



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
NORTHERN REGIONAL OFFICE  
13901 Crown Court, Woodbridge, Virginia 22193  
(703) 583-3800 Fax (703) 583-3821  
www.deq.virginia.gov

Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
FAUQUIER HOSPITAL INCORPORATED  
FOR  
FAUQUIER HOSPITAL  
Registration No. 40736**

## **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 The Fauquier Hospital, Inc., regarding Fauquier Hospital 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. "ASTM" means the American Society for Testing and Materials.
2. "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.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations for the Control and Abatement of Air Pollution.
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.

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5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "EPA" means the United States Environmental Protection Agency.
7. "Facility" means Fauquier Hospital, located at 500 Hospital Drive in Warrenton, Virginia.
8. "Fauquier Hospital" means Fauquier Hospital, Incorporated, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Fauquier Hospital is a "person" within the meaning of Va. Code § 10.1-1300
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
11. "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.
12. "Permit" means a Minor New Source Review Permit to modify and operate a hospital facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Fauquier Hospital, Inc. on August 5, 2005.
13. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 5 through 510.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
17. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

**SECTION C: Findings of Fact and Conclusions of Law**

1. Fauquier Hospital owns and operates the Facility in Warrenton, Virginia which is located in Fauquier County.

2. The Facility is the subject of the Permit which allows them to operate boilers, an ethylene oxide sterilizer and emergency generators. The Facility is also subject to 40 CFR 60, Subpart Dc.
3. On July 14, 2009, DEQ conducted a Full Compliance Evaluation of the facility to determine 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 observations:
  - a) The facility failed to obtain a fuel certification from the fuel supplier with each shipment of distillate oil, to demonstrate that the oil meets ASTM specifications for #1 or #2 fuel oil and has a maximum sulfur content of 0.5% as required by Conditions 7 and 8 of the Permit.
  - b) The facility failed to submit semi-annual fuel quality reports for the time period from January 1, 2008, to June 30, 2009, as required by 40 CFR Section 60.48c and Condition 20 of the Permit.
  - c) The facility failed to maintain monthly and annual throughputs of distillate oil and natural gas for the boilers, fuel supplier certifications, or the annual throughput of ethylene oxide for the ETO sterilizer as required by Condition 19 of the Permit.
  - d) The facility failed to submit the 2008 annual update to DEQ as required by Condition 30 of the Permit.
  - e) The facility failed to maintain records of the monthly hours of operation, and reason for operation, for each engine-generator set; and failure to add the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months at the conclusion of every month to determine the yearly hours of operation to demonstrate its exemption status from 9 VAC 5-80-1320.
4. Based on the inspection and follow-up information DEQ issued a Notice Of Violation to Fauquier Hospital for the violations described in paragraphs C3(a) through C3(e), above on August 5, 2009.
5. On August 12, 2009, Fauquier Hospital submitted a fuel certification statement, and a cumulative semi-annual report for July 2008 to August 2009. The facility also submitted records of the monthly hours of operation for 2008 for the generators, and the 2008 Annual Report.
6. On November 4, 2009, DEQ staff met with a representative of Fauquier Hospital to discuss the aforementioned violations.
7. Based on the results of the July 14, 2009 inspection, the November 4, 2009 meeting, and information submitted by the facility on August 12, 2009 the Board concludes that

Fauquier Hospital has violated:

- Permit Condition 7
- Permit Condition 8
- 40 CFR Section 60.48c
- Permit Condition 19
- Permit Condition 20
- Permit Condition 30
- 9 VAC 5-80-1320A.4

8. In order for Fauquier Hospital to return to compliance, DEQ staff and representatives of Fauquier Hospital 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 Hospital, and Fauquier Hospital agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$10,904.40, 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

The Fauquier Hospital 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 Hospital for good cause shown by Fauquier Hospital, 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 Hospital admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Fauquier Hospital 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 Hospital 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 Hospital 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 Hospital 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. Fauquier Hospital shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Fauquier Hospital 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 Fauquier Hospital 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 Fauquier Hospital. Nevertheless, Fauquier Hospital 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. Fauquier Hospital 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 Fauquier Hospital.

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

And it is so ORDERED this 6<sup>th</sup> day of October, 2010.



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

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Fauquier Hospital, Inc., voluntarily agrees to the issuance of this Order.

Date: 10/1/2010 By: Tracy Turman (Person), VP of Support Services (Title)

Commonwealth of Virginia  
City/County of FAUQUIER

The foregoing document was signed and acknowledged before me this 1 day of OCTOBER, 2010, by TRACY TURMAN who is VICE PRESIDENT of Fauquier Hospital, Inc., on behalf of the corporation.

Sonia E. Quiles  
Notary Public

120301  
Registration No.

My commission expires: 4-30-2014

Notary seal:



**Appendix A**

Fauquier Hospital shall:

1. Create and submit a plan for timely compliance with Permit and regulatory requirements to DEQ by June 1, 2010, for review and approval. Upon approval, the plan shall be implemented immediately.
2. Unless otherwise specified in this Order, Fauquier Hospital shall submit all requirements of Appendix A of this Order to:

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