



COMMONWEALTH of VIRGINIA

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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
DNA ENTERPRISE, LLC
FOR THE
DNA ENTERPRISE, LLC'S
LYNCHBURG, VA FACILITY
EPA ID No. VAR000533315**

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 DNA Enterprise, LLC, regarding its facility in Lynchburg, Virginia, 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. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Salem, Virginia.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
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. "DNA" means DNA Enterprise, LLC, a company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. DNA is a "person" within the meaning of Va. Code § 10.1-1400.
7. "Facility" or "Site" means the DNA Enterprise, LLC owned and operated facility located at 3107 Odd Fellows Road, Suite B, Lynchburg, VA 24501.
8. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
9. "Hazardous Waste" or "HW" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
10. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 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. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
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 incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected 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 made directly to the VHWMR.
14. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.
17. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. DNA owns and operates the Facility in Lynchburg, Virginia. The Facility is a vape (e-cigarette) liquid manufacturer. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. At the Facility, DNA generates hazardous waste in the form of nicotine containing vape liquid with a waste code of P075. Regulated wastes generated at the Facility include pharmaceutical grade nicotine containers and spent fluorescent lamps (potentially D009 hazardous waste).
3. On May 31, 2018, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations.
4. DNA began operating as a LQG in 2016 but did not notify as a LQG until November 25, 2017 when it requested a permanent EPA ID but the request was not processed.
5. At the time of the inspection, DNA had accumulated four 55-gallon containers of HW. The containers were not dated but DNA staff estimated the start dates as 01/16/17, 05/03/17, 09/09/17, & 01/09/18. Documentation provided by DNA indicated the most recent HW shipment occurred on 01/13/17. 40 CFR 262.17 allows a LQG to accumulate HW on site without a permit provided the HW is on site for no more than 90 days.
6. DNA began operating as a LQG in 2016 and two shipments (09/09/16 & 01/13/17) of HW were sent for disposal. Both shipments were made using Bills of Lading instead of Uniform HW Manifests. 40 CFR 262.20(a)(1) requires a generator who transports, or offers for transport a HW for offsite treatment, storage, disposal or a treatment, storage and disposal ("TSD") facility....must prepare a Manifest on EPA Form 8700-22.
7. DNA did not provide a written notice to the treatment/storage/disposal facility that the HW described in Paragraph #6, above, did not meet the applicable treatment standards of Part 268 as required in 40 CFR 268.7(a)(2).
8. DNA operates a satellite accumulation area ("SAA") in the clean room. Waste nicotine containing liquids, with a waste code of P075, are containerized in a 5-gallon container that is a violation of 40 CFR 262.15(a) that allows a generator to accumulate one quart of liquid acute HW.
9. 40 CFR 262.15(a)(6) allows a generator who accumulates acute HW at or near any point of generation to accumulate for no longer than three consecutive days. The SAA container in the clean room had been accumulating beyond three consecutive days.
10. 9 VAC 20-60-262.B.4 requires a LQG to notify the department and document in the operating record that he intends to accumulate HW in accordance with 40 CFR 262.17

prior to or immediately upon the establishment of each 90-day accumulation area and because the requirements for the SAA were not met, as described in paragraph #9, above, DNA should have notified the DEQ of the establishment of a new HW accumulation area in the clean room.

11. At the time of the inspection, the SAA container noted in paragraph #8, above, was not labeled with the words "Hazardous Waste" as required by 40 CFR 262.15(a)(5)(i).
12. At the time of the inspection, there were four 55-gallon containers of waste nicotine liquids present in the central accumulation area. These containers were not labeled with the words "Hazardous Waste" in violation of 40 CFR 262.17(a)(5)(i)(A).
13. At the time of the inspection, none of the containers noted in paragraph #12, above, were labeled with an accumulation start date in violation of 40 CFR 262.17(a)(5)(i)(C).
14. DNA staff asserted that inspections of the <90 day central accumulation area were being conducted at least once a week but at the time of the inspection, DNA was not able to provide documentation demonstrating compliance with 40 CFR 262. 17(a)(1)(v) which requires inspection of the central accumulation at least weekly.
15. At the time of the inspection, DNA did not have a formalized RCRA contingency plan in place. 40 CFR 262.260(a) requires that a LQG must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release hazardous waste or hazardous waste constituents to air, soil, or surface water. DNA had a draft contingency plan that contained some of the required elements, but the plan had not been finalized.
16. At the time of the inspection, DNA had not submitted copies of its contingency plan to all local emergency responders. 40 CFR 262.262(a) and 40 CFR 262.256(a) require that a LQG must submit a copy of the contingency plan and all revisions to all local emergency responders that may be called upon to provide emergency services. This document may also be submitted to the Local Emergency Planning Committee, as appropriate.
17. At the time of the inspection, DNA, as a LQG, had not submitted a biennial report for the hazardous waste generated during 2017 calendar year; the report was due by March 1, 2018. 40 CFR 262. 41(a) requires an owner or operator to prepare and submit a single copy of a biennial report to the Regional Administrator by March 1 of each even numbered year. The biennial report must be submitted on EPA Form 8700-13A/B and cover facility activities during the previous calendar year.
18. At the time of the inspection, DNA representatives were unable to provide a written description of the type and amount of introductory and continuing training that is required for employees who manage HW. 40 CFR 262.17(a)(7)(iv)(C) requires a LQG large quantity generators to maintain a written description of the type and amount of both introductory and continuing training that will be given to each person who manages HW.

19. At the time of the inspection, DNA had not paid the annual fee for calendar year 2016 during which it was a LQG. LQGs are required by 9 VAC 20-60-1283.B to pay an annual fee.
20. On June 29, 2018, based on the inspection and follow-up information, the Department issued NOV No. NOV-18-06-BRRO-007 to DNA for the violations described in paragraphs C(4) through C(19), above.
21. Based on the results of the May 31, 2018 inspection and follow-up information, the Board concludes that DNA has violated 40 CFR 262.17, 40 CFR 262.20(a)(1), 40 CFR 268.7(a)(2), 40 CFR 262.15(a), 40 CFR 262.15(a)(6), 9 VAC 20-60-262.B.4, 40 CFR 262.15(a)(5)(i), 40 CFR 262.17(a)(5)(i)(A), 40 CFR 262.17(a)(5)(i)(C), 40 CFR 262.17(a)(l)(v), 40 CFR 262.260(a), 40 CFR 262.262(a), 40 CFR 262.256(a), 40 CFR 262.41(a), 40 CFR 262.17(a)(7)(iv)(C) and 9 VAC 20-60-1283.B as described in paragraphs C(4) through C(13), above.
22. DNA has submitted documentation that verifies that the violations described in paragraphs C(4) through C(19), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders DNA, and DNA agrees to pay a civil charge of **\$20,440** in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

| <u>Due Date</u> | <u>Amount</u> |
|--------------------------|---------------------------|
| September 2, 2019 | \$5,110 or balance |
| December 2, 2019 | \$5,110 or balance |
| March 2, 2020 | \$5,110 or balance |
| June 2, 2020 | \$5,110 |

If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. 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 DNA. Within 15 days of receipt of such letter, DNA 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

DNA shall include its Federal Employer Identification Number (FEIN) 47-3473287 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, DNA 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 DNA for good cause shown by DNA, 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, DNA admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact, and conclusions of law contained in this Order.
4. DNA 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. DNA 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 DNA 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. DNA 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. DNA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. DNA 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 DNA. Nevertheless, DNA 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 DNA has completed all of the requirements of the Order;
 - b. DNA 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 DNA.

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

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15. By its signature below, DNA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 2nd day of August, 2019.



Robert J. Weld, Regional Director
Department of Environmental Quality

DNA voluntarily agrees to the issuance of this Order.

Date: 06/25/19 By: , Partner
Mr. Don Henley Sr.
DNA Enterprise, LLC

Commonwealth of Virginia
City/County of Campbell

The foregoing document was signed and acknowledged before me this 25 day of June, 2019, by Mr. Don Henley Sr., who is a Partner of DNA Enterprise, LLC, on behalf of the company.


Notary Public

7677148
Registration No.

My commission expires: 11/30/2020

Notary seal:

