



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION

ORDER BY CONSENT ISSUED TO

Rockingham Memorial Hospital
Registration #: 81591

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and Rockingham Memorial Hospital, for the purpose of resolving certain alleged 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 citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
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.
5. "Order" means this document, also known as a Consent Order.

6. "RMH" means Rockingham Memorial Hospital.
7. "Facility" means the new Rockingham Memorial Hospital facility located at 3073 Reservoir Street, Harrisonburg, VA.
8. "VRO" means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
9. "CFR" means Code of Federal Regulations.
10. "The Regulation" means the Virginia Regulations for the Control and Abatement of Air Pollution, 9 VAC 5-10-10 et seq.
11. "Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous properties, and are under the control of the same persons (or persons under common control) except the activities of any watercraft or nonroad engine. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e. which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9 VAC 5-20-21).
12. "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. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location of a portable emissions unit, this term refers to the delivery of any portion of the portable emissions unit to the site.

SECTION C: Findings of Facts and Conclusions of Law

1. Rockingham Memorial Hospital is the owner and operator of the Facility, which is the subject of a Notice of Violation issued on September 6, 2007. Based on a permit application received on August 31, 2007, prior informational meetings, and site observations, it appears that RMH has begun actual construction of a new stationary source, including the installation of building supports and foundations for the emission units, prior to obtaining an air permit.
2. Pursuant to 9 VAC 5-80-1120. A. of the Regulation: "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."

3. On May 7, 2007, DEQ staff advised RMH to submit an air permit application as soon as possible since groundbreaking for the new facility had begun. DEQ advised RMH that the application should have been submitted prior to groundbreaking.

SECTION D: Agreement and Order

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 Rockingham Memorial Hospital, and Rockingham Memorial Hospital agrees to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders Rockingham Memorial Hospital, and Rockingham Memorial Hospital voluntarily agrees, to a civil charge of **\$14,179.00** in settlement of the violations cited in this Order, to be paid as follows:

1. Rockingham Memorial Hospital shall pay **\$1,417.90** of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's 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 Rockingham Memorial Hospital's Federal ID number and shall state that it is being tendered in payment of the civil charge assessed under this Order.

2. Rockingham Memorial Hospital shall satisfy **\$12,761.10** of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.
3. The net project cost of the SEP to Rockingham Memorial Hospital shall not be less than the amount set forth in Paragraph D.2. If it is, Rockingham Memorial Hospital shall pay the remaining amount in accordance with Paragraph D.1. of this Order, unless otherwise agreed to by the 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, Rockingham Memorial Hospital certifies that it has not commenced performance of the SEP.

5. Rockingham Memorial Hospital acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Rockingham Memorial Hospital to a third party, shall not relieve Rockingham Memorial Hospital of its responsibility to complete the SEP as described in this Order.
6. In the event it publicizes the SEP or the SEP results, Rockingham Memorial Hospital shall state in a prominent manner that the project is part of a settlement for an enforcement action with DEQ.
7. The Department has the sole discretion to:
 - a. Authorize any alternate, equivalent SEP proposed by the Facility; and
 - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
8. Should the Department determine that Rockingham Memorial Hospital has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Rockingham Memorial Hospital in writing. Within 30 days of being notified, Rockingham Memorial Hospital shall pay the amount specified in Paragraph 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 Rockingham Memorial Hospital, for good cause shown by Rockingham Memorial Hospital, or on its own motion after notice to Rockingham Memorial Hospital and its opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein. 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 this 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, Rockingham Memorial Hospital admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Rockingham Memorial 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. Rockingham Memorial Hospital declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the 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 of Rockingham Memorial Hospital to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Rockingham Memorial 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. Rockingham Memorial 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. Rockingham Memorial Hospital shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rockingham Memorial 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 Rockingham Memorial 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 Rockingham Memorial Hospital. Notwithstanding the foregoing, Rockingham Memorial 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. Rockingham Memorial Hospital petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director, his designee, or the Board may terminate this Order, upon his or its own initiative, upon 30 days' written notice to Rockingham Memorial Hospital, and in accordance with the provisions of the Administrative Process Act.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Rockingham Memorial Hospital from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By appropriate signature below, Rockingham Memorial Hospital voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Sept 10, 2007.

Amy Thatcher Owens
Amy Thatcher Owens, Regional Director
Valley Regional Office
Department of Environmental Quality

Rockingham Memorial Hospital voluntarily agrees to the issuance of this Order.

By: Dennis Coffman Dir. FAC. Planning
Date: Sept 10, 2007

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 10 day of
Sept, 2007, by DENNIS COFFMAN, who is
(name)

Director Facilities Planning of Rockingham Memorial Hospital, on behalf of Rockingham Memorial
Hospital.
(title)

Diana L Adams
Notary Public

My commission expires: 1/31/2011

DIANA L. ADAMS
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #329867
My Commission Expires Jan. 31, 2011

APPENDIX A

In addition to the foregoing, the Virginia State Air Pollution Control Board orders RMH, and RMH voluntarily agrees, to implement this corrective action plan as an additional provision to this Order. Based on the information obtained to date, DEQ has determined and RMH agrees that RMH must comply with the terms and conditions as set out below:

1. In that RMH submitted a Form 7 permit application on August 31, 2007, RMH shall provide additional information in support of the permit application as requested by DEQ and within specified timeframes.
2. In that RMH has begun actual construction, RMH shall not locate emissions units on the premises nor pursue further construction of foundations and utilities associated with any emission units until such time that the air permit has been issued by DEQ. Furthermore, the areas of the central energy plant designated for boilers and generators, as specified in the letter and site plan from RMH dated August 31, 2007, shall remain undeveloped until such time that the air permit has been issued by DEQ.

APPENDIX B

SUPPLEMENTAL ENVIRONMENTAL PROJECT

In addition to the foregoing, Rockingham Memorial Hospital shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by RMH shall be submitted as a proposal to DEQ within 180 days of the effective date of this Order. The SEP shall conform to the requirements as stated in DEQ Enforcement Guidance Memorandum No. 3-2006 Supplemental Environmental Projects and shall be subject to DEQ approval.
2. The SEP shall be completed within 180 days of DEQ approval of the SEP. DEQ reserves the right to require RMH to submit periodic progress reports upon approval of the SEP.
3. RMH 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 by a responsible corporate officer. RMH shall submit the final report and certification to DEQ within 30 days of the SEP completion date.
4. If the SEP has not or cannot be completed as described in the Order, RMH shall notify DEQ in writing no later than the SEP completion deadline established in Condition 2 above. Such notification shall include:
 - a. an alternate SEP proposal, or
 - b. payment of the amount specified in Paragraph D.2. as described in Paragraph D.1.
5. RMH hereby consents to reasonable access by DEQ to property or documents for verifying progress or completion of the SEP.
6. RMH shall submit to DEQ written verification 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, and/or similar documentation with the written final report described in Condition 3 above. 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 RMH's Chief Financial Officer concerning the projected tax savings, grants, or first-year operation cost reductions or other efficiencies.
7. Documents to be submitted to DEQ, other than the civil charge payment described in Section D of the Order, shall be sent to:

Mr. Ronald D. Phillips
DEQ Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801