COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FAUQUIER COUNTY LANDFILL GAS, LLC
Registration No. 41028

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 Fauquier County Landfill Gas, LLC, 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 Fauquier County Landfill Gas, LLC facility, located at Bingham Road, Warrenton, in Fauquier County, Virginia.

5. "Fauquier County Landfill Gas" means the Fauquier County Landfill Gas, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Fauquier County Landfill Gas, LLC is a "person" within the meaning of Va. Code § 10.1-1300.

6. "FCE" means a full compliance evaluation by DEQ staff.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, 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 a minor New Source Review (mNSR) Stationary Source Permit, to construct and operate a facility Internal Combustion Engine/Generator set, which was issued under the Virginia Air Pollution Control Law and the Regulations to Fauquier County Landfill Gas, LLC, on May 24, 2004.

11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 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. Fauquier County Landfill Gas owns and operates the Facility in Fauquier County, Virginia. The Facility is a landfill gas to energy operation. The Facility is the subject of the Permit which allows for the construction and operation of two landfill gas internal combustion engine/generator sets (EPG-1 and EPG-2).

2. On August 29, 2011, Department staff conducted an FCE at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:

    a. The initial performance tests for nitrogen oxides (NOx), carbon monoxide (CO), and oxygen (O_2) on EPG-1was not performed.

b. Failure to submit report for O_2 values out of range.

c. Failure to calibrate O_2 monitoring instrument in accordance with manufacturers' guidelines.

d. Failure to maintain records for daily O_2 readings.

e. Failure to provide operator training and maintain training records.

f. Failure to maintain a copy of the Permit onsite.

3. Condition 6 of the Permit, requires Fauquier County Landfill Gas to perform initial performance tests for NOx, CO, and O_2 from each of the engines to determine compliance with the emission limits contained in Condition 4a. The tests were to be performed, reported, and demonstrate compliance within 60 days after achieving the maximum production rate of the second engine, but in no event later than 180 days after start-up of the second engine.

4. Condition 7 of the Permit, requires Fauquier County Landfill Gas to monitor and record the oxygen content (O_2 as a percent) of the two engine's stacks at least once each day of weekday operations. If the values of oxygen monitoring fall outside of the range identified during the most recent stack test as corresponding to acceptable emissions, Fauquier County Landfill Gas shall submit a report to the Air Compliance Manager, Northern Virginia Regional Office, within three business days of discovering the out-of-range value.

5. Condition 8 of the Permit, requires the instrumentation used to monitor the O_2 content of the exhaust streams of the two engines to be operated, calibrated, and maintained in accordance with the manufacturer's written requirements or recommendations.

6. Condition 9(a) of the Permit, requires Fauquier County Landfill Gas to maintain records of the daily O_2 readings for the most recent five years.

7. Conditions 15(d) and 15(e) of the Permit, requires Fauquier County Landfill Gas to train operators in the proper operation of all such equipment and familiarize the operators with the written operating procedures and maintain records of the training provided including the names of trainees, the date of training and the nature of the training. The records are to be maintained on site for a period of five years.

8. Condition 19 of the Permit, requires Fauquier County Landfill Gas to keep a copy of the permit on the premises of the facility to which it applies.

9. On October 5, 2011, based on the evaluation and follow-up information, the Department issued a Notice of Violation to Fauquier County Landfill Gas for the violations described in paragraphs C(2) through C(8), above.

10. On October 13, 2011, Fauquier County Landfill Gas submitted a written response to the NOV via electronic mail. The response requested a meeting to discuss the NOV.

11. On November 29, 2011, Department staff met with representatives of Fauquier County Landfill Gas to discuss the violations. At the meeting DEQ was provided the training records for the Area Supervisor and Alternate Site Operator and documentation that the Permit was on-site as required.

12. Based on the results of the August 29, 2011 evaluation and the documentation submitted in the November 29, 2011 meeting, the Board concludes that Fauquier County Landfill Gas has violated Permit conditions 6, 7, 8, 9(a), 15(d), and 15(e), as described in paragraphs C(3) through C(7), above.

13. Fauquier County Landfill Gas has submitted documentation that verifies that the violations described in paragraph C(2)(f), above, has been corrected.

14. In order for Fauquier County Landfill Gas to return to compliance, DEQ staff and representatives of Fauquier County Landfill Gas 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 Fauquier County Landfill Gas, and Fauquier County Landfill Gas agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $10,282.00 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

Fauquier County Landfill Gas 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Fauquier County Landfill Gas for good cause shown by Fauquier County Landfill Gas, 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, Fauquier County Landfill Gas admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Fauquier County Landfill Gas 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. Fauquier County Landfill Gas 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 Fauquier County Landfill Gas 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. Fauquier County Landfill Gas 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. Fauquier County Landfill Gas shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Fauquier County Landfill Gas 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 Fauquier County Landfill Gas. Nevertheless, Fauquier County Landfill Gas 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 Fauquier County Landfill Gas has completed all of the requirements of the Order;

    b. Fauquier County Landfill Gas 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 Fauquier County Landfill Gas.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Fauquier County Landfill Gas 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 Fauquier County Landfill Gas 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 Fauquier County Landfill Gas certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Fauquier County Landfill Gas to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Fauquier County Landfill Gas.

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, Fauquier County Landfill Gas voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 22 day of February, 2012.

Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

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Fauquier County Landfill Gas, LLC voluntarily agrees to the issuance of this Order.

Date: 2/21/2012 By: _____, Secretary
(Person) (Title)
Fauquier County Landfill Gas, LLC

Commonwealth of Virginia
City/County of Arlington

The foregoing document was signed and acknowledged before me this 21 day of February, 2012, by Denise B. Godfrey who is Secretary of Fauquier County Landfill Gas, LLC, on behalf of the company.

_____
Notary Public

7037697
Registration No.

My commission expires: February 28, 2014

Notary seal:

MILDRED WADE ANTOINE
NOTARY PUBLIC
REG # 7037697
COMMISSION EXPIRES 2/28/2014
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Engine Generator EPG-1:**

   i) Within 30 days of the execution of this Order, submit to DEQ calibration results for the O_2 meter used at the Facility.

   ii) Conduct testing in accordance with 9 VAC 5-50-30, 9 VAC 5-50-410, and 9 VAC 5-80-1200. Fauquier County Landfill Gas, LLC shall:

      (1) Submit to DEQ for review and approval, a test protocol for an Initial Performance Test on EPG-1 and EPG-2 for NOx, CO, and O_2, at least 30 days prior to testing.

      (2) Arrange the details of the test with Regional Air Compliance Manager (ACM) of the DEQ's NRO.

      (3) Conduct the test within 90 days of the execution of this Order on the engine generator's stacks (Unit Ref. Nos. EPG-1 and EPG-2) at the Facility.

      (4) Submit the test results to ACM - DEQ's NRO within 45 days after completion of the test.

2. Within 30 days of the submission of the Stack Test Report to the ACM – DEQ-NRO, submit to DEQ a complete request to modify the Permit to reflect accurate O_2 operating ranges established during the latest round of testing and NOx emissions for both EPG-1 and EPG-2.

3. **Certification of Documents and Reports**

   In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, Fauquier County Landfill Gas, 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."

4. **DEQ Contact**

Unless otherwise specified in this Order, Fauquier County Landfill Gas shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Attn: Enforcement Staff
13901 Crown Court
Woodbridge, VA 22193