



# *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*  
VALLEY REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

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Regional Director

## **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, 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.
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 construct and operate 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. "Title V" means the section of the Clean Air Act that requires major sources of air pollutants, and certain other sources, to obtain and operate in compliance with an operating permit.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
17. "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, Facility) owns and operates a facility that produces Extended Shelf Life (ESL) dairy products. The Facility is located in Frederick County at 160 Hood Way. The Facility is subject to a Stationary Source Permit to Construct and Operate issued June 15, 2015. The Facility is classified as a major source and is subject to Title V regulations.

2. On October 27, 2015, Hood and DEQ entered into a consent order requiring Hood to submit to DEQ an Air Permit Application Form 805 identifying each emission unit subject to air permitting requirements.
3. In November 2015, Hood retained an air consultant to perform a comprehensive inspection of the facility to identify all air emission sources. During this inspection, all air emission sources were identified and evaluated, including a dairy pasteurization/processing area (PR1).
4. On December 10, 2015, Hood submitted an application for a Title V Federal Operating Permit, which included information regarding PR1.
5. Following submission of the application, Hood and its consultant had telephone and email communications with DEQ regarding PR1, including methodology for calculating emissions for PR1 and appropriate permitting requirements for PR1.
6. On February 4, 2016, DEQ wrote a letter to Hood requesting additional information regarding PR1.
7. Based on additional discussions and correspondence with DEQ, Hood submitted a minor NSR permit application for PR1, that was received by DEQ on May 20, 2016.
8. Additional discussions between Hood, its consultant and DEQ took place in June and July 2016 regarding emission calculations for PR1.
9. On August 22, 2016, DEQ staff conducted a pre-permit inspection at the Facility. Staff observed that PR1 was constructed and in operation at the time of the inspection, as had been previously reported by Hood and as reflected in its Title V permit application and its May minor NSR permit application.
10. 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."
11. 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."
12. On March 28, 2017, DEQ issued Hood a Stationary Source Permit to Construct and Operate a dairy pasteurization/processing area (PR1) at the Facility.

13. On March 29, 2017, based on the August 22, 2016 inspection, the Department issued Notice of Violation No. AVRO000400-002 to Hood for the violations described in paragraphs C(3) through C(5), above.
14. On April 13, 2017, DEQ staff met with Facility staff to discuss the NOV. Hood's consultant, Trinity Consultants, provided the background on the installation, operation and permitting of PR1.
15. Based on the results of the August 22, 2016 site visit and the April 13, 2017 meeting, the Board concludes that Hood has violated 9 VAC 5-80-1120(A), and 9 VAC 5-80-1210(E) as described in paragraphs C(3) through C(5), above.
16. Hood has provided actual emission information for PR1 to DEQ since the April 13, 2017 meeting. That emission information documents that the actual emissions from PR1 are orders of magnitude below the estimated potential emissions, as well as the triggers for minor NSR permitting. Nonetheless, the permitting is based on potential emissions, and minor NSR permit coverage has been applied for and obtained by Hood.

#### **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:

Pay a civil charge of \$33,124.00 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 (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. AVRO000400-002 dated March 29, 2017. 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 11<sup>th</sup> day of July, 2017.



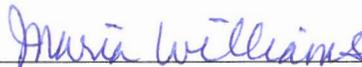
Amy T. Owens, VRO Regional Director  
Department of Environmental Quality

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

Date: 7/7/17 By: H. Scott Blake, 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 7<sup>th</sup> day of July, 2017, by H. Scott Blake who is Sr. Vice President of Operations of HP Hood LLC, on behalf of the company.



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