



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN VIRGINIA REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

~~Jeffery A. Steers~~
Regional Director

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

Upper Occoquan Sewage Authority
DEQ Registration No. 71770

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1316, and 10.1-1309, between the State Air Pollution Control Board (SAPCB) and Upper Occoquan Sewage Authority, for the purpose of resolving certain alleged violations of the air regulations as specified in SECTION C of this Order.

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 collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
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.

4. "Facility" means Upper Occoquan Sewage Authority, located at 14631 Compton Road, Centreville, Virginia 20121 (Fairfax County).
5. "MNSR" means Minor new Source Review.
6. "NO_x" means Nitrogen oxide.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "Order" means this document, also known as a Consent Order.
9. "RACT" means Reasonably Available Control Technology.
10. "Regulations" refers to the Regulations for the Control and Abatement of Air Pollution for the Commonwealth of Virginia.
11. "SAPCB Regulations" mean the State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution.
12. "VAC" means Virginia Administrative Code.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VOC" means Volatile Organic Compounds.

SECTION C: Findings of Fact

1. The Upper Occoquan Sewage Authority (UOSA) operates a wastewater treatment plant at 14631 Compton Road, Centreville, VA 20121. Prior to the expansion of the facility from 27 million gallons per day (mgd) to 54 mgd with the addition of two 2,530 kilowatt (kW), 3,393 brake horsepower (bhp) diesel generators, UOSA commissioned the preparation of an air emissions evaluation. UOSA was already operating one 2,500 kW (3,353 bhp) diesel generator at this plant prior to the expansion. The resulting report, issued to UOSA by its consultant in November of 1995, concluded that an air emissions permit was unnecessary for the plant expansion. The report erroneously identified the two planned diesel generators as 25 kW each, rather than 2,530 kW each. This error, and the resulting emissions miscalculations, led to the incorrect conclusion that a permit to construct and operate was not necessary under State Air Pollution Control Board (SAPCB) regulations. Without a permit to construct and operate, UOSA commenced installation of these generators in 1999 and began operating them in July 2004.

2. In 1992, the Northern Virginia Emissions Control Area (the area) was designated as “serious non-attainment” for ozone, for which Nitrogen Oxide (NO_x) and Volatile Organic Compounds (VOCs) are the precursor pollutants. In 2003, the area was redesignated as “severe non-attainment” for ozone. Additionally, in 1995, all major stationary sources within the Commonwealth of Virginia became subject to the Federal Operating Permit requirements of SAPCB regulations. Under the SAPCB regulations, all facilities with a theoretical potential to emit (PTE) greater than 50 tons per year of NO_x or VOCs are subject to the requirements for Reasonably Available Control Technology (RACT). In 1995, when the consulting firm performed the air emissions evaluation, the facility should have been considered as a major stationary source with a PTE greater than 50 tons of NO_x per year, and applied for a non-attainment New Source Review (NSR) permit for the major modification at the facility. In addition, based on the DEQ’s evaluation, UOSA should have applied for and been issued a Federal Operating Permit in the first round of permits in Calendar Year (CY) 2000 if they did not opt to take limits that would have kept them below the Federal Operating Permit limit threshold. DEQ estimates of actual CY 2004 facility-wide emissions indicate that UOSA exceeded the 25 tons per year major source threshold for NO_x under NSR and exceeded the Title V major source NO_x threshold in a “severe ozone non-attainment” area. DEQ estimated actual facility-wide NO_x emissions to be 44 tons in CY 2004 based on actual CY 2004 fuel throughputs and equipment operational hours reported by UOSA and calculated the emissions using the appropriate Federal and manufacturer emission factors.
3. UOSA disclosed to DEQ, in a letter dated April 10, 2006, that the Centreville facility may have violated SAPCB regulations based on the finding that the initial air emissions evaluation performed by the consultant was incorrect. UOSA submitted a Form 7 Air Permit Application and a revised Form 7 Application to DEQ on May 5, 2006, and May 25, 2006, respectively, detailing all installed equipment at the facility. Past actual criteria pollutant emissions forms, which included CY 2004 and CY 2005 emissions data, were submitted in June 2006, and additional information and emissions estimates were provided to DEQ in July and August of 2006. After reviewing all of UOSA’s submittals and finalizing facility emissions estimates, an “out of compliance” inspection report was prepared on October 3, 2006, and a Notice of Violation (NOV) was issued to the facility on November 3, 2006, based on the findings of non-compliance detailed in the inspection report. The NOV states that the facility is alleged to have violated 9 VAC 5-80 Permits for Stationary Sources, Part II Permit Procedures – Permits for New and Modified Stationary Sources, 9 VAC 5-50-270 Standards for Major Stationary Sources in Non-attainment Areas, 9 VAC 5-40-310 Standards for Nitrogen Oxides, and 9 VAC 5-80 Permits for Stationary Sources, Part II Permit Procedures – Federal Operating Permits for Stationary Sources.
4. A meeting between DEQ and UOSA, with their consultant CH2M-Hill, was held on November 29, 2006, to discuss the November 3, 2006, NOV. Subsequent to that meeting, DEQ incorporated UOSA’s comments/corrections, as points of clarification,

into a revised NOV that retained the original issuance date of November 3, 2007. UOSA responded to the NOV in a letter dated December 7, 2006, and DEQ stated in its January 26, 2007, response, that it had considered all of the UOSA comments but would make no further modifications to the revised NOV.

5. Another meeting between DEQ and UOSA was held on March 13, 2007, to discuss preliminary civil penalty calculations to be incorporated into the Consent Order to resolve the NOV.
6. UOSA's reported operation of non-permitted equipment is considered a federally enforceable violation and is classified as a High Priority Violator (HPV). The alleged violation is considered to be HPV because the facility is a major source for the pollutant of concern (NOx). Also, the following EPA general HPV criterion apply:
 - a. General HPV Criterion 1: Failure to Obtain PSD or NSR Permit – "Failure to obtain a PSD permit (and/or to install BACT), and NSR permit (and/or install LAER or obtain offsets), and/or a permit for a major modification of either."
 - b. General HPV Criterion 3: Violation that affects Synthetic Minor Status – "Violation by a synthetic minor of an emission limit or permit condition that affects the source's PSD, NSR, or Title V status."
7. The facility has submitted an administratively and technically complete Form 7 Air Permit Application to the Northern Virginia Regional Air Permit Manager and is working with the DEQ permitting personnel in a timely manner to complete the permitting process. The facility has also submitted a SEP proposal to include a donation to the Clean Air Partners Clean Air Teleworking Project as well as upgrading the lighting in selected areas of the facility to a more modern and efficient lighting system to reduce energy use.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1309 and §10.1-1316, and upon consideration of Va. Code §10.1-1186.2, the Board orders the Upper Occoquan Sewage Authority, and the Upper Occoquan Sewage Authority voluntarily agrees to perform the actions described below and in Appendices A. In addition, the Board orders the Upper Occoquan Sewage Authority, and the Upper Occoquan Sewage Authority voluntarily agrees to pay a civil charge in the amount of \$56,437.00 to be paid as follows:

1. The Upper Occoquan Sewage Authority shall pay \$5,937.00 within 30 days of the effective date of 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

The payment shall include the Upper Occoquan Sewage Authority's Federal ID Number and shall identify that payment is being made as a result of this Order.

2. The Upper Occoquan Sewage Authority shall satisfy \$50,500.00 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.
3. The net project cost of the SEP to the Upper Occoquan Sewage Authority shall not be less than the amount set forth in paragraph D.2. If it is, the Upper Occoquan Sewage Authority shall pay the remaining amount in accordance with paragraph D.1 of this Order, unless otherwise agreed to by this Department. "Net project costs" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
4. By signing this Order, the Upper Occoquan Sewage Authority certifies that it has not commenced performance of the SEP.
5. The Upper Occoquan Sewage Authority acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks or otherwise by the Upper Occoquan Sewage Authority to a third party, shall not relieve the Upper Occoquan Sewage Authority of its responsibility to complete the SEP as described in this Order.
6. In the event that it publicizes the SEP or the SEP results, the Upper Occoquan Sewage Authority shall state in a prominent manner that the project is part of a settlement of an enforcement action.
7. The Department has the sole discretion to:
 - i. Authorize any alternate, equivalent SEP proposed by the Facility; and
 - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
8. Should the Department determine that the Upper Occoquan Sewage Authority has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify the Upper Occoquan Sewage Authority in writing. Within 30 days of being

notified, the Upper Occoquan Sewage Authority shall pay the amount specified in D.2., above, as provided in paragraph D.1., above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Upper Occoquan Sewage Authority, for good cause shown by the Upper Occoquan Sewage Authority, 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 November 3, 2006. 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, the Upper Occoquan Sewage Authority admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Upper Occoquan Sewage Authority 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. The Upper Occoquan Sewage Authority 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 the Upper Occoquan Sewage Authority 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.

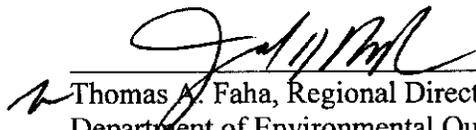
8. The Upper Occoquan Sewage Authority shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Upper Occoquan Sewage Authority shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Upper Occoquan Sewage Authority 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 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 the Upper Occoquan Sewage Authority. Notwithstanding the foregoing, the Upper Occoquan Sewage Authority 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 the Upper Occoquan Sewage Authority. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Upper Occoquan Sewage Authority 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, the Upper Occoquan Sewage Authority voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of September 27, 2007.


Thomas A. Faha, Regional Director
Department of Environmental Quality

The Upper Occoquan Sewage Authority voluntarily agrees to the issuance of this Order.

By: Charles P. Boepple

Date: Sept. 26, 2007

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this day of

September 26, 2007, by Charles P. Boepple, who is
(name)

Executive Director of the Upper Occoquan Sewage Authority, on behalf of the
(title)

Organization.


Notary Public

My commission expires: June 30, 2008
Notary Registration # 162018

Appendix A

The Upper Occoquan Sewage Authority shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by the Upper Occoquan Sewage Authority is to contribute \$10,000 towards the Clean Air Partners Clean Air Teleworking Project (See Appendix B) as well as installing a more efficient lighting system in the facility for an estimated energy savings of 133,350 kWh per year and at a cost of approximately \$40,500.
2. The SEP shall be completed in a timely manner with the Clean Air Partners project funding being completed by September 30, 2007. The lighting system upgrade shall be installed as soon as the engineering update is complete and the Upper Occoquan Sewage Authority shall notify DEQ upon completion of each phase of the project as outlined in paragraph 3 below.
3. The Upper Occoquan Sewage Authority shall submit progress reports on the SEP on a quarterly basis on the 10th day of the month following the end of a calendar quarter. At the conclusion of the engineering update at the facility, the Upper Occoquan Sewage Authority shall submit the lighting upgrade plan and schedule to DEQ for review before beginning the upgrades.
4. The Upper Occoquan Sewage Authority shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. The Upper Occoquan Sewage Authority shall submit the final report and certification to the Department within 45 days of completion of the SEP.
5. If the SEP has not or can not be completed as described in the Order, The Upper Occoquan Sewage Authority shall notify DEQ in writing no later than September 30, 2007. Such notification shall include:
 - a. An alternate SEP proposal, or
 - b. Payment of the amount specified in paragraph D.2 as specified in paragraph D.1.
6. The Upper Occoquan Sewage Authority hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
7. The Upper Occoquan Sewage Authority shall submit to the Department written notification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 45 days of completion of the SEP. For the purposes of this

submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from the Upper Occoquan Sewage Authority's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

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

Trisha Eyler
Regional Enforcement Specialist
13901 Crown Court
Woodbridge, VA 22193

Appendix B

Clean Air Teleworking

Clean Air Partners is a non-profit, public-private partnership committed to improving air quality in the Metropolitan Washington-Baltimore region. Our mission is to educate the public about the health effects of poor air quality and to encourage organizations and individuals to reduce air pollution through simple, voluntary actions. Clean Air Partners is pleased to submit the following proposal to the DEQ for consideration as a Supplemental Environmental Project.

Purpose: To encourage the use of teleworking on forecasted poor air quality days (Code Orange and above). According to the Metropolitan Washington Council of Governments, there were 19 Code Orange days, 1 Code Red day and 1 Code Purple day in 2006. Of the 21 poor air quality days in 2006, three were for elevated levels of particle pollution and 18 were for ground-level ozone. All poor air quality days occurred between May and August.

Description: This project will be implemented by Clean Air Partners between June 2007 and June 2008 and includes two elements – the development of an on-line Telework Tool Kit and a Clean Air Teleworking Demonstration Project, both of which are described below:

Telework Tool Kit – The tool kit will provide online resources to help employers start or expand a telework program, including the use of teleworking on poor air quality days. The tool kit will include a list of frequently asked questions, implementation steps, telework policy and agreement, job and employee assessment instruments, implementation checklist, home office safety checklist, and communication tools. Employers will be able to download the tool kit through the Clean Air Partners' website.

Clean Air Teleworking Demonstration Project – Clean Air Partners will work with one or more employers to develop and implement a Clean Air Teleworking program. Participants will be recruited through the Clean Air Partners database of more than 600 Air Quality Action Day participants and the Telework!VA program. An orientation will be provided to participating organizations. Participants will be asked to track their participation using a web-based system that calculates auto emissions reductions resulting from teleworking (NO_x, VOC, CO, and CO₂), such as Teletrips (<https://www.secure-teletrips.com/>).

The results will be incorporated into Clean Air Partners' marketing and outreach efforts, with an initial emphasis on targeting local and state government agencies.

Coordination: This project will be closely coordinated with other entities involved in telework implementation in the Commonwealth of Virginia, including the Virginia Department of Rail and Public Transportation and the Office of Telework Promotion and Broadband Assistance.

Estimated Costs:	
Telework Tool Kit:	\$3,000 to develop toolkit
Clean Air Teleworking Demonstration Project	\$5,000 for consultant support
Online Tracking/Reporting	\$2,000
TOTAL	\$10,000