



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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[www.deq.virginia.gov](http://www.deq.virginia.gov)

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

**AOL LLC**

**Registration No. 72368**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1307(D), 10.1-1309, and 10.1-1316, between the State Air Pollution Control Board and AOL LLC, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and Regulations for the Control and Abatement of Air Pollution.

### **SECTION B: Definitions**

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

1. "AOL" means AOL LLC, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in the Va. Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in the Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Facility" means the AOL facility located at 7777 Infantry Ridge Road in Manassas, which is located in Prince William County, Virginia.
6. "NSR" means New Source Review.
7. "NOVEC" means Northern Virginia Electric Cooperative.
8. "NOx" means oxides of nitrogen.
9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
10. "Order" means this document, also known as a Consent Order.
11. "Permit" means a Minor New Source Review Permit issued on July 15, 1999, and amended on February 27, 2004.
12. "Regulations" mean the Regulations for the Control and Abatement of Air Pollution located in the Virginia Administrative Code ("VAC"), 9 VAC 5-10-10 *et seq.*.
13. "SCR" means Selective Catalytic Reduction units, which are add-on pollution control devices that are installed to reduce NOx emissions.
14. "Virginia Air Pollution Control Law" means the laws located in the Virginia Code ("Va. Code") (1950), as amended, Va. Code § 10.1-1300 *et seq.*.

**SECTION C: Findings of Fact**

1. AOL LLC ("AOL") owns and operates a computer network operations facility in Manassas, Virginia. The Facility operates ten 2,000 kW generators, each driven by a Caterpillar 3516B diesel engine, and three 1,333 kW rotary power systems, each driven by a Caterpillar 3516B diesel engine.
2. In order to develop AOL's Permit and determine appropriate emission limits, DEQ relied on submissions from AOL including, but not limited to, those mentioned below. These submissions defined the generators operated at AOL's Manassas facility as emergency generators.
3. As a part of the initial Permit application process, AOL submitted Form 7 applications and related correspondence on March 26, 1999, and April 16, 1999. In support of the Permit application, AOL submitted technical data to DEQ for the generators located at AOL's Manassas facility which references the generators as standby power generators. In the 1999 Permit application, AOL represented to DEQ that the basis for operating the generators at the Facility was for back-up power, and for periods during severe weather episodes. This application is

specifically referenced, incorporated, and enforceable under the Facility's 2004 amended Permit.

4. AOL submitted a Best Available Control Technology (BACT) analysis to DEQ as well as a revised BACT analysis dated April 15, 1999. Both make repeated and frequent references to AOL's emergency generators located at AOL's Manassas facility. In addition, this BACT analysis states that AOL will only operate the engines when necessary. A document entitled Basis for Applying a Reduced Loading to the AOL Data Center Engines on the Permit Application accompanying the BACT analysis also makes reference to the generators located at AOL's Manassas facility as back-up generators.
5. DEQ received correspondence from Versar, Inc. on behalf of AOL on June 21, 1999, regarding a proposed approach to recordkeeping at the AOL Manassas facility. This proposal refers to the generators located at AOL's Manassas facility as emergency generators.
6. AOL records indicate that the Facility has been operating the generators under a load curtailment agreement with NOVEC since August 6, 2001. During the permit amendment process in 2003, AOL continued to represent that the generators would not be used for any purpose other than emergency generation, as described in the 1999 Permit applications. In addition, email correspondence received by DEQ from AOL on November 10, 2003 relating to the permit amendment process included a revised spreadsheet referring to the generators located at AOL's Manassas facility as emergency generators.
7. In April 2004, AOL installed Selective Catalytic Reduction ("SCR") units on six of the ten generators operating at the Facility. AOL communicated to DEQ that the purpose for installing the SCR units was to reduce its NOx emissions and to maintain its status as a minor source. The SCR units began operation on October 11, 2004.
8. DEQ received a stack test protocol from AOL on September 7, 2004, which stated in Section 4.1 that AOL operated ten 2,000 kW diesel-fired emergency generators at its Manassas Technology Center. The protocol also stated in Section 4.1. that the purpose of these emergency generators was to provide back-up power for AOL's computer network operations facility.
9. DEQ received emission test results from AOL on December 3, 2004 which stated in Section 3.1, that AOL operates ten 2,000 kW diesel-fired emergency generators at its Manassas Technology Center. The emission test results also stated in Section 3.1, that the purpose of these emergency generators was to provide back-up power for their computer network operations facility.
10. DEQ has received annual updates from AOL which recite that the Facility has operated the emergency generators for approximately 13,500 hours from 2002 through 2006.

11. A Notice of Violation ("NOV") was issued by DEQ to AOL on January 17, 2008, citing the following violation:
  - a. Failure to operate the diesel generators in accordance with the facility's Permit as stated in Permit condition 1.
12. As detailed in the findings of fact above, DEQ concludes that AOL is in violation of 9 VAC 5-80-1210(D).
13. AOL believes and asserts that it was authorized to use the generators for load curtailment.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1316(C), the Board orders AOL LLC and AOL LLC voluntarily agrees, to perform the actions described in Appendix A of this Order.

In addition, the Board orders AOL LLC, and AOL LLC voluntarily agrees to pay a civil charge in the amount of \$23,517.00. The civil charge is due 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 payable to the "Treasurer of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on the check, AOL LLC shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for AOL LLC.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of AOL LLC, for good cause shown by AOL LLC, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves all violations or alleged violations of the Permit known or reported to DEQ up to the date of the execution of this Order by AOL. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This

Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, AOL LLC admits the jurisdictional allegations, but neither admits nor denies the factual findings, and conclusions of law contained herein.
4. AOL LLC 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. AOL LLC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State 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 enforce this Order.
6. Failure by AOL LLC 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. AOL LLC 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. AOL LLC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. AOL LLC shall notify the DEQ Regional Director in writing 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 in writing within 24 hours of learning of any condition above, which the parties intend to assert will result or has resulted in the impossibility of compliance, shall constitute a waiver of any claim of 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 AOL LLC. Notwithstanding the foregoing, AOL LLC agrees to be bound by any compliance date that precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to AOL LLC. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve AOL LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, AOL LLC voluntarily agrees to the issuance of this Order.
13. The undersigned representative of AOL LLC 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 AOL LLC to this document. Any documents submitted pursuant to this Order shall also be submitted by a responsible official of AOL LLC.

And it is so ORDERED this 29<sup>th</sup> day of May, 2009.



Thomas A. Faha  
Northern Regional Director  
Department of Environmental Quality

AOL LLC voluntarily agrees to the issuance of this Order.

By: [Signature]

Date: 5/29/09

Commonwealth of Virginia  
City/County of Dulles Loudoun

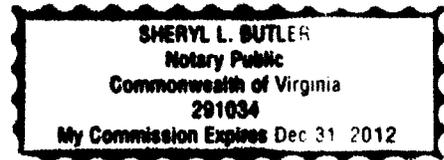
The foregoing document was signed and acknowledged before me this 28<sup>th</sup> day of

May, 2009, by Alan Nielsen, who is  
(name)

Vice President of AOL LLC on behalf of the Organization.  
(title)

[Signature]  
Notary Public

My commission expires: Dec 31, 2012



## APPENDIX A

In order to comply with the provisions of the State Air Pollution Control Law and Regulations, the Board orders AOL LLC ("AOL") to undertake, and AOL agrees to implement, the following terms and conditions of this Appendix:

1. AOL shall submit a Form 7 or equivalent within 30 days of the execution of this Order for the purpose of incorporating the following operating scenarios into its Permit.
  - a. Emergency / Critical Power Generation:
    - i. Emergency: The engine-generator set(s) may be operated in situations where immediate action on the part of the facility is needed due to a failure or loss of electrical power service resulting from a failure of the primary power provider and the failure or loss of power service is beyond the reasonable control of the facility. Operation under these circumstances shall be allowed for the period of time the primary electrical power provider service is unavailable. Once primary electrical power provider service is available the engine-generator set(s) may be operated in accordance with Critical Power Generation as defined below.
    - ii. Critical Power Generation: The engine-generator set(s) may be operated in situations where immediate action on the part of the facility is needed due to a loss or anticipated loss of acceptable electrical power service from the primary provider and the loss or anticipated loss of power service is beyond the reasonable control of the facility. Operation under these circumstances shall be allowed until such time as acceptable power provider service is restored or the loss of acceptable power provider service is no longer reasonably anticipated.
  - b. Alternate Power Generation: Except as specified in subsection 1c below, an engine-generator set may be operated voluntarily for the purposes of peak-shaving, demand response, or as part of an interruptible power supply arrangement with a power provider, other market participant, or system operator if the engine is equipped with a selective catalytic reduction system (SCR) that achieves the manufacturer's guaranteed maximum emission reductions based on fuel type. DEQ consents to accept all past certified stack testing data compiled for SCR equipped units, as the initial compliance demonstration documentation for the four new SCRs referenced in the 2009 Consent Order, as long as the new SCRs are identical to the previously tested units and will operate in the same manner as the previously tested existing units. Operations, as outlined in this subsection, shall be allowed when the engine-generator set is operating a load level necessary to sustain urea injection. When changing from Emergency Power Generation or Critical Power Generation to Alternate Power Generation, the permittee shall submit appropriate documentation to the Department of Environmental Quality (DEQ), and

receive DEQ approval for the change in the method of operation of the engine-generator set to ensure that the facility remains in compliance with the appropriate permitting requirements.

- c. The engine-generator sets may be operated for periodic maintenance, testing, and operational training.
2. AOL shall not participate in any alternate power generation scenario until it receives a permit amendment from DEQ that incorporates the operating scenarios stated above.
3. AOL shall purchase only ultra low sulfur diesel for use in all the engine-generators.
4. AOL shall install (4) additional SCR units on the engine-generators at the Manassas facility. AOL shall submit a construction and installation schedule for the SCR units within 15 days of the execution of this Order. The construction and installation schedule shall become enforceable under this Order. Included in this schedule shall be:
  - a. Anticipated date of commencing construction/installation of the SCR units;
  - b. Anticipated date that construction/installation will be completed for each SCR unit;
  - c. Anticipated date for manufacturer's trials; and
  - d. Other significant dates relevant to the installation of the SCR units.
5. AOL shall notify DEQ in writing of the actual date that the additional 4 SCR units were installed, no later than 30 days after said installation.
6. AOL shall submit a Form 7 or equivalent to DEQ within 30 days of the execution of this Order that reflects the installation of the SCRs.

Documents to be submitted to the Department, other than the civil charge payment described in Section D of this Order, shall be sent to:

VA Department of Environmental Quality  
Northern Regional Office  
Attention: Enforcement  
13901 Crown Court  
Woodbridge, VA 22193