



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 Nestle Purina Petcare Company Registration No. 40896

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 Nestle Purina Petcare Company regarding its King William Site 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 Nestle Purina Petcare Company's King William Plant, a pet absorbent manufacturing plant located at 931 Dunluce Road, King William County, Virginia. The Facility primarily produces pet absorbent products (cat litter) for retail distribution.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "NPPC" means Nestle Purina Petcare Company, a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. NPPC is a "person" within the meaning of Va. Code § 10.1-1300.
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 a partial compliance evaluation by DEQ staff.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Permit" means the New Source Review permit issued on June 28, 2017 for construction and operation at the Facility.
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.

SECTION C: Findings of Fact and Conclusions of Law

1. NPPC owns and operates the Facility, which produces pet absorbent products for retail distribution.
2. The Facility is the subject of the Permit, which allows the operation of the Facility.
3. On October 16, 2018, DEQ staff conducted an on-site FCE of the Facility. Paragraphs C.4. through C.6 contain staff observations and the applicable legal requirements for all those violations noted in the report.

4. Records for the 140 MMBtu/hr Rotary Dryer (Ref. #210) provided during the FCE indicate the clay throughput, in tons per year (tpy), for the following 12-month periods:

<u>12-month ending</u>	<u>Tons per year</u>
October 2017	923,531 tpy
November 2017	984,739 tpy
December 2017	1,036,686 tpy
January 2018	1,031,326 tpy
February 2018	1,033,585 tpy

March 2018	1,017,342 tpy
April 2018	1,011,618 tpy
May 2018	1,001,468 tpy
June 2018	995,026 tpy
July 2018	983,103 tpy
August 2018	903,558 tpy

5. Condition 8 of the Permit states, “The Rotary Dryer (Ref. No. 210) shall process no more than 720,000 tons/yr of clay (a nonmetallic mineral), calculated monthly as the sum of each consecutive 12-month period. (9VAC5-80-1180)”
6. Condition 30 of the Permit states, “Emissions from the operation of the Rotary Dryer (Ref. No. 210) shall not exceed the limits specified below:

Particulate Matter:	0.022 gr/dscf; 7.6 lbs/hr; 16.0 tons/yr
PM10:	7.6 lbs/hr; 16.0 tons/yr
Sulfur Dioxide:	6.4 lbs/hr; 28.0 tons/yr
Nitrogen Oxides (as NO ₂):	21.6 lbs/hr; 94.8 tons/yr
Carbon Monoxide:	11.8 lbs/hr; 51.5 tons/yr
Volatile Organic Compounds:	0.2 lbs/hr; 1.0 ton/yr

”

These emissions are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits shall be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Conditions 8, 14, 16, 17, 26, 27, and 29. (9VAC5-80-1180, 9VAC5-50-260, 9VAC5-50-410)”

7. On January 23, 2019, DEQ issued Notice of Violation No. APRO001069-001 to NPPC for the violations noted in paragraphs C.4. through C.6.
8. On February 4, 2019, DEQ staff discussed the violations with NPPC representatives via conference call. NPPC agreed to submit additional documentation regarding the alleged violations noted above and any corrective actions they have implemented or planned to implement.
9. On April 2, 2019, NPPC submitted compliance information and confirmed that they had submitted a permit application on August 16, 2018 to increase the clay throughput for the Rotary Dryer (Ref #210). The permit application was deemed complete on September 14, 2018, and DEQ issued a new permit on March 11, 2019. This same submittal included throughput documentation that confirms the violation noted in paragraph C.4.
10. On August 16, 2019, DEQ staff completed its review of the stack test report performed for the Rotary Dryer on May 10, 2019. The report was received on July 18, 2010, 68 days after stack test completion.

11. Condition 53 of the Permit states, “Stack Test - Initial performance One copy of the test results shall be submitted to the Piedmont Regional Office within 30 days after test completion and shall conform to the test report format enclosed with this permit. (9 VAC 5-50-30, 9 VAC 5-80-1200, and 9 VAC 5-50-410)”
12. Condition 54 of the Permit states, “Visible Emissions Evaluation - One copy of the test results shall be submitted to the Piedmont Regional Office within 30 days after test completion and shall conform to the test report format enclosed with this permit. (9 VAC 5-50-30, 9 VAC 5-80-1200, and 9 VAC 5-50-410)”
13. Va. Code §10.1-1322 states that failure to meet conditions of a permit is considered a violation of the Virginia Air Pollution Control Law.
14. 9VAC5-80-260 and 9VAC5-80-1210(I) require compliance with all terms and conditions of Title V operating permits and permits for stationary sources respectively.
15. Based on the results of the above mentioned compliance evaluations, meetings and submitted documentation, the Board concludes that NPPC has violated conditions 8, 30, 53 and 54 of the Permit and Va. Code § 10.1-1322 and 9VAC5-80-260 and -1210 of the Virginia Air Pollution Control Law and Regulations as described 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 NPPC, and NPPC agrees, to pay a civil charge of \$15,861.00 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

NPPC 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, NPPC 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 NPPC for good cause shown by NPPC, 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, NPPC 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. NPPC 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. NPPC 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 NPPC 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. NPPC does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.
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. NPPC 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. NPPC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NPPC 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 NPPC. Nevertheless, NPPC 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 NPPC has completed all of the requirements of the Order;
 - b. NPPC 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 NPPC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NPPC 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 NPPC 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 NPPC certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind NPPC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NPPC.

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, NPPC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 6th day of July, 2020.

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

Nestle Purina Petcare Company voluntarily agrees to the issuance of this Order.

Date: June 24, 2020 By: [Signature], FACTORY MGR
(Person) (Title)
Nestle Purina Petcare Company

Commonwealth of Virginia
City/County of Hanover

The foregoing document was signed and acknowledged before me this 24 day of June, 2020, by Brian Blanck, who is Factory Manager of Nestle Purina Petcare Company, on behalf of the corporation.

[Signature]
Notary Public
7768511
Registration No.

My commission expires: June 30, 2022

Notary seal:

