



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2009

www.deq.virginia.gov

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Francis L. Daniel  
Regional Director

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

**BON SECOURS – DEPAUL MEDICAL CENTER, INC.**

**Registration No. 60299**

### **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 Bon Secours – DePaul Medical Center, Inc. for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the 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. "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. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "DePaul", means Bon Secours – DePaul Medical Center, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries and parents. DePaul is a "person" within the meaning of Va. Code § 10.1-1300.

5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. “Facility” means the Bon Secours – DePaul Medical Center, Inc. medical facility, located at 150 Kingsley Lane, Norfolk, Virginia.
7. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
9. “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.
10. “Permit” means the Stationary Source Permit issued by the Department to Bon Secours – DePaul Medical Center, Inc. on August 16, 2001 (as amended February 20, 2008).
11. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” means 9 VAC 5 Chapters 10 through 80.
12. “Va. Code” means the Code of Virginia (1950), as amended.
13. “VAC” means the Virginia Administrative Code.
14. “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. DePaul owns and operates the Facility that is located at 150 Kingsley Lane in Norfolk, Virginia which is a medical facility.
2. The Facility is subject to the Permit which includes three 12.55 mmBtu/hr natural gas/distillate oil-fired boilers (BOIL #1, BOIL #2, BOIL #3). According to the Permit, the three 12.55 mmBtu/hr natural gas/distillate oil-fired boilers are also subject to New Source Performance Standards (“NSPS”) 40 CFR 60 Subpart Dc – Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units.
3. On January 5, 2010, DEQ compliance staff conducted a Full Compliance Evaluation (inspection) at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the inspection and follow-up information, Department staff made the following observation:

A review of documents provided by DePaul during the course of the inspection indicated that annual throughput records of natural gas for the three 12.55 mmBtu/hr natural gas/distillate oil-fired boilers were not being calculated monthly as the sum of each consecutive 12-month period from January 2008 to November 2009 as required by the Permit.

4. Condition 16.a of the Permit and NSPS 40 CFR 60 Subpart Dc require DePaul to calculate annual throughput records of natural gas for the three 12.55 mmBtu/hr natural gas/distillate oil-fired boilers monthly as the sum of each consecutive 12-month period.
5. On January 19, 2010, based on the January 5, 2010 inspection and review of documents, the DEQ issued a NOV to DePaul for the violations described in paragraphs C3 and C4 above.
6. Based on the results of the January 5, 2010 inspection, the Board concludes that DePaul has violated Condition 16.a of the Permit and NSPS 40 CFR 60 Subpart Dc as described in paragraphs C3 and C4 above.
7. On January 27, 2010, DePaul submitted completed annual throughput records of natural gas for the three 12.55 mmBtu/hr natural gas/distillate oil-fired boilers calculated monthly as the sum of each consecutive 12-month period through December 2009 that indicated the violations described in paragraphs C3 and C4, above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 1316, the Board orders DePaul and DePaul agrees to pay a civil charge of \$1,950.00 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

DePaul shall include its Federal Employer Identification Number (FEIN) [ 54-1820093 ] 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).

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of DePaul good cause shown by DePaul, 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 the purposes of this Order and subsequent actions with respect to this Order only, DePaul admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. DePaul 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. DePaul 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 DePaul 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. DePaul 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. DePaul shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. DePaul 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 within 24 hours and in writing within three business days, of learning of any condition above, which DePaul intends to assert will result 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 DePaul. Nevertheless, DePaul 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) DePaul 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
  - (b) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to DePaul.

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

And it is so ORDERED this 13<sup>th</sup> day of May, 2010.

*Francis L. Daniel*  
Francis L. Daniel, Regional Director  
Department of Environmental Quality

Bon Secours - DePaul Medical Center, Inc. voluntarily agrees to the issuance of this Order.

Date: 5/13/10 By: David P. Setchel, Vice President - Operations  
(Person) (Title)

of Bon Secours - DePaul Medical Center, Inc.

**Commonwealth of Virginia**

City/County of Norfolk

The foregoing document was signed and acknowledged before me this 13<sup>th</sup> day of May, 2010, by David P. Setchel, who is

Vice President of Operations of Bon Secours - DePaul Medical Center, Inc. on behalf of Bon Secours - DePaul Medical Center, Inc.

*[Signature]*  
Notary Public

210771  
Registration No.

My commission expires: 07/31/10  
Notary Seal:

