VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Bear Island Paper WB, LLC
EPA ID No. VAD049582919

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Bear Island Paper Company, LLC ("Bear Island") for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Bear Island Paper WB LLC" or "Bear Island," means a limited liability company authorized to do business in Virginia, and its members, affiliates, partners, and subsidiaries. Bear Island is a "person" within the meaning of Va. Code § 10.1-1400.


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

6. "Facility" or "Site" means the paper mill located at 10026 Old Ridge Road, Ashland, Virginia.

7. "Generator" means a person who is a hazardous waste generator, as defined by 40 CFR § 260.10.

8. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.

9. "LQG" means large quantity generator, a hazardous waste generator that generates 1,000 kilograms (2,200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. See 40 CFR § 262.34(a)-(b) and (g)-(l).


11. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

12. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

13. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 et seq. Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR, incorporated by reference with corresponding parts and sections of the federal Code of Federal Regulations ("CFR"), the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are a direct reference to the VHWMR.

14. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.

15. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. See 40 CFR § 262.34(d)-(f).


17. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Bear Island owned and operated the Facility in Ashland, Virginia for the primary purpose of manufacturing paper products. Operations at the Facility were subject to the Virginia Waste Management Act and the Regulations.

2. Bear Island no longer owns the Facility. The Bear Island plant was idled in June 2017, and re-opened in September 2018 until February 2019. The facility was sold to Cascades Inc. on July 26, 2018 with a 27-month term lease-back option to Bear Island. The lease was terminated on May 8, 2019. The facility is currently owned and operated by 819 Virginia, LLC, a subsidiary business interest of Cascades, Inc. Bear Island operated the Facility during the period inspections were performed by Department staff and the violations in this Order were identified.

3. On May 6, 2019, DEQ Piedmont Regional Office staff conducted an announced Compliance Evaluation Inspection ("CEI") at the Facility. The CEI was conducted to evaluate Facility compliance with applicable Virginia Hazardous Waste Management Regulations ("VHWMR").

4. At the time of the inspection, Bear Island was in the process of closing all manufacturing operations in preparation of pending conveyance of the facility to 819 Virginia.

5. At the time of the inspection, Bear Island was identified in the Resource Conservation and Recovery Act ("RCRA") Information System database as a Very Small Quantity Generator ("VSQG") of hazardous waste, or generating less than 100 kilograms of non-acute hazardous waste per calendar month. At the time of the inspection, and based on the event described herein, Bear Island triggered and was operating as a Large Quantity Generator ("LQG") of hazardous waste, or greater than 1000kg (or 2,200 pounds) of non-acute hazardous waste per month for the months of March and April of calendar year 2019.

6. Generator status changed, in part, due to a release of approximately 2,707 gallons of 50% sodium hydroxide liquid occurring on April 12, 2019. The sodium hydroxide became hazardous waste upon its release.

7. During the inspection on May 6, 2019, Bear Island staff indicated that it was operating elementary neutralization units ("ENU") to address excess quantities of sodium hydroxide (3,480 gallons) and sulfuric acid (3,350 gallons) in March and April of 2019. Once neutralized, the wastewater was sent to the on-site wastewater treatment plant. DEQ does not agree that the Bear Island operation constituted an ENU. Bear Island used water as its neutralizing agent. DEQ does not find this to be an acceptable form of neutralization to qualify for the ENU exception. Accordingly, DEQ determined that Bear Island was a LQG in March and April of 2019.
40 CFR §268.3(a) states, "Except as provided in paragraph (b) of this section, no generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a restricted waste or the residual from treatment of a restricted waste as a substitute for adequate treatment to achieve compliance with subpart D of this part, to circumvent the effective date of a prohibition in subpart C of this part, to otherwise avoid a prohibition in subpart C of this part, or to circumvent a land disposal prohibition imposed by RCRA section 3004."

8. The sodium hydroxide and sulfuric acid above ground day tanks used to neutralize waste did not meet the requirements of 40 CFR §265 Subpart J.

40 CFR §262.17(a)(2) states, "If the waste is placed in tanks, the large quantity generator must comply with the applicable requirements of subparts J, except §265.197(c) of Closure and post-closure care and §265.200 - Waste analysis and trial tests, as well as the applicable requirements of AA, BB, and CC of 40 CFR part 265."

9. The Facility did not provide notification to DEQ of a status change to LQG in March and April of calendar year 2019.

9 VAC 20-60-315.D states, "Anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record."

10. Bear Island staff reported that an employee mistakenly released 2,707 gallons of 50% sodium hydroxide solution by opening the bottom valve of a bulk storage tank and releasing the material into a secondary containment area. At the time of the release, the control valve in the secondary containment area was open and waste released into a sump and accumulated in a concreted trough secondary containment system. DEQ staff observed deteriorated joint seals in the containment trough. After its initial notifications, Bear Island staff submitted an incident report on April 22, 2019, stating the release of the sodium hydroxide outside of the containment trough occurred through joint seals in the containment trough.

40 CFR §262.251 states, "A large quantity generator must maintain and operate its facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

11. Bear Island did not have a written training program consisting of hazardous waste management. The Facility did not maintain a written description of the type and amount of both introductory and continuing training for personnel with assigned hazardous waste management duties.

40 CFR §262.17(a)(7)(i)(A-B) states, "(A)Facility personnel must successfully complete a program of classroom instruction, online training (e.g., computer-based or electronic), or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator must ensure that this program
includes all the elements described in the document required under paragraph (a)(7)(iv) of this section. (B) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.”

40 CFR §262.17(a)(7)(iv)(B) states, “The large quantity generator must maintain the following documents and records at the facility: (B) A written job description for each position listed under paragraph (a)(7)(iv)(A) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.”

12. Bear Island did not maintain job titles and names of employees for those personnel assigned hazardous waste management duties.

40 CFR §262.17(a)(7)(iv)(A) states, “The large quantity generator must maintain the following documents and records at the facility: (A) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.”

13. Based on the inspection and other information received from Bear Island, the Department issued Notice of Violation No. 2019-06-PRO-601 to Bear Island.

14. DEQ staff met with representatives from Bear Island regularly to discuss the release, remediation activities, the NOV, compliance, responses to Requests for Information, requirements for corrective action, and enforcement. Bear Island conducted remediation activities for the sodium hydroxide release, and submitted a final report to DEQ on August 15, 2019 indicating the remediation was successful. No further remediation or corrective action is required of Bear Island.

15. Based on the information provided above, the Board concludes that Bear Island violated 40 CFR §268.3(a), 40 CFR §262.17(a)(2), 9 VAC 20-60-315(D), 40 CFR §262.251, 40 CFR §262.17(a) (7)(i)(A-B), 40 CFR §262.17(a)(7)(iv)(B), and 40 CFR §262.17(a) (7)(iv)(A) as described above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Bear Island, and Bear Island agrees to pay a civil charge of $149,263 in settlement of the violations cited in this Order. Payment of the civil charge shall be made in three equal installments. The first payment shall be made within 60 days of the effective date of the Order; the second payment shall be made within 120 days of the effective date of the Order; the third payment shall be made within 180 days of the effective date of the Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:
Bear Island 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, Bear Island 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 Bear Island for good cause shown by Bear Island, 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, Bear Island 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. Bear Island 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. Bear Island declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act 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 Bear Island 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. Bear Island 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 occurrence. Bear Island shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Bear Island 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 Bear Island intends 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, their 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 Bear Island. Nevertheless, Bear Island 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 Bear Island has completed all of the requirements of the Order;
   
   b. Bear Island 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 Bear Island.
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Bear Island 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 Bear Island 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 Bear Island 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 Bear Island to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Bear Island.

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, Bear Island voluntarily agrees to the issuance of this Order.

And it is so ORDERED this ______ day of __________________, 2020.

_____________________________________
James J. Golden
Department of Environmental Quality
Piedmont Regional Office, Director

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Bear Island Paper WB, LLC voluntarily agrees to the issuance of this Order.

Date: 3/19/20  
By: Timothy Butle  
Bear Island Paper Company WB, LLC  
Title: Treasurer

Commonwealth of Virginia  
City/County of Greenwich, CT 06830

The foregoing document was signed and acknowledged before me this 19th day of March, 2020, by Timothy Butle who is Treasurer of Bear Island Paper WB, LLC, on behalf of the company.

Notary Public

Registration No. Commission Expires  
Lic. # 70193

My commission expires:  
Notary seal: