



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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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
QUEST DIAGNOSTICS INCORPORATED
FOR
THE NICHOLS INSTITUTE
Registration No. 72342**

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 Quest Diagnostics Incorporated regarding the Nichols Institute 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. "CO" means Carbon Monoxide
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. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the Nichols Institute, located at 14225 Newbrook Drive, in Chantilly, Virginia. The Facility is a laboratory with 5 dual fuel powered (natural gas and distillate) boilers and three generators.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "NO_x" means oxides of nitrogen
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 permit to modify and operate a laboratory facility with boilers and generators, which was issued under the Virginia Air Pollution Control Law and the Regulations to Quest Diagnostics, Inc., on September 9, 2009.
11. "Quest" means Quest Diagnostics Incorporated, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Quest is a "person" within the meaning of Va. Code § 10.1-1300.
12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "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. Quest owns and operates the Facility in Chantilly, Virginia. The Facility is the subject of the Permit which allows Quest to operate 5 dual fuel powered (natural gas and distillate) boilers and three generators.
2. On April 27, 2010, Department staff conducted a Partial Compliance Evaluation of the calendar year 2009 annual update 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 observations:

- a. The calendar year 2009 annual update indicated that the five Cleaver Brooks Boilers at the Facility burned a total of 40.1 million cubic feet of natural gas during the 2009 calendar year.
 - b. Using the natural gas throughput provided in the 2009 annual update and emissions factors in EPA’s AP 42, a Compilation of Air Pollutant Emissions Factors, the facility emitted 2.054 tons of NOx and 1.722 tons of CO in the 2009 calendar year.
3. Condition 7 of the Permit states: “The five boilers (Ref.#B-1 to B-5) shall consume no more than 25.23×10^6 (million) cubic feet of natural gas and 100,000 gallons of diesel fuel oil per year, calculated monthly as the sum of each consecutive twelve-month period.”
 4. Condition 12 of the Permit states: “Emissions from the operation of the boilers (Ref.#B-1 to B-5) using natural gas, shall not exceed the limits specified below:

	Ref#	Ref #	Ref#	Total for All Boilers
	B1	B2 or B3	B4 or B5	
Nitrogen Oxides (as NO2)	0.42 lbs/hr	1.68 lbs/hr	1.05 lbs/hr	1.26 tons/yr
Carbon Monoxide (CO)	0.35 lbs/hr	1.41 lbs/hr	0.88lbs/hr	1.06tons/yr...”

5. On May 10, 2010, based on the inspection, the Department issued a Notice of Violation to Quest for the violations described in paragraphs C2 through C4 above.
6. On June 14, 2010, Department staff met with representatives of Quest and their environmental consultant to discuss the violations.
7. Based on the results of the April 27, 2010 inspection and the June 14, 2010, meeting, the Board concludes that Quest has violated Conditions 7 and 12 of the Permit as described in paragraphs C2 through C4 above.
8. A permit modification request was received by DEQ on June 8, 2010, and is currently being processed. The permit modification will resolve the aforementioned violations.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Quest, and Quest agrees to pay a civil charge of \$6,011.26 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

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

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

And it is so ORDERED this 18th day of January, 2010.



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

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Quest Diagnostics Incorporated voluntarily agrees to the issuance of this Order.

Date: 1/12/2011 By: [Signature], MANAGER
(Person) (Title)

Commonwealth of Virginia
City/County of Fairfax

The foregoing document was signed and acknowledged before me this 12 day of January, 2011, by John W. Cooper who is manager of Quest Diagnostics Incorporated on behalf of the corporation.

Lana Sue Hepner
Notary Public
7211289
Registration No.

My commission expires: May 31, 2012

Notary seal:



LANA SUE HEPNER
Notary Public 7211289
Commonwealth of Virginia

My Commission Expires May 31, 2012