COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VADATA, Inc.
FOR
Facilities: IAD-1; IAD-9; IAD-7; and IAD-11
Registration Nos. 73294 and 73741

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 VADATA, Inc., regarding the IAD-1; IAD-9, IAD-7, and IAD-11 for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "IAD-1; IAD-9" means the VADATA, Inc. facility, located at 4101 Westfax Drive in Fairfax County, Virginia (Registration No. 73294).

5. "IAD-7" means the VADATA, Inc. facility, located at 7505 Mason King Court in Prince William County, Virginia (Registration No. 73741).

6. "IAD-11" means the VADATA, Inc. facility, located at 7510 Mason King Court in Prince William County, Virginia (Registration No. 73741).

7. "IAD-7 Permit" means a New Source Review permit to construct and operate a data center, which was issued under the Virginia Air Pollution Control Law and the Regulations to VADATA, Inc. on May 14, 2010, amended on June 3, 2010 *(an amendment was also issued on November 23, 2010, however the relevant permit at the time for the subject violations was the June 16, 2010 Permit).*

8. "IAD-1;IAD-9 Permit" means a New Source Review permit to construct and operate a data center, which was issued under the Virginia Air Pollution Control Law and the Regulations to VADATA, Inc. on March 26, 2010.

9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

11. "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.

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. "VADATA" means VADATA, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. VADATA is a "person" within the meaning of Va. Code § 10.1-1300.

16. "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. VADATA operates IAD-7; IAD-11 and IAD-1; IAD-9 which are data centers and are the subject of this Order. VADATA operates generator units at the data centers for the purpose of providing emergency backup power to the facilities.

IAD-7

2. The IAD-7 Permit authorizes, among other units, the installation of two generators identified as a Caterpillar model 3516 C rated at 2500 kW and a Caterpillar model 3512 C rated at 1500 kW

3. On October 5, 2010, Department staff conducted a Full Compliance Evaluation of IAD-7 for compliance with the requirements of the Virginia Air Pollution Control Law, the IAD-7 Permit, and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

   a. A Caterpillar model 3516 C portable rental emergency generator rated at 1850 kW was onsite and had been operated by VADATA;
   b. Two Kohler model 2000ROZD4 portable rental emergency generators rated at 2000 kW were onsite and had been operated by VADATA;
   c. The three portable emergency generators were not included in the IAD-7 Permit;
   d. No notification had been provided to DEQ for the construction or start-up of the portable units.

4. On November 29, 2010, VADATA submitted notification to DEQ regarding the installation of two generators each described as Caterpillar Model C175 units rated at 3000 kW.

5. On December 2, 2010, Department staff conducted a Partial Compliance Evaluation of IAD-7 for compliance with the requirements of the Virginia Air Pollution Control Law, the IAD-7 Permit, and the Regulations. Based on the inspection, Department staff made the following observations:

   a. The installation of the two Caterpillar Model C175 generators has occurred that was not authorized by the IAD-7 Permit.

<u>IAD-1; IAD9</u>

6. IAD-1; IAD-9 is the subject of the IAD-1; IAD-9 Permit which authorizes, among other units, the installation of 10 emergency generators.

7. On September 3, 2010, VADATA submitted notification to DEQ regarding the construction of a Kohler model 2000REOZMB unit rated at 2000 kW identified as Generator C, and the installation of two Kohler model 2000ROZD4 units rated at 2050 kW identified as Generators EG1-M and EG1-C.

8. On October 18, 2010, VADATA submitted notification to DEQ regarding the installation of a Caterpillar C175-16 unit rated at 3000 kW identified as Generator EG1-U.

9. On December 2, 2010, VADATA submitted notification to DEQ regarding the installation of a Caterpillar C175-16 unit rated at 3000 kW identified as EG2-U.

10. On December 14, 2010, Department staff conducted a Partial Compliance Evaluation of IAD-1; IAD-9 for compliance with the requirements of the Virginia Air Pollution Control Law, the IAD-1; IAD-9 Permit, and the Regulations. Based on the inspection and file review, Department staff made the following observations:

a. The installation of Generators C, EG2-U, EG1-M, EG1-C, and EG1-U was not authorized by the IAD-1; IAD-9 Permit;
b. No notification of startup was provided by VADATA for Generator C;
c. A portable Caterpillar generator with a rated capacity of 2000 kW was installed onsite and was not authorized in the IAD-1; IAD-9 Permit;
d. No notification of construction, anticipated startup, and actual startup was provided by VADATA for the portable Caterpillar generator.

11. On January 6, 2011, DEQ met with VADATA to discuss the violations at both IAD-7 and IAD-1; IAD-9.

IAD-11

12. On March 28, 2011, Department staff conducted a Partial Compliance Evaluation (PCE) of IAD-11 for compliance with the requirements of the Virginia Air Pollution Control Law, and the Regulations. Based on the inspection and file review, Department staff made the following observations:

a. On December 20, 2010, VADATA submitted a permit amendment to DEQ for the IAD-7 Permit to authorize the installation of units at IAD-11;
b. At the time of the PCE, the amended IAD-7 Permit had not been issued in order to authorize installation of units at IAD-11;
c. Five generators (3 Caterpillar 3516C-HD and 2 Caterpillar C175) were installed onsite;
d. Two portable Caterpillar generators were installed onsite;
e. No notification of construction, anticipated startup, and actual startup was provided by VADATA for the seven Caterpillar generators.

13. 9 VAC 5-80-1120(A) requires that "[n]o 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."

14. 9 VAC 5-80-1210(D) states that "[a]ny owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subjected to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."

15. 9 VAC 5-50-50(A) requires that "[a]ny owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board of the following: 1. The date of commencement of construction, reconstruction or modification of a new or modified source postmarked no later than 30 days after such date. 2. The anticipated date of initial startup of a new or modified source postmarked not more than 60 days nor

less than 30 days prior to such date. 3. The actual date of initial startup of a new or modified source postmarked within 15 days after such date."

16. 9 VAC 5-50-20(D) states that "[n]o owner of a new or modified source subject to the provisions of this chapter shall fail to provide notifications and reports, revise reports, maintain records or report performance test or monitoring results as required under this chapter."

17. On October 18, 2010, December 21, 2010, January 4, 2011, and March 29, 2011, based on the inspections and documentation submitted by VADATA, the Department issued NOVs to VADATA for the violations described in paragraphs C(2) through C(16), above.

18. Based on the results of the October 5, 2010, and December 2, 2010 inspection of IAD-7, the December 14, 2010, inspection of IAD-1; IAD-9, the meeting on January 6, 2011, the March 28, 2011, inspection of IAD-11 and the documentation submitted by VADATA referenced herein, the Board concludes that VADATA has violated 9 VAC 5-80-1120(A), 9 VAC 5-50-50(A), and 9 VAC 5-50-20(D) as described in paragraphs C(2) through C(17), above.

19. On August 31, 2010, October 12, 2010, November 29, 2010, November 30, 2010, December 21, 2011, and February 8, 2011, VADATA submitted permit applications in order to include the generators that are the subject of this Order into the IAD-7; IAD-11 and IAD-1; IAD-9 Permits.

SECTION D: Agreement and Order

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

Pay a civil charge of $261,638.00 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

VADATA, 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 VADATA for good cause shown by VADATA, 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 or referenced 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, VADATA admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact, and conclusions of law contained herein.

4. VADATA 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. VADATA 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 VADATA 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. VADATA 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. VADATA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. VADATA 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 VADATA 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 VADATA.

11. This Order shall continue in effect until:

a. VADATA 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 VADATA.

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

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, VADATA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5th day of August, 2011.

Thomas A. Faha

Thomas A. Faha, Regional Director
Department of Environmental Quality

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VADATA, Inc. voluntarily agrees to the issuance of this Order.

Date: 8/3/11 By: _____, vice president
Jerry J. Hunter (Person) (Title)
VADATA, Inc.

State of Washington ~~Commonwealth of Virginia~~

~~City/~~County of King

The foregoing document was signed and acknowledged before me this 3rd day of August, 2011, by Jerry J. Hunter who is Vice President of VADATA, Inc., on behalf of the corporation.

_____
Notary Public

0098627
Registration No.

My commission expires: 2/19/2012

Notary seal:

LAYNETTE A. BARON
COMMISSION EXPIRES
NOTARY
PUBLIC
2-19-12
STATE OF WASHINGTON