



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Molly Joseph Ward
Secretary of Natural Resources

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO TRAE-FUELS LLC Registration No. 41057

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 Trae-Fuels LLC (Trae-Fuels), 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 Trae-Fuels wood pellet manufacturing facility, located at 1376 Fredericks Hall Road in Bumpass, Virginia, in Louisa County.
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. "Permit" means a Minor New Source Review permit to modify and operate a wood pellet manufacturing facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Trae-Fuels on July 15, 2014.
8. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
9. "Trae-Fuels" means Trae-Fuels LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Trae-Fuels is a "person" within the meaning of Va. Code § 10.1-1300.
10. "Va. Code" means the Code of Virginia (1950), as amended.
11. "VAC" means the Virginia Administrative Code.
12. "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. Trae-Fuels owns and operates the Facility in Bumpass, Virginia. The Facility is the subject of the Permit which allows Trae-Fuels to modify and operate a wood pellet manufacturing facility in accordance with the Permit. The Facility is a major source of particulate matter pollution.
2. Trae-Fuels purchased the Facility from Biomass Energy in June 2013. The Facility was subject to a consent order with DEQ issued on March 5, 2012.
3. DEQ staff conducted thirty-five (35) on-site inspections during the time period from December 2013 through August 2016, resulting in twelve (12) out of compliance inspection reports.
4. Based on partial and full compliance evaluations conducted by DEQ staff, which include on-site inspections and report reviews, DEQ issued ten (10) Notices of Violation to Trae-Fuels on January 16, 2014, April 25, 2014, June 18, 2014, September 4, 2014, October 30, 2014, February 5, 2015, April 22, 2015, June 19, 2015, October 16, 2015, and January 28, 2016.
5. The Facility suspended operation on or about January 21, 2016 and has remained non-operational since that time.
6. Within the inspection reports and NOV's, DEQ observed and documented violations of the following Permit Conditions and regulatory requirements:

- a) Trae-Fuels modified and operated the Facility without a permit (9 VAC 5-80-1120 and 9 VAC 5-80-1105(A)(2)(b));
 - b) Trae-Fuels failed to maintain and operate the Facility in a manner consistent with air pollution control practices for minimizing emissions (9 VAC 5-50-20(E));
 - c) Trae-Fuels failed to control fugitive particulate emissions (Permit Condition 3);
 - d) Trae-Fuels failed to take reasonable precautions to promptly remove accumulations of dust to prevent particulate matter from becoming airborne (Permit Condition 7(b));
 - e) Trae-Fuels failed to follow the required Fugitive Dust/Emission Control Plan (Permit Condition 13);
 - f) Trae-Fuels exceeded the twenty percent opacity limit for visible emissions from the Earthcare and EcoTherm dryer lines (required by Permit Condition 25) on numerous occasions;
 - g) Trae-Fuels failed to report performance testing/monitoring results in a manner and form and using procedures acceptable to the Board (9 VAC 5-50-50(H));
 - h) Trae-Fuels failed to conduct testing of process equipment while the tested process equipment is operated at least at eighty percent of its rated capacity as required by Permit Condition 27;
 - i) Trae-Fuels failed to maintain and provide required records required by Permit Conditions 8, 10, 12, 14, 15, 17, 19, 20, 21, 22, and 31;
 - j) Trae-Fuels failed to maintain and provide required records relating to maintenance, inventory of spare parts, and training for operators to DEQ inspectors upon request, as required by Permit Condition 38.
7. Pursuant to Virginia Code § 2.2-4019, DEQ properly noticed and conducted an informal fact-finding proceeding on November 8, 2016, to support a case decision to revoke the Facility's Permit.
 8. DEQ is prepared to issue a case decision that revokes the Permit.
 9. DEQ and Trae-Fuels met on March 24 and June 16, 2017, to negotiate a good faith settlement of the outstanding violations in the alternative to the Permit revocation, and have agreed to the conditions in Attachment A to defer DEQ's issuance of a case decision revoking the Permit. Additionally, at the March meeting, DEQ and Trae-Fuels agreed to certain administrative modifications to the permit related to capacity issues.
 10. Virginia Code § 10.1-1322(A) gives the Department the authority to issue, amend, revoke or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.
 11. 9 VAC 5-80-1210 further authorizes the Board to "revoke any minor [new source review] permit if the permittee...[f]ails to comply with the terms or conditions of the permit."
 12. 9 VAC 5-50-260 requires that, "No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of emissions limitations representing best available control technology, as reflected in any

term or condition that may be placed upon the minor NSR permit approval for the facility...”

13. 9 VAC 5-170-160(A) states: “The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.”
14. Based on the results of the informal fact-finding proceeding, the Board concludes that Trae-Fuels has violated the Permit, and has failed to resolve the outstanding violations dating to January 16, 2014, as described in paragraphs C(6), above.
15. In order for Trae-Fuels to return to compliance, DEQ staff and representatives of Trae-Fuels 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 Trae-Fuels, and Trae-Fuels agrees to:

1. Perform the actions described in Appendix A of this Order;
2. DEQ agrees to stay any final agency decision on the permit revocation proceeding conducted on November 8, 2016, pending satisfactory and timely completion of the terms of this Order. The Permit revocation decision is appended as Attachment B to this Order;
3. If Trae-Fuels fails to comply with and fully complete all requirements listed in Appendix A of this Order by December 1, 2020, Trae-Fuels agrees to a surrender and mutual revocation of all air permits for the Facility; and
4. Pay a civil charge of \$40,000.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
September 1, 2017	\$10,000.00 or balance
March 1, 2018	\$10,000.00 or balance
September 1, 2018	\$10,000.00 or balance
March 1, 2019	\$10,000.00

If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late and Trae-Fuels shall be in violation of this

Order. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Trae-Fuels. Within 15 days of receipt of such letter, Trae-Fuels shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under 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

Trae-Fuels shall include its Federal Employer Identification Number (FEIN) [(xx-xxxxxxx)] 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, Trae-Fuels 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 Trae-Fuels for good cause shown by Trae-Fuels 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. Successful completion of requirements in 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, Trae-Fuels admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Trae-Fuels 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. Trae-Fuels 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 Trae-Fuels 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. Trae-Fuels 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. Trae-Fuels shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Trae-Fuels shall notify the DEQ 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 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.

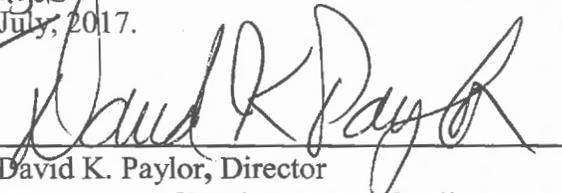
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Trae-Fuels. Nevertheless, Trae-Fuels agrees to be bound by any compliance date which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

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

And it is so ORDERED this 14th day of ~~July~~^{August}, 2017.



David K. Paylor, Director
Department of Environmental Quality

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Trae-Fuels LLC voluntarily agrees to the issuance of this Order.

Date: 8/4/17 By: Roger Knoph, Manager
(Person) (Title)
Trae-Fuels LLC

State of Colorado

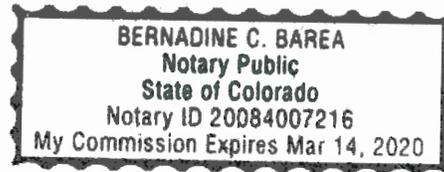
City/County of Greeley/Weld

The foregoing document was signed and acknowledged before me this 4th day of August, 2017, by Roger Knoph who is Manager of Trae-Fuels LLC, on behalf of the company.

Bernadine C Barea
Notary Public

My commission expires: March 14, 2020

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Trae-Fuels shall submit a notice of intent to restart the Facility and an approvable stack test protocol 30 days prior to startup;
2. Trae-Fuels shall promptly provide information requested to secure DEQ approval of the test protocol within 30 days of receipt of DEQ's information request;
3. From the date of this Order, Trae-Fuels shall not operate the Facility, except for the purpose of repackaging any existing inventory of pellets, unless both of the following requirements have been satisfied: (i) Trae-Fuels submits a notice of intent to restart in accordance with #1; and (ii) DEQ has approved the test protocol;
4. Trae-Fuels shall immediately implement the approved October 2016 Dust Control Plan and implement Maintenance Edge Software by August 15, 2017;
5. Trae-Fuels shall submit an approvable modeling protocol within 60 days of the notice of intent to restart;
6. Trae-Fuels shall promptly provide information requested by DEQ to secure DEQ approval of the modeling protocol within 30 days of receipt of DEQ's information request;
7. Trae-Fuels shall submit an application for a permit amendment within 90 days of the notice of intent to restart. The permit application shall contain PM, PM₁₀ and PM_{2.5} Best Available Control Technology (BACT) analyses for the two dryers;
8. DEQ will determine BACT based on DEQ's evaluation of the complete application and any other relevant information;
9. Subject to this schedule of compliance, DEQ will issue a permit incorporating BACT after successful (NAAQS-compliant) air quality analysis demonstrating current (uncontrolled) Facility configuration or after the Facility has otherwise demonstrated compliance with the NAAQS as approved by DEQ for the modified (controlled) Facility;
10. Trae-Fuels shall modify its existing storage area to reduce moisture content of feed stock for Facility and reduce opportunity for material to become airborne by adding a 3-sided enclosure to the existing concrete pad and roof structure;
11. Trae-Fuels shall conduct stack testing in accordance with the approved stack test protocol of all point sources for filterable PM, filterable and condensable PM₁₀ and filterable and

condensable PM_{2.5} within 60 days of startup. DEQ staff shall observe the stack test.

Testing shall include, at a minimum, the following equipment:

- a. Clean Gas Multi-cyclone (Earth Care) – Source ID = EU-07/EU-09
 - b. EcoTherm Multi-cyclone (Bliss) – Source ID = EU-08-EU-10
 - c. Dry Hammer Mill #2 Baghouse (Aircon) - Source ID = EU-31
 - d. Green Wood Chip Hammer Mill - Source ID = EU-25R
 - e. Eco Therm Dry Hammer Mill #1 Baghouse (Kice) – Source ID = EU-12;
12. Trae-Fuels shall submit stack test results within 30 days of stack test date;
 13. Trae-Fuels shall complete and submit an air quality analysis in accordance with approved modeling protocol and based on DEQ-verified stack test data within 60 days of completed stack test; and
 14. Upon notification from DEQ, Trae-Fuels shall immediately cease operations if the air quality analysis results indicate exceedance of any NAAQS
 15. DEQ Contact. Unless otherwise specified by this Order, Trae-Fuels shall submit all requirements of Appendix A of this Order to:

Kerri Nicholas
Air Enforcement Manager
Virginia Department of Environmental Quality
629 East Main Street
Richmond, Virginia 23219
Kerri.Nicholas@DEQ.virginia.gov
804-698-4073

16. **Certification of Documents and Reports.** In accordance with 9 VAC 5-20-230(A), in all documents or reports, including, without limitation, the SEP Completion Report, submitted to DEQ pursuant to this Consent Order, Trae-Fuels, 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.”