COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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

Registration number 60103

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1307.D, §10.1-1309, §10.1-1316.C, and §10.1-1184 between the State Air Pollution Control Board and Maryview Hospital, for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

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

1. "Va. Code" means the Code of Virginia (1950), as amended.

2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.

3. "Boilers" means external combustion steam generating units.

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.

6. "Distillate oil" means liquid fuel which meets the ASTM specification for numbers 1 and 2 fuel oil.

7. "Order" means this document, also known as a Consent Order.

8. "Maryview Medical Center" means Maryview Hospital, certified to do business in Virginia, and its affiliates, partners, subsidiaries, and parents.

9. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

10. "Permit" means Stationary Source Permit To Install and Operate, which includes designated equipment subject to New Source Performance Standards (NSPS).

11. "Regulations" means Virginia Regulations for the Control and Abatement of Air Pollution (9 VAC 5-80-10 et seq.).

12. "CFR" means Code of Federal Regulations.

SECTION C: Findings of Fact and Conclusions of Law

1. Maryview Hospital owns the facility known as Maryview Medical Center at 3636 High Street, Portsmouth, VA 23707.

2. DEQ issued to Maryview Medical Center on August 17, 2001 an air permit that included three boilers each with a capacity of 11,700,000 Btu per hour and with approved fuels of natural gas and distillate oil.

3. On June 6, 2003 Department of Environmental Quality regional staff during an inspection discovered that two boilers had been constructed at Maryview Medical Center. The "new boilers" each had a capacity of 10,460,000 Btu per hour, capable of being fired by natural gas and distillate oil. The new boilers each had a nameplate date of 2002.

4. A subsequent review of agency files did not find an air permit issued for Maryview Medical Center that included the two new boilers.

5. 9 VAC 5-80-1120(A)(Article 6) of the Regulations states: "No owner or other person shall begin actual construction, reconstruction, or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source."

6. 9 VAC 5-80-1110 (C)(Article 6) of the Regulations states: "'Begin actual construction' means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building

supports and foundations, laying of underground pipework, and construction of permanent storage structures."

7. 9 VAC 5-80-1110(C)(Article 6) of the Regulations states: "'Stationary source' means any building, structure, facility or installation, which emits any regulated air pollutant."

8. 9 VAC 5-80-1220 (Article 6) "Existence of permit no defense" of the Regulations states: "The existence of a permit under this article shall not constitute defense to a violation of the Virginia Air Pollution Control Law or the regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction."

9. 9 VAC 5-80-100(C)(Article 6) of the Regulations states "The provisions of this article do not apply to any stationary source, emissions unit or facility that is exempt under the provisions of 9 VAC 5-80-1320".

10. 9 VAC 5-80-1320(B)(Article 6) of the Regulations states: "Facilities as specified below shall be exempt from the provisions of this article..."

11. 9 VAC 5-80-1320(B)(1)(b)(Article 6) of the Regulations states: Using liquid fuel [distillate oil] with a maximum heat input of less than 10,000,000 Btu per hour."

12. The capacity and fuel of the two new boilers, each 10,460,000 Btu per hour and capable of being fired by liquid fuel, are not exempt and are subject to Virginia Regulations for the Control and Abatement of Air Pollution.

13. 9 VAC 5-80-1100(E)(Article 6) of the Regulations states: "An affected facility subject to Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 shall not be exempt from the provisions of this article..."

14. 9 VAC 5-50-400 (Article 5) of the Regulations states; "The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (40 CFR Part 60) designated in 9 VAC 5-50-410 are, unless indicated otherwise, incorporated by reference into these regulations..."

15. 9 VAC 5-50-400 (Article 5) of the Regulations "'Designated standards of performance' [includes] Subpart Dc, Small Industrial-Commercial-Institutional Steam Generating Units, 40 CF 60.40c through 60.48c (industrial-commercial-institutional steam generating units which have a heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour)".

16. The two new boilers, each 10,460,000 Btu per hour heat capacity, are not exempt and are subject to the U.S. Environmental Protection Agency Regulations on

Standards of Performance for New Stationary Sources (40 CFR Part 60), as designated in the Virginia Regulations for the Control and Abatement of Air Pollution 9 VAC 5-50-410.

17. 40 CFR Part 60, Subpart Dc, § 60.48c(e) states "The owner or operator of each affected facility ... shall keep records and submit reports ..."

18. 40 CFR Part 60, Subpart Dc, § 60.48c(e)(11) and (f) states (e) "If fuel supplier certification is used to demonstrate compliance ..." and (f) "Fuel supplier certification shall include the [listed] information ..."

19. 40 CFR Part 60, Subpart Dc, § 60.48c(g) states "The owner or operator of each affected facility shall record and maintain records of the amounts of each fuel combusted during each day."

20. A subsequent review of DEQ files did not find records of fuel supplier certifications from the period of installation (2002) to the present, submitted to demonstrate compliance with 40 CFR Part 60, Subpart Dc.

21. A facility inspection on June 6, 2003 did not find records of the amounts of natural gas fuel combusted during each day to demonstrate compliance with 40 CFR Part 60, Subpart Dc.

22. The two new boilers were apparently operating without an air permit (9 VAC 5-80-1120(A)(Article 6)).

23. Fuel supplier certifications were apparently not being submitted (40 CFR Part 60, Subpart Dc, § 60.48c(e)).

24. Fuel combusted each day of natural gas was apparently not being recorded (40 CFR Part 60, Subpart Dc, § 60.48c(g)).

25. A Notice of Violation (NOV) was issued to Maryview Medical Center on June 27, 2003. The NOV was issued for violations of the Regulations: 9 VAC 5-80-1120(A), construction without a (air) permit; 9 VAC 5-50-400, failure to submit fuel reports and keep daily fuel combusted records as required with incorporated by reference 40 CFR Part 60 Subpart Dc § 60.48c(e) and § 60.48c(g).

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316.C, orders Maryview Hospital, and Maryview Hospital voluntarily agrees, to pay a civil charge of $8,662.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," shall indicate Maryview Hospital's Federal Identification Number, and shall be sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

2. Maryview Hospital agrees to the following, to be completed within 30 days of the effective date of this Order, for the two new boilers:

   a. Submit to DEQ TRO a complete Form 7 application.
   b. Submit semi-annual distillate fuel oil reports for the periods January 1 – June 30, 2002, July 1 – December 31, 2002, and January 1 – June 30, 2003.
   c. Begin daily recordings of natural gas fuel combusted.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Maryview Hospital, for good cause shown by Maryview Hospital, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Maryview Medical Center by DEQ on June 27, 2003. 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, Maryview Hospital admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Maryview 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. Maryview Hospital declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *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 Maryview 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. Maryview 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. Maryview Hosptial shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Maryview Hospital 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 within 24 hours 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, 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 Maryview Hospital. Notwithstanding the foregoing, Maryview 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 the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Maryview Hospital. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Maryview Hospital 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, Maryview Hosptial voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Aug. 15, 2003.

Francis L. Daniel, Regional Director
for Robert G. Burnley, Director
Department of Environmental Quality

Maryview Hospital voluntarily agrees to the issuance of this Order.

By: _____

Date: 8-13-03

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 13-16 day of August, 2003, by John M. Poore, who is
(name)

Vice President of Maryview Hospital, on behalf of the Hospital.
(title)

Notary Public

My commission expires: June 30, 2006.

Maryview Hospital voluntarily agrees to the issuance of this Order.

By: _____

Date: 8-13-03

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 13th day of August, 2003, by John M. Poore, who is
(name)

Vice President of Maryview Hospital, on behalf of the Hospital.
(title)

_____
Notary Public

My commission expires: June 30, 2006.