



# 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 QWEST COMMUNICATIONS COMPANY, LLC Registration No. 73293**

### **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 Qwest Communications Company, LLC, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, 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. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
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 Qwest Communications Company, LLC., located at 22995 Wilder Court, Dulles, Virginia 20166.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "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.
9. "Permit" means the New Source Review Permit to construct and operate a two diesel engine driven emergency generators, which was issued under the Virginia Air Pollution Control Law and the Regulations to IT Service Center, LLC on December 10, 2004 and was transferred to Qwest Communications Company, LLC on January 13, 2010.
10. "Qwest" means Qwest Communications Company, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. Qwest Communications Company, LLC is a "person" within the meaning of Va. Code § 10.1-1300.
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.
15. "VEE" means a Visible Emissions Evaluation, as determined by EPA Reference Method 9 (see 40 CFR 60, Appendix A).

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

1. Qwest owns and operates the Facility which serves as a data-center with two Caterpillar Model 3512B diesel engine driven emergency electric generators (G1 and G2), located in Dulles, Virginia. The units are permitted by the Department under registration number 73293.
2. On February 18, 2010, Department staff conducted a Full Compliance Evaluation of the Facility for compliance with the applicable 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. Failure to submit notification to DEQ of the actual installation date and the start-up in service date of G1 and G2, in accordance with Condition 12 of the Permit and 9 VAC 5-50-50.
  - b. Failure to conduct a VEE for one of the two units, in accordance with Condition 10 of the Permit, 9 VAC 5-50-30 and 40 CFR Part 60, Appendix A, Method 9.
  - c. The operation of G1 and G2 using fuel with sulfur content in exceedance of the Permit limit (The fuel used had a sulfur content of 0.09% as represented in the documentation provided to DEQ by the source at the time of the site visit. The facility's fuel sulfur content limit is 0.05%. The facility reported 24 hours of operation for G1 since December 24, 2009, and 23 hours of operation G2) in accordance with Condition 4 and 5 of the Permit, 9 VAC 5-50-260, and 9 VAC 5-80-1180.
  - d. Failure to maintain records of monthly and 12-month rolling totals of fuel consumption, and failure to provide DEQ with the Calendar Year (CY) 2008 Annual Update in accordance with Conditions 11 and 21 of the Permit and 9 VAC 5-50-50.
3. The Permit, Condition 4 states "The approved fuel for the Caterpillar Model 3512B (Ref # G1 and G2) generators is low sulfur diesel or No. 2 fuel oil with sulfur content at or below 0.05%. A change in the fuel may require a permit to modify and operate."
4. The Permit, Condition 5 states "The fuel shall meet the specifications below: DISTILLATE OIL which meets the ASTM D396 specifications for number 2 fuel oil: Maximum sulfur content per shipment: 0.05%"
5. The Permit, Condition 10 states "Visible Emission Evaluations (VEE) in accordance with 40 CFR Part 60, Appendix A, Method 9, shall be conducted on one of the two Caterpillar Model 3512B generators (Ref # G1 and G2). The test shall consist of 30 sets of 24 consecutive observations (at 15 second intervals) to yield a six minute average. The details of the tests are to be arranged with the Air Compliance Manager of the Northern Virginia Regional Office. The permittee shall submit a test protocol at least 30 days prior to testing. The evaluation shall be performed within 60 days after starting the engines, but no later than 180 days after starting the engines. Two copies of the test result shall be submitted to the Air Compliance Manager of the Northern Virginia Regional Office within 45 days after test completion."
6. The Permit, Condition 11 states in part "The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Air Compliance Manager, Northern Virginia Regional Office. These records shall include, but are not limited to:  
...
  - b. Annual consumption of No. 2 fuel oil, calculated monthly as the sum of each consecutive twelve month period.
  - c. All fuel supplier certifications....

These records shall be available for inspection by the DEQ and shall be current for the most recent five years.”

7. The Permit, Condition 12 states “The permittee shall furnish written notification to the Air Compliance Manager of the Northern Virginia Regional Office of the DEQ.
  - a. The actual date on which the installation of the two Caterpillar Model 3512B diesel driven electric generators (Ref # G1 and G2) commenced within thirty days after such date
  - b. The actual start up, in service date of the two Caterpillar Model 3512B diesel driven electric generators (Ref # G1 and G2) within fifteen days after such date.”
8. The Permit, Condition 21 states “Annually the permittee will be required to provide information to the DEQ or the Board which will be used to maintain the currency of the stationary source emission database. The information requested may include, but is not limited to; process and production data; changes in control equipment; and operating schedules. Such requests for information from the DEQ will either be in writing or by personal contact. The availability of information submitted to the DEQ or the board will be governed by applicable provisions of the Freedom of Information Act, Sections 2.1-340 through 2.1-348 of the Code of Virginia, Section 10.1-1314 (addressing information provided to the board) of the Code of Virginia, and 9 VAC 5-170-60 of the State Air Pollution Control Board Regulations. Information provided to federal officials is subject to appropriate federal law and regulations governing confidentiality of such information.”
9. On March 29, 2010, based on the inspection and follow-up information, the Department issued a Notice of Violation to Qwest for the violations described in paragraphs C(2) through C(8), above.
10. On April 9, 2010, Representatives of Qwest met with DEQ to discuss the violations. At the meeting the Qwest provided fuel certifications and testing results purporting that the sulfur content of the fuel in the tanks for the generators was within the permit limits. In addition, Qwest provided the hours of operation of generators and monthly fuel consumption since the transfer of ownership on December 24, 2009. At the meeting Qwest stated that a VEE would be scheduled as soon as possible.
11. On April 20, 2010 Qwest submitted a written response to the NOV that included a protocol for the VEE and the estimated date of installation of January 18, 2005 of G1 and G2.
12. On April 22, 2010, the VEE protocol was approved by DEQ.
13. The VEE was conducted on May 25, 2010.
14. On May 12, 2010, DEQ and Qwest took split samples of the fuel at the facility for analysis. The DEQ samples were tested by Virginia Division of Consolidated Laboratory

Services (DCLS) and the report, dated May 27, 2010, stated that the sulfur content of the fuel being used for G1 and G2 was 844 ppm and 827 ppm in tanks one and two.

15. On June 1, 2010, Qwest emailed DEQ a fuel testing report, dated May 28, 2010, which stated that the sulfur content of the fuel being used for G1 and G2 was 0.09%.
16. Qwest drained, cleaned and refilled the two tanks with ultra low sulfur diesel on June 4, 2010.
17. On June 11, 2010, Qwest submitted to DEQ an in compliance testing report for the VEE conducted on May 25, 2010.
18. Based on the results of February 18, 2010 inspection, the Board concludes that Qwest Communications Company, LLC has violated conditions 4, 5, 10, 11, 12, 21 of the December 10, 2004 Permit, 9 VAC 5-50-30, 9 VAC 5-50-50, 9 VAC 5-50-260, 9 VAC 5-50-410 and 9 VAC 5-80-1180, as described in paragraphs C(2) through C(8), above.
19. Qwest Communications Company, LLC has submitted documentation that verifies that the violations described in paragraphs C(2) through C(8), above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Qwest Communications Company, LLC, and Qwest Communications Company, LLC agrees to pay a civil charge of \$5,040.00 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

Qwest Communications Company, LLC 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 Qwest Communications Company, LLC for good cause shown by Qwest Communications

Company, LLC, 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, Qwest Communications Company, LLC admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law contained in this Order.
4. Qwest Communications Company, LLC 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. Qwest Communications Company, LLC 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 Qwest Communications Company, LLC 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. Qwest Communications Company, LLC 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. Qwest Communications Company, LLC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Qwest Communications Company, LLC 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 Qwest Communications Company, LLC 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 Qwest Communications Company, LLC. Nevertheless, Qwest Communications Company, LLC 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. Qwest Communications Company, LLC 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 Qwest Communications Company, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Qwest Communications Company, LLC 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 Qwest Communications Company, LLC 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 Qwest Communications Company, LLC 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 Qwest Communications Company, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Qwest Communications Company, LLC.
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, Qwest Communications Company, LLC voluntarily agrees to the issuance of this Order but does not waive and expressly reserves all of its rights, defenses and claims against any third-parties with respect to the violations identified in this Order.

And it is so ORDERED this 2<sup>nd</sup> day of September, 2010.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

Qwest Communications Company, LLC voluntarily agrees to the issuance of this Order.

Date: 08/30/2010 By: Darrell S. Lingk, Director EHS  
(Person) (Title)  
Qwest Communications Company, LLC

Commonwealth of Virginia

City/County of Denver

The foregoing document was signed and acknowledged before me this 30<sup>th</sup> day of August, 2010, by Darrell Lingk who is Director of Qwest Communications Company, LLC, on behalf of the company.

Hilary Esker  
Notary Public

20094034565  
Registration No.

My commission expires: October 28, 2013

Notary seal: