contractor.

40 CFR §265.16 states in part, “Personnel training. (a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their [hazardous waste] duties in a way that ensures the facility's compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section. 2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed. (3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable: (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment; (ii) Key parameters for automatic waste feed cut-off systems; (iii) Communications or alarm systems; (iv) Response to fires or explosions; (v) Response to ground-water contamination incidents; and (vi) Shutdown of operations. (b) Facility personnel must successfully complete the program required in paragraph (a) of this section within six months after the effective date of these regulations or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this section. (c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section. (d) The owner or operator must maintain the following documents and records at the facility: . . . 3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section;(4) Records that document that the training

or job experience required under paragraphs (a), (b), and (c) of this section has been given to, and completed by, facility personnel. (e) Training records on current personnel must be kept until closure of the facility. Training records on former employees must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.”

- k) Job titles and job descriptions for employees whose positions at the Facility are related to hazardous waste management were not maintained at the Facility.

40 CFR §265.16(d) states in part, “The owner or operator must maintain the following documents and records at the facility: (1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job; (2) A written job description for each position listed under paragraph (d)(1) of this Section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.”

- l) The Facility did not have a contingency plan meeting the requirements of 40 CFR 265.51. The existing Facility emergency plan addressed only fire, flood and tornado. The Facility did not have an appointed hazardous waste emergency coordinator who meets the requirements of VHWMR 265.55. A copy of the contingency plan was not maintained on site, and had not been submitted to state and local authorities. The Facility had not made arrangements to familiarize local authorities with the layout of the Facility and associated hazards, and the Facility did not have documentation to show that these authorities have declined to enter into such an agreement.

40 CFR §265.51 states, “(a) Each owner or operator must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. (b) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.”

40 CFR §265.55 states “At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's [hazardous waste] contingency plan, all operations and activities at the facility, the location and

characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.”

40 CFR §265.53 states, “A copy of the contingency plan and all revisions to the plan must be: (a) Maintained at the facility; and(b) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.”

40 CFR §265.37 states “Arrangements with local authorities.(a) The owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:(1) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;(2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and (4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility. (b) Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.”

- m) The Facility did not have a written inspection plan meeting LQG requirements. According to Facility representatives, inspections of the <90 day hazardous waste accumulation areas were being conducted daily; however, the inspections were part of the overall Facility walk-through and not specifically designed to inspect aspects of the hazardous waste accumulation area. No log of weekly inspections meeting LQG requirements were maintained for the < 90 day area.

40 CFR §265.15 states “(a) The owner or operator must inspect his facility for malfunctions and deterioration, operator errors, and discharges which may be causing—or may lead to: (1) Release of hazardous waste constituents to the environment or (2) a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment . . . (b)(1) The owner or operator must develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards. (2) He must keep this schedule at the facility . . . (c) The owner or operator must

remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately. (d) The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.”

40 CFR §265.174 states that “At least weekly, the owner or operator must inspect areas where containers are stored... The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.”

- n) At the time of the inspection, Manifest #000222353MWI dated February 1, 2016 was not available for review. Upon subsequent presentation of the manifest by Avail and review of the manifest DEQ staff, it was observed that the manifest was signed by Facility staff, but did not have a signature from the receiving facility. An exception report was not filed for the manifest. According to Avail, as of the time of the shipment under Manifest #000222353MWI and until March 2017, it was under the mistaken understanding that it was a conditionally exempt small quantity generator, and so would not have been required to file an exception report.

40 CFR §262.23 states, “Use of the manifest.(a) The generator must: (1) Sign the manifest certification by hand; and (2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and (3) Retain one copy, in accordance with §262.40(a).”

40 CFR §262.40(a) states, “(a) A generator must keep a copy of each manifest signed in accordance with §262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.”

40 CFR §262.42 states, “(a)(1) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §261.31 or §261.33(e) in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste. (2) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in §261.31 or §261.33(e) in a calendar

month, must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter.”

- o) By not including all applicable waste codes on laboratory wastes generated since September 2015, the Facility did not provide the correct Land Disposal Restriction (“LDR”) notification information to the Temporary Storage and Disposal (“TSD”) facility. Avail corrected the identification error in July 2017 and reported that no change in the management of the subject laboratory wastes was required since they were already being managed and disposed of as hazardous waste.

40 CFR §268.7 requires generators of hazardous waste to determine if the waste has to be treated before it can be land disposed and outlines tracking and recordkeeping requirements.

5. On July 5, 2017, based on the inspection and subsequent correspondence with Avail, the Department issued Notice of Violation No. 2017-07-PRO-601 to the Avail for the violations described above.
6. On August 28, 2017, Avail submitted to the Department a response to the NOV containing training documentation, a completed hazardous waste manifest #000222353MWI, waste profiles, a completed 90-day hazardous waste accumulation area inspection checklist, an exception report for un-received/unsigned manifests, monthly inspection logs of the fire extinguishers, an inspection report on the fire sprinkler system, and photographs documenting compliance in the 90-day and lab satellite accumulation areas with container labelling and aisle space.
7. On September 22, 2017, Avail submitted to the Department a second response to the NOV. This response contained a hazardous waste accumulation and shipment tracking log, a hazardous waste contingency plan, a written training plan, a facility map showing 90-day accumulation areas, photographs documenting a compliant central accumulation and lab hood satellite accumulation areas, a log of hazardous waste manifests documenting waste shipped off, a land disposal restriction notification for manifest #00707342, and a written inspection plan.
8. On September 26, 2017, Avail submitted to the Department a third response to the NOV. The response contained a copy of the 2015 biennial report, a copy of the final contingency plan, and copies of certified mail receipts and e-mails documenting that Avail sent a copy of the contingency plan to local response organizations.
9. Avail has submitted written and photographic documentation that verifies, and DEQ staff concurs, that Avail has corrected the violations described in Section C above. Sufficient

corrective action has been taken to address the violations identified in the NOV issued on July 5, 2017.

10. Based on the information provided above, the Board concludes that Avail has violated 9 VAC 20-60-262.B.8, 40 CFR §262.34(b), 40 CFR §262.34(c)(1)-(2), 9 VAC 20-60-262, 40 CFR §262.11, 40 CFR §262.34(a), 40 CFR §265.173(a), 40 CFR §265.35, 40 CFR §265.16, 40 CFR §265.51, 40 CFR §265.55, 40 CFR §265.53, 40 CFR §265.37, 40 CFR §265.15, 40 CFR §265.174, 40 CFR §262.23, 40 CFR §262.40(a), 40 CFR §262.42, 40 CFR §268.7, as described above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Avail, and Avail agrees to pay a civil charge of **\$70,000** within 30 days of the effective date of the Order in settlement of the violations cited in this Order

The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
December 31, 2019	\$ 10,000 or balance
January 31, 2020	\$ 10,000 or balance
February 29, 2020	\$ 10,000 or balance
March 31, 2020	\$ 10,000 or balance
April 30, 2020	\$ 10,000 or balance
May 31, 2020	\$ 10,000 or balance
June 30, 2020	\$ 10,000

If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under 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

Avail shall include its Federal Employer Identification Number (FEIN) 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, Avail 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 Avail for good cause shown by Avail, 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, Avail admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Avail 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. Avail 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 Avail 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. Avail 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. Avail shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Avail 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 Avail 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 Avail. Nevertheless, Avail 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 Avail has completed all of the requirements of the Order;
 - b. Avail 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 Avail.

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

And it is so ORDERED this 2nd day of December, 2019.



(FOR)

James J. Golden
Department of Environmental Quality
Piedmont Regional Office, Director

------(Remainder of Page Intentionally Blank)-----

Avail Vapor, LLC voluntarily agrees to the issuance of this Order.

Date: 9/30/2019 By: [Signature], COO
Avail Signing Authority Title

Commonwealth of Virginia

City/County of N. Chesterfield

The foregoing document was signed and acknowledged before me this 30 day of September, 2019, by Russ Rogers who is COO of Avail Vapor, LLC, on behalf of the company.

[Signature]
Notary Public

7827570
Registration No.

My commission expires: January 31, 2023

Notary seal:

