



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 HP HOOD LLC Registration No. 81359

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 HP Hood LLC for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and 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. "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" means the HP Hood LLC facility, located at 160 Hood Way, Winchester, in Frederick County, Virginia.
6. "Hood" means HP Hood LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Hood is a "person" within the meaning of Va. Code § 10.1-1300.
7. "Major stationary source" means any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: (a) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input within in the meaning of 9 VAC 5 chapter 80.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
9. "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.
10. "PCE" means a partial compliance evaluation by DEQ staff.
11. "Permit" means a New Source Review (NSR) permit to operate and construct an Extended Shelf Life dairy production facility which was issued under the Virginia Air Pollution Control Law and the Regulations to Hood on June 15, 2015.
12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
16. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (*see* 40 CFR 60, Appendix A).
17. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Hood owns and operates the Facility in Frederick County, Virginia. The Facility produces Extended Shelf Life (ESL) dairy products. The Facility is subject to a Stationary Source Permit to Construct and Operate (Permit) issued June 15, 2015. The

Facility is classified as a major source and is subject to Title V regulations. Prior to the construction of the cogeneration project, the Facility was a minor source.

2. On May 20, 2014, Hood submitted a Form 7 permit application to DEQ. The permit application was amended four additional times, December 29, 2014, March 26, 2015, May 21, 2015, and May 28, 2015, to include additional information provided by the Facility, as well as an amendment to include fuel cap for the heat recovery steam generators and turbine as requested by the Facility. Hood asserted that the Form 7 permit application was for two projects.
3. On April 21, 2015, DEQ staff performed a pre-permit site inspection at the Facility. DEQ staff observed that a combustion turbine (CT1), a digester flare (BB2), and two gas fired heat recovery steam generators (HRSG1 & HRSG2) had been constructed prior to the Permit issuance. Additionally, DEQ staff observed that one of the two new heat recovery steam generators was operating at the time of the inspection.
4. 9 VAC 5-80-1120(A) states that: "No owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit."
5. 9 VAC 5-80-1210(E) states that: "Any owner who constructs or operates a source subject to this section not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a source subject to this section who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."
6. On April 30, 2015 based on the April 21, 2015 inspection, the Department issued Notice of Violation No. AVRO000148-001 to Hood for the violations described in paragraphs C(2) through C(5), above.
7. On May 1, 2015, DEQ received a response to the NOV from Hood.
8. On May 7, 2015, DEQ staff met with a Hood representative and Hood's consultant to discuss the NOV. Hood representatives did not deny starting construction and operation prior to obtaining their Permit, including ordering equipment prior to Permit issuance.
9. On May 12, 2015, Hood submitted a stack test protocol, as developed by Hood consultants, to DEQ for review and approval. The protocol stated that the stack test would be conducted when the Facility was operating at greater than 50% load. On June 3, 2015, DEQ approved the submitted stack test protocol.
10. On May 20, 2015, Hood submitted the Initial Notification per Permit Condition 29, which included the following dates for the construction and operation of the unpermitted equipment:

- a. January 2, 2014: HRSG1 delivered to Facility;
 - b. January 31, 2014: HRSG1 started up;
 - c. February 26, 2014: HRSG2 installed;
 - d. March 29, 2014: BB2 began operation;
 - e. June 13, 2014: HRSG2 started operation;
 - f. July 28, 2014: CT1 delivered to the Facility;
 - g. December 18, 2014: CT1 first test fired.
11. On May 28, 2015, DEQ deemed Hood's air permit application complete. On June 15, 2015, DEQ issued the Permit to Hood to construct and operate.
 12. On June 3, 2015, DEQ staff observed a VEE and stack test for CT1, and a Method 22 for BB2 at the Facility. On June 16, 2015, Hood performed additional stack testing for nitrogen oxides (NO_x) emissions from HRSG1 and HRSG2.
 13. On June 6, 2015, DEQ conducted a PCE on the notification document in paragraph C(9) and observed that the dates of construction and operation were prior to Permit issuance.
 14. On July 30, 2015, DEQ received the stack test results from both the June 3, 2015 and June 16, 2015 tests. The report indicated that the units were in compliance with applicable limits. DEQ staff completed a PCE on the results and observed that the stack tests for HRSG1 and HRSG2 were performed at 40 and 48 percent capacity respectively. DEQ staff observed that the amount of gas burned per hour for BB2 exceeded the reported BB2 capacity. Hood asserted that the stack test was performed at 55% load based on steam flow, in accordance with the DEQ-approved protocol.
 15. Condition 21 of the Permit states: "An initial annual performance test shall be conducted for NO_x from each of the heat recovery steam generators (Ref. HRSG1 and HRSG2) in accordance with the requirements in 40 CFR 60, Subpart KKKK to determine compliance with the emission limits contained in Condition 12...."
 16. 40 CFR 60, Subpart KKKK requires that: "The performance test must be done at any load condition within plus or minus 25 percent of 100 percent of peak load. You may perform testing at the highest achievable load point, if at least 75 percent of peak load cannot be achieved in practice."
 17. On September 4, 2015, Hood submitted a modified Form 7 application for BB2, reporting BB2 had a capacity of 7.2 MM Btu/hr.
 18. On September 8, 2015, DEQ staff performed a record review of the Facility and noted that the Title V, Form 805, application due June 13, 2015 had not been submitted to DEQ. The operation date of Title V triggering equipment, HRSG2, was reported as June 13, 2014.

19. 9 VAC 5-80-80(C)(1-2) states that: "The owner of a stationary source applying for a permit under this article for the first time shall submit an application within 12 months after the source becomes subject to this article, except that stationary sources not deferred under 9VAC5-80-50 D shall submit their applications on a schedule to be determined by the department but no later than 12 months following the effective date of approval of this article by the administrator, to include approval for federal delegation purposes. The owner of a source subject to the requirements of the new source review program shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this article would prohibit such construction or change in operation, the owner shall obtain a permit revision before commencing operation."
20. On September 9, 2015, based on the evaluation and follow-up information, the Department issued NOV No. AVRO000148-002 to Hood for the violations described in paragraphs C(13) through C(19), above.
21. Based on the results of the April 21, 2015 evaluation, the May 7, 2015 meeting, and the documentation submitted on May 20, 2015, July 30, 2015, and September 4, 2015, the Board concludes that Hood has violated Permit Condition 21, 9 VAC5-80-80(C)(2), 9 VAC 5-80-1120(A), and 9 VAC 5-80-1210(E) as described in paragraphs C(2) through C(20) above.
22. In order for Hood 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 §§ 10.1-1309 and -1316, 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 \$105,199.20 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 (FEIN) 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. AVRO000148-001 dated April 30, 2015 and NOV No. AVRO000148-002 dated September 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 to 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. 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 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 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.

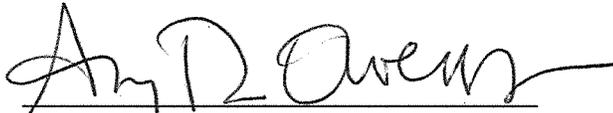
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Hood from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

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 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 27th day of October, 2015.



Amy T. Owens, VRO Regional Director
Department of Environmental Quality

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

Date: 10/27/15 By: [Signature] Senior Vice President of Operations
H. Scott Blake Title

HP Hood LLC

Commonwealth of ~~Virginia~~ Massachusetts
City/County of Essex

The foregoing document was signed and acknowledged before me this 27th day of
October, 2015, by H. Scott Blake who is
Sr. V.P. of Operations of HP Hood LLC, on behalf of the company.

[Signature]
Notary Public

Registration No.

My commission expires: March 26, 2021

Notary seal:



Maria Williams
Notary Public
Commonwealth of Massachusetts
My Comm. expires March 26, 2021

APPENDIX A SCHEDULE OF COMPLIANCE

1. Title V Permit Required to Operate

- a. Within 45 days of the execution of this Order, Hood shall submit to DEQ an Air Permit Application Form 805 identifying each emission unit subject to Article 1, 9 VAC 5 Chapter 80, and the application fee for a Title V permit. The Form 805 shall contain all information required pursuant to 9 VAC 5-80-90.

2. Stack Test

- a. Within 30 days of the execution of this Order, Hood shall submit a test protocol in accordance with Permit Condition 21. Within 60 days of DEQ approval of the protocol, Hood shall re-perform the initial annual performance test for NO_x from each of the heat recovery steam generators (Ref. HRSG1 and HRSG2) while firing natural gas in accordance with the requirements in 40 CFR 60, Subpart KKKK to determine compliance with the emission limits contained in Permit Condition 21.
- b. Within 45 days of the stack test, a copy of the test results shall be submitted to the DEQ and an additional copy shall be submitted to the EPA at the address listed in Permit Condition 28.

3. Certification of Documents and Reports

In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, Hood shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

4. **DEQ Contact**

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

Tiffany R. Severs
Enforcement Specialist
VA DEQ –VRO Regional Office
4411 Early Road, Harrisonburg, VA 22801
540-574-7859
540-574-7878
tiffany.severs@deq.virginia.gov