



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

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Regional Director

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

Registration Number 61435

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 Sentara Hospitals, 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. "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. "Disposer" means equipment that destructs ethylene oxide gas by converting the gas to carbon dioxide and water vapor.
6. "Order" means this document, also known as a Consent Order.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

8. "Permit" means synthetic minor Stationary Source Permit To Construct and Operate air permit dated August 26, 2002, which includes two sterilizers designated to sterilize medical instruments using ethylene oxide gas.
9. "Sentara" means Sentara Hospitals, certified to do business in Virginia, and its affiliates, partners, subsidiaries, and parents.

SECTION C: Findings of Fact and Conclusions of Law

1. Sentara owns the medical facility ("facility"), dba Sentara CarePlex Hospital located at 3000 Coliseum Drive, Hampton. The facility is subject to the Permit dated August 26, 2002.
2. On September 16, 2005, TRO staff conducted an air inspection at the facility. During the inspection it was reported that the ethylene oxide gas emission disposer had not been in operation since April 1, 2003. Reportedly, after the disposer had malfunctioned repeatedly, the repair person told the facility that the disposer was not needed; it was not placed back into service at that time.
3. Permit condition #3 required that ethylene oxide emissions from the two ethylene oxide sterilizers shall be controlled by the disposer. Permit condition #3 also required that the disposer shall be in operation when one or both of the sterilizers using ethylene oxide gas were in operation.
4. According to the manufacturer and facility records, the two sterilizers each operate on a one hour cycle per disposable cartridge containing 0.2205 pounds (100 grams) of 100% ethylene oxide gas, all of which is exhausted within one hour following completion of the sterilization cycle. When the disposer was not in operation during exhaust of 0.2205 pounds ethylene oxide gas from the sterilizer, the hourly ethylene oxide emission Permit limit of 0.009 pounds per hour was exceeded by 2,350% (the disposer has a 99% rated manufacturer ethylene oxide destruction efficiency).
5. According to facility records, yearly ethylene oxide gas permit limits were exceeded when the disposer was not in use according to the table below:

Time Period	# cartridges	Permit limit Tons/yr	Actual emissions Tons/yr	% over annual permit limit
2003	292	0.001	0.032	3,100
2004	448	0.001	0.050	4,900
2005	288	0.001	0.032	3,100

6. Sentara placed the disposer back into service on October 31, 2005. The disposer was placed into back into service following the TRO staff inspection and DEQ notification by letter dated October 18, 2005, that the disposer was required to reduce ethylene oxide emissions below Permit limits and could not be removed from the Permit.

7. Sentara violated Permit Condition #3 by not operating the disposer while exhausting ethylene oxide gas when one or both sterilizers were in operation during April 1, 2003 to October 31, 2005.
8. Sentara violated Permit Condition #5 by exceeding the hourly and yearly ethylene oxide emission Permit limits by not operating the disposer while exhausting ethylene oxide gas when one or both sterilizers were in operation during April 1, 2003 to October 31, 2005.
9. DEQ advised Sentara CarePlex Hospital of the above referenced findings and applicable Permit citations by Notice of Violation dated December 31, 2005.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316.C, orders Sentara, and Sentara voluntarily agrees, to pay a civil charge of \$185,000.00 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 Sentara's Federal Identification Number, and shall be sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 1105
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Sentara, for good cause shown by Sentara, 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 Sentara CarePlex Hospital by DEQ on December 31, 2005. 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. Sentara does not waive any rights it may have to object to enforcement action by other federal, state or local authorities arising out of the same or similar facts alleged in this Order.
3. For purposes of this Order and subsequent actions with respect to this Order, Sentara admits the jurisdictional allegations in the Order, but does not admit the factual allegations or legal conclusions of law contained herein.

4. Sentara 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. Sentara 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, except that Sentara reserves its right to a hearing or other administrative proceeding authorized or required by law or to judicial review of any issue of fact or law contained in any subsequent amendment to this Order issued by the Board without the consent of Sentara. 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 Sentara 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. Sentara does not waive any rights it may have to object to enforcement action by other federal, state or local authorities arising out of the same or similar facts alleged in this Order.
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. Sentara 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. Sentara shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Sentara 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 Sentara. Notwithstanding the foregoing, Sentara 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 Sentara. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Sentara 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, Sentara voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Dec. 15, 2006.

Francis L. Daniel
Francis L. Daniel

Sentara Hospitals voluntarily agrees to the issuance of this Order.

By: Megan B. Perry
Date: 12/15/06

Commonwealth of Virginia
City/County of Hampton

The foregoing document was signed and acknowledged before me this 15 day of December, 2006, by Megan B. Perry, who is
(name)

Sr. Vice President of Sentara Hospitals, on behalf of Sentara Hospitals.
(title)

Barbara M. Belcher
Notary Public

My commission expires: 9/30/07