



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO INGENCO Wholesale Power, LLC - Registration Number 52148

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 INGENCO Wholesale Power, 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means Ingenco - King & Queen, located at 4443 Iris Road which is a high landfill gas fraction dual-fuel electrical power generating facility, also known as a landfill gas-to-electricity generation plant, in King & Queen, Virginia.
5. "IINGENCO" means INGENCO Wholesale Power, LLC a wholly owned subsidiary of Castleton Commodities International LLC, and a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. INGENCO is a "person" within the meaning of Va. Code § 10.1-1300.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "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.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means a Title V Permit, Permit No. PRO-52148, Registration No. 52148, issued to INGENCO to operate the landfill gas and natural gas-fired electrical power generation facility in accordance with the Virginia State Air Pollution Control Board Regulations. The Permit was issued under the Virginia Air Pollution Control Law and the Regulations to the Facility on January 31, 2013.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 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. INGENCO currently owns and operates the Facility in King and Queen County. The Facility is a high landfill gas fraction dual-fuel electrical power generating facility utilizing the landfill gas from the adjacent King and Queen municipal solid waste landfill.

2. The Facility is the subject of the Permit, which allows the operation of the Facility and requires the submittal of certain compliance reports throughout each calendar year.
3. On April 15, 2015, pursuant to 9VAC5-80-340(c), the Facility was required to submit its annual Emissions Statement/Annual Update. This report is used to calculate annual emissions fees. DEQ staff have no record of receiving this Emissions Statement/Annual Update.
4. On May 27, 2015, Castleton Commodities International LLC, purchased INGENCO.
5. On August 1, 2105 DEQ sent an invoice for the annual fee which was calculated based on the 2013 Emissions Statement/ Annual Update. This invoice was paid in full by INGENCO on or about August 21, 2015. DEQ staff notified INGENCO during the month of August that the 2014 Emissions Statement/Annual Update had not been received.
6. Subsequently, on September 4, 2015, INGENCO submitted the 2014 Emissions Statement/ Annual Update.
7. On September 10, 2015, DEQ staff conducted a PCE of the Emissions Statement/Annual Update and confirmed that the report was submitted 142 days late.
8. Condition VII. M. of the Permit states that, "The owner of any source for which a permit under 9 VAC 5-80-50 through 9 VAC 5-80-300 was issued shall pay permit fees consistent with the requirements of 9 VAC 5-80-310 through 9 VAC 5-80-350. The actual emissions covered by the permit program fees for the preceding year shall be calculated by the owner and submitted to the Department by April 15 of each year. The calculations and final amount of emissions are subject to verification and final determination by the Department (9 VAC 5-80-110 H and 9 VAC 5-80-340 C)."
9. 9VAC5-80-340(c) states that "The actual emissions covered by the permit program emissions fees for the preceding year shall be calculated by the owner and submitted to the department by April 15 of each year."
10. On September 17, 2015, the Department issued Notice of Violation No. APRO000250-001, for the violation as described above.
11. On September 21, 2015, Department received an e-mail from Castleton Commodities International LLC, in response to the NOV that was issued to Castleton Commodities International LLC for the Facility. In the email, the Castleton Commodities International LLC representative stated that Castleton Commodities International LLC purchased INGENCO from Ingenco Holdings, LLC on May 27, 2015. The representative further stated that upon reviewing their records, they could not find tracking information or explain why this filling was not made by the due date, but noted that all other Virginia INGENCO plants' Annual 2014 Updates and Emissions Statements were submitted and received on time. Castleton Commodities International LLC further noted that the person

responsible for submitting the 2014 Annual Update and Emission Statement was no longer with the company. Castleton Commodities International LLC also indicated that they have added annual regulatory requirements, including this one, to a web based regulatory tracking system which provides task reminders. Castleton Commodities International LLC also stated that in the future INEGNCO will submit documents using a delivery system with tracking services such as FedEx or UPS.

12. On December 16, 2015, DEQ issued an invoice to INGENCO in the amount of \$5702.11 for additional fees due for 2014 emissions calculated using the Emissions Statement/Annual Update that was submitted on September 4, 2015. On December 28, 2015 this invoice was paid in full.
13. On December 31, 2015, Department staff spoke with a representative of INGENCO to discuss the violations, including INGENCO's written response.
14. Based on the late filing of the 2014 Emissions Statement/Annual Update, the Board concludes that INGENCO has violated Permit condition M and 9VAC5-80-340(c), as described in the paragraphs above.
15. INGENCO has submitted the 2014 Emissions Statement/Annual Update and payment in full for the annual fee; therefore the violation described in the paragraphs above has been resolved.

SECTION D: Agreement and Order

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

1. Pay a civil charge of **\$903.00** 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", delivered to:

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

INGENCO 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, Richmond shall be liable for attorney's 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 INGENCO, for good cause shown by INGENCO, 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, INGENCO admits the jurisdictional allegations, the findings of fact, and conclusions of law in this Order.
4. INGENCO 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. INGENCO declares it has received fair and due process under the Administrative Process Act and 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 INGENCO 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. INGENCO 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. INGENCO shall demonstrate that such circumstances were beyond its control and

not due to a lack of good faith or diligence on its part. INGENCO 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 INGENCO. Nevertheless, INGENCO 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 INGENCO has completed all of the requirements of the Order; or
 - b. INGENCO 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 INGENCO.

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

And it is so ORDERED this 26th day of February, 2016.



Michael P. Murphy, Regional Director
Department of Environmental Quality

INGENCO Wholesale Power, LLC voluntarily agrees to the issuance of this Order.

Date: 2-24-16 By: [Signature], SVP/GM
(Person) (Title)
INGENCO Wholesale Power, LLC

State of Virginia
City/County of Henrico

The foregoing document was signed and acknowledged before me this 24th day of February, 2016, by Brad Burmaster, who is
(name)
SVP/GM of INGENCO Wholesale Power, LLC on behalf of the
company.

[Signature]

Notary Public

276152
Registration No.

My commission expires: 2/28/2019

Notary seal

