



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE

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Secretary of Natural Resources

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Director

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Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
RUBBERMAID COMMERCIAL PRODUCTS LLC
FOR
RUBBERMAID-APPLE VALLEY
Registration No. 81736**

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 Rubbermaid Commercial Products LLC, regarding the Rubbermaid-Apple Valley facility 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 the Rubbermaid-Apple Valley facility, located at 125 Apple Valley Road in Winchester, Virginia.
5. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
6. “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.
7. “PCE” means a partial compliance evaluation by DEQ staff.
8. “Permit” means a New Source Review (NSR) permit to operate and construct a metal can and container manufacturing operation, which was issued under the Virginia Air Pollution Control Law and the Regulations to Rubbermaid on April 9, 2018.
9. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” mean 9 VAC 5 chapters 10 through 80.
10. “Rubbermaid” means Rubbermaid Commercial Products LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Rubbermaid is a “person” within the meaning of Va. Code § 10.1-1300.
11. “Va. Code” means the Code of Virginia (1950), as amended.
12. “VAC” means the Virginia Administrative Code.
13. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
14. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

SECTION C: Findings of Fact and Conclusions of Law

1. Rubbermaid owns and operates a metal can and container manufacturing facility located at 125 Apple Valley Road, in Winchester, VA. The Facility is the subject of the Permit, issued to Rubbermaid on April 9, 2018.

2. On February 18, 2016, DEQ staff performed a PCE at the Facility. On February 22, 2016, DEQ sent the inspection report to Rubbermaid. On March 31, 2016, DEQ staff requested the submission of a Form 7 air permit application for the powder coating and bake off over equipment operating at the Facility.
3. On May 9, 2016, DEQ staff issued WL No. AVRO000403-001 to Rubbermaid, citing that Rubbermaid did not submit documentation demonstrating exemptions from air permitting as requested by DEQ.
4. On May 27, 2016, DEQ staff performed an Industrial Stormwater inspection at the Facility and again observed the powder coating and bake off oven in operation. At the time of the inspection, DEQ staff recommended the submittal of a Form 7 application.
5. On July 20, 2016, Rubbermaid applied for a minor NSR permit for emissions from a powder coating operation and a bake-off oven in response to the DEQ request for information, as a result of information obtained at the DEQ's staff compliance evaluation at the Rubbermaid Valley Avenue facility. Rubbermaid reported on the Form 7 that the construction/operational dates of the powder coating equipment and bake-off oven equipment had been in August and November 2014, respectively.
6. On August 22, 2016, DEQ staff conducted a Pre-Permit inspection and observed the powder coating and bake off oven equipment. The equipment was not in operation at the time of the inspection.
7. On March 31, 2017, DEQ issued NOV No. AVRO000403-002 to Rubbermaid for the construction and operation of the powder coating equipment and the bake-off oven without an air permit.
8. On April 19, 2017, DEQ staff met with Rubbermaid representatives and their consultant, to discuss the NOV. Rubbermaid conveyed information that the equipment had been relocated from its Pennsylvania location to Virginia in August 2014, and began operation shortly after. Also during the meeting, Rubbermaid informed DEQ that it had previously hired a consultant to perform an air emissions evaluation, but that the results of that evaluation erroneously notified Rubbermaid that it was exempt.
9. Throughout 2016 and 2017, DEQ communicated with Rubbermaid, in the attempt to obtain sufficient information to draft and issue an air permit for the equipment. A Form 7 was received electronically on July 20, 2016, with additional information received July 21, 2016, September 14, 2016, August 22, 2016, and February 13, 2017. After DEQ initiated enforcement proceedings, Rubbermaid submitted a completely revised permit application on May 19, 2017 in response to the April 19, 2017 enforcement meeting, supplemental information was received by DEQ on July 19, 2017, November 15, 2017,

January 3, 2018, and January 18, 2018 as requested by DEQ air permitting staff.

10. On January 18, 2018, the application was deemed complete. On April 9, 2018, DEQ issued Rubbermaid the Stationary Source Permit to Construct and Operate (Permit).
11. 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."
12. 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."
13. Based on the results of the February 18, 2016 PCE, the May 27, 2016 observation, the August 22, 2016 pre-permit inspection, the April 19, 2017 meeting, and the documentation submitted to DEQ as referenced in paragraph C(8), the Board concludes that Rubbermaid has violated 9 VAC 5-80-1120(A) and 9 VAC 5-80-1210(E) as described in paragraphs C(2) through C(11), above.
14. Following the issuance of the Permit, DEQ staff inspected the Facility on May 16 and May 24, 2018, and verified that the violations described in paragraphs C(2) and C(11) above, have been corrected.

SECTION D: Agreement and Order

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

1. Pay a civil charge of \$61,800 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

Rubbermaid 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, Rubbermaid 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 Rubbermaid for good cause shown by Rubbermaid, 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. AVRO000403-002 dated March 31, 2017 and Warning Letter No. AVRO000403-001 date May 9, 2016. 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, Rubbermaid admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Rubbermaid 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. Rubbermaid 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 Rubbermaid 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. Rubbermaid 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. Rubbermaid shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rubbermaid 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.

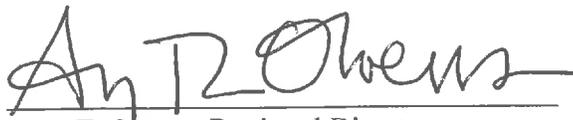
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Rubbermaid. Nevertheless, Rubbermaid agrees to be bound by any compliance date which 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 Rubbermaid has completed all of the requirements of the Order;

- b. Rubbermaid 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 Rubbermaid.

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

And it is so ORDERED this 31st day of August, 2018.


Amy T. Owens, Regional Director
Department of Environmental Quality

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Consent Order
Rubbermaid Commercial Products LLC; 81736
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Rubbermaid Commercial Products LLC voluntarily agrees to the issuance of this Order.

Date: 8/6/18 By: [Signature], VP. SUPPLY CHAIN
(Person) (Title)
Rubbermaid Commercial Products LLC

State of North Carolina
Commonwealth of Virginia
City/County of Mecklenburg

The foregoing document was signed and acknowledged before me this 06 day of August, 2018, by Paul Henry who is VP - Supply Chain of Rubbermaid Commercial Products LLC on behalf of the company.

[Signature]
Notary Public

Registration No. _____

My commission expires: 01/02/2022

Notary seal: **ROBERT H. THOMPSON
Notary Public - North Carolina
Mecklenburg County
My Commission Expires Jan 2, 2022**