



# 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  
HCA HEALTH SERVICES OF VIRGINIA, INC.  
FOR THE  
SPOTSYLVANIA REGIONAL MEDICAL CENTER  
Registration No. 41071**

### **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 HCA Health Services of Virginia, Inc., regarding the Spotsylvania Regional Medical Center 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. "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 the Spotsylvania Regional Medical Center, located at 4702 Southpoint Parkway Fredericksburg, Spotsylvania County, Virginia.
6. "HCA" or "HCA Health Services" means HCA Health Services of Virginia, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. HCA Health Services of Virginia, Inc. is a "person" within the meaning of Va. Code § 10.1-1300.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
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. "PCE" means a partial compliance evaluation by DEQ staff.
11. "Permit" means a New Source Review (NSR) Permit to construct and operate a medical center, which was issued under the Virginia Air Pollution Control Law and the Regulations to Healthcare Corporation of America on September 10, 2008 and amended on May 14, 2009.
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.
16. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (*see* 40 CFR 60, Appendix A).

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

1. HCA owns and operates the Facility in Spotsylvania County, Virginia. The Facility is a 126 bed hospital and is the subject of the Permit, which allows for the construction and operation of two Cleaver Brooks firetube boilers rated at 12.24 Million Btu per hour (MMBtu) (B1 and B2), and two emergency engine generator sets rated at 1500 kW each (EPG-1 and EPG-2).

2. On July 30, 2009 HCA submitted notification to DEQ that the anticipated date for the start-up of B1 and B2 was August 17, 2009.
3. On August 19, 2009 HCA submitted notification that the anticipated date for the start-up of EPG-1 and EPG-2 was September 20, 2009.
4. On June 9, 2011, DEQ staff conducted a PCE at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the evaluation and follow-up information, Department staff made the following observations:
  - a. Boilers (B1 and B2):
    - i) Facility staff failed to provide records that demonstrate NOx testing was conducted on one of the two permitted boilers, in accordance with Permit Condition 11.
    - ii) Facility staff failed to provide records that demonstrate that a VEE was conducted on the permitted boiler not tested for NOx, in accordance with Permit Condition 12.
    - iii) Facility staff failed to provide notification to DEQ of the following regarding the boiler: actual date that construction commenced; actual start-up date; and the anticipated performance testing dates, in accordance with Permit Condition 13.
  - b. Emergency Engine Generators (EPG-1 and EPG-2):
    - i) Facility staff failed to provide records that demonstrate NOx testing was conducted on one of the two permitted generators, in accordance with Permit Condition 25.
    - ii) Facility staff failed to provide records that demonstrate that a VEE was conducted on the permitted generator not tested for NOx, in accordance with Permit Condition 26.
    - iii) Facility staff failed to provide notification to DEQ of the following regarding the EPG's: actual date that construction commenced or the type of fuel used; actual start-up date; and the actual performance testing dates and notice that the testing was performed, in accordance with Permit Condition 27.
5. Permit Condition 11 requires that “[t]wo initial performance tests shall be conducted for nitrogen oxides (NOx) as NO<sub>2</sub> from one the new boilers (Unit Ref. Nos. B1 and B2) using reference method 7 or 7E of 40 CFR Part 60, Appendix A to determine compliance with the emission limits contained in Condition 7.”
6. Permit Condition 12 requires that a “visible emissions evaluation shall be conducted on the boiler that was not tested per the requirement in Condition 11 using reference method 9 of 40 CFR Part 60, Appendix A to determine compliance with the visible emission limits contained in Condition 6.”

7. Permit Condition 13 requires that the “permittee shall furnish written notification to the Regional Air Compliance Manager of the DEQ’s NRO of the following:
  - i. The actual date on which construction of each of the boilers (Unit Ref. Nos. B1 and B2) commenced within thirty days after such date.
  - ii. The anticipated start- up date of each boiler postmarked not more than sixty days nor less than thirty days prior to such date.
  - iii. The actual start- up date of the boilers (Unit Ref. Nos. B1 and B2) within fifteen days after such date.
  - iv. The anticipated date of performance tests on each of the boilers postmarked at least thirty days prior to such date.”
  
8. Permit Condition 25 requires that an “Initial performance test shall be conducted for nitrogen oxides (as NO<sub>2</sub>) from one engine generator’s stack (Unit Ref. Nos. EPG-1 or EPG-2) using 40 CFR Part 60, Appendix A, Method 7 or 7E to determine compliance with the emission limits contained in Condition 20.”
  
9. Permit Condition 26 requires that a “Visible Emission Evaluations (VEE) in accordance with 40 CFR Part 60, Appendix A, Method 9, shall be conducted by the permittee on the remaining engine generator’s stack (Unit Ref. Nos. EPG-1 or EPG-2) not selected for initial stack testing in Condition 25.”
  
10. Permit Condition 27 requires that the “permittee shall provide written notification to...the Regional Air Compliance Manager of the DEQ’s NRO ... of:
  - i. The actual date on which construction of each engine generator set (Unit Ref. Nos. EPG-1 and EPG-2) commenced within thirty days after such date. The notification must include the following:
    - a) Name and address of the permittee;
    - b) The address of the affected source;
    - c) Engine information including the make, model, engine family, serial number, model year, maximum engine power and engine displacement;
    - d) Emission control equipment;
    - e) Fuel used.
  - ii. The anticipated start- up date of each engine generator set (Unit Ref. Nos. EPG-1 and EPG-2) postmarked not more than sixty days nor less than thirty days prior to such date.
  - iii. The actual start- up date of each engine generator set (Unit Ref. Nos. EPG-1 and EPG-2) within fifteen days after such date. The actual start -up date shall be the date on which each engine completes manufacturer’s trials, but shall be no later than thirty days after start up for manufacturer’s trials.
  - iv. The anticipated date of performance tests of each engine-generator set (Unit Ref. Nos. EPG-1 and EPG-2) postmarked at least thirty days prior to such date.
  - v. The anticipated date of installation of the monitoring device used to measure and record engine load, as specified in Condition 15, thirty days prior to such date.”

11. On June 15, 2011, based on the evaluation and the review of the Facility file, the Department issued a Notice of Violation to HCA for the violations described in paragraphs C(2) and C(10), above.
12. Based on the results of the June 9, 2011 evaluation, the Board concludes that HCA has violated Permit conditions 11,12, 13, 25, 26, and 27, as described in paragraphs C(5) through C(10), above.
13. In order for HCA to return to compliance, DEQ staff and representatives of HCA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders HCA Health Services of Virginia, Inc., and HCA Health Services of Virginia, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$18,000.00 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

HCA Health Services of Virginia, Inc. 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 HCA Health Services of Virginia, Inc. for good cause shown by HCA Health Services of Virginia, Inc., 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, HCA Health Services of Virginia, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. HCA Health Services of Virginia, Inc. 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. HCA Health Services of Virginia, Inc. 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 HCA Health Services of Virginia, Inc. 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. HCA Health Services of Virginia, Inc. 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. HCA Health Services of Virginia, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. HCA Health Services of Virginia, Inc. 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 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 and any 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 HCA Health Services of Virginia, Inc.. Nevertheless, HCA Health Services of Virginia, Inc. 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. The Director or his designee terminates the Order after HCA Health Services of Virginia, Inc. has completed all of the requirements of the Order;
  - b. HCA Health Services of Virginia, Inc. 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
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to HCA Health Services of Virginia, Inc..

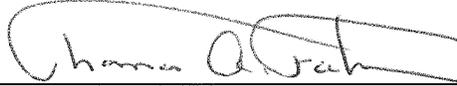
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve HCA Health Services of Virginia, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by HCA Health Services of Virginia, Inc. 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 HCA Health Services of Virginia, Inc. 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 HCA Health Services of Virginia, Inc. to this

document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of HCA Health Services of Virginia, Inc..

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, HCA Health Services of Virginia, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15<sup>th</sup> day of December, 2011.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

HCA Health Services of Virginia, Inc. voluntarily agrees to the issuance of this Order.

Date: 11/30/11 By: Terika R. Mbande, Chief Operating Officer  
(Person) (Title)  
HCA Health Services of Virginia, Inc.

Commonwealth of Virginia  
City/County of Spotsylvania

The foregoing document was signed and acknowledged before me this 30 day of  
November, 2011, by Terika R. Mbande who is  
Chief Operating Officer of HCA Health Services of Virginia, Inc., on behalf of the  
corporation.

Lauren Paige Tinnell  
Notary Public  
7314123  
Registration No.

My commission expires: November 30, 2014

Notary seal:



**APPENDIX A  
SCHEDULE OF COMPLIANCE**

HCA Health Services of Virginia, Inc. shall:

1. Testing

a. Boilers (B1 and B2):

- i) Conduct testing in accordance with 9 VAC 5-50-30 and 9 VAC 5-60-30. HCA Health Services of Virginia, Inc. shall:
  - (1) Submit to DEQ for review and approval a test protocol for a (NO<sub>x</sub>) as NO<sub>2</sub> at least 30 days prior to testing.
  - (2) Arrange the details of the test with Regional Air Compliance Manager of the DEQ's NRO.
  - (3) Conduct the test within 60 days of the execution of this Order in accordance with 40 CFR Part 60, Appendix A, reference method 7 or 7E on from one the new boilers (Unit Ref. Nos. B1 or B2) at the Facility.
  - (4) Submit the test results to Regional Air Compliance Manager of the DEQ's NRO within 60 days after completion of the test.
- ii) Conduct Visible Emissions Evaluation (VEE) testing in accordance with 9 VAC 5-50-30 and 9 VAC 5-60-30. The HCA Health Services of Virginia, Inc. shall:
  - (1) Submit to DEQ for review and approval a VEE test protocol at least 30 days prior to testing.
  - (2) Arrange the details of the test with the Regional Air Compliance Manager of DEQ's NRO.
  - (3) Conduct the test within 60 days of the execution of this Order in accordance with 40 CFR Part 60, Appendix A, Method 9 on the boiler that was not tested (Unit Ref. Nos. B1 or B2) under 1(a)(i)(3) above.
  - (4) Submit the test results to Regional Air Compliance Manager of the DEQ's NRO within 60 days after completion of the test.

b. Emergency Engine Generators (EPG-1 and EPG-2):

- i) Conduct testing in accordance with 9 VAC 5-50-30 and 9 VAC 5-80-1200. HCA Health Services of Virginia, Inc. shall:

- (1) Submit to DEQ for review and approval a test protocol for an Initial performance test shall be conducted for nitrogen oxides (as NO<sub>2</sub>) at least 30 days prior to testing.
  - (2) Arrange the details of the test with Regional Air Compliance Manager of the DEQ's NRO.
  - (3) Conduct the test within 60 days of the execution of this Order in accordance with 40 CFR Part 60, Appendix A, Method 7 or 7E on from one engine generator's stack (Unit Ref. Nos. EPG-1 or EPG-2) at the Facility.
  - (4) Submit the test results to Regional Air Compliance Manager of the DEQ's NRO within 60 days after completion of the test.
- ii) Conduct Visible Emissions Evaluation (VEE) testing in accordance with 9 VAC 5-50-30 and 9 VAC 5-80-1200. The HCA Health Services of Virginia, Inc. shall:
- (1) Submit to DEQ for review and approval a VEE test protocol at least 30 days prior to testing.
  - (2) Arrange the details of the test with the Regional Air Compliance Manager of DEQ's NRO.
  - (3) Conduct the test within 60 days of the execution of this Order in accordance with 40 CFR Part 60, Appendix A, Method 9 on the remaining engine generator's stack (Unit Ref. Nos. EPG-1 or EPG-2) at the Facility.
  - (4) Submit the test results to Regional Air Compliance Manager of DEQ's NRO within 60 days after completion of the test.

## 2. Certification of Documents and Reports

In accordance with 9 VAC 5-20-230(A), in all documents or reports, submitted to DEQ pursuant to this Consent Order, HCA Health Services of Virginia, Inc., shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

3. **DEQ Contact**

Unless otherwise specified in this Order, HCA Health Services of Virginia, Inc. shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality  
Northern Regional Office  
Attn: Enforcement Staff  
13901 Crown Court  
Woodbridge, VA 22193