

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

**Covanta Alexandria / Arlington, Inc.
5301 Eisenhower Avenue
Alexandria, Virginia 22304**

DEQ Registration #71895

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1307.D and 10.1-1309, between the State Air Control Board and Covanta Alexandria / Arlington, Inc., for the purpose of resolving certain alleged violations of 9 VAC 5-40-50 of the Regulations for the Control and Abatement of Air Pollution and Condition 181 of their PSD permit.

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 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. “SAPCB Regulations” mean the State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution.
7. “Covanta” means Covanta Alexandria / Arlington Inc., a Virginia corporation, headquartered in Fairfield, New Jersey.
8. “Facility” means the municipal waste combustor owned and operated by Covanta Alexandria / Arlington, Inc., located at 5301 Eisenhower Avenue, Alexandria, Virginia 22304 (City of Alexandria).
9. “PSD” means Prevention of Significant Deterioration.
10. “Permit” means the PSD Permit, Stationary Source Permit to Modify and Operate issued February 4, 2002, which supercedes the air permit dated October 4, 1984, as amended on June 20, 1986, July 26, 1988, October 26, 1992, March 15, 1994, December 12, 2000, and February 12, 2001.
11. “CEDs” means the Comprehensive Environmental Data System utilized by DEQ to maintain and track facility information and reports.
12. “EER” means quarterly Excess Emissions Reports required under 9 VAC 5-40-50 and Condition 181 of the PSD Permit.
13. “NVRO” means the Northern Virginia Regional Office of the Virginia Department of Environmental Quality.
14. “NOV” means a formal Notice of Violation issued by the Department of Environmental Quality to notify a facility that there is reason to believe that a SAPCB regulation or permit condition has been violated.

SECTION C: Findings of Fact

1. Covanta Alexandria/Arlington, Inc. owns and operates a facility located on Eisenhower Avenue in Alexandria, Virginia. This facility is the subject of the PSD Air Permit issued February 12th, 2001.
2. On July 30, 2001, the semi-annual report required pursuant to 9 VAC 5-40-8160E of the SAPCB regulations was submitted to DEQ-NVRO for the reporting period of January 1, 2001 – June 30, 2001. Excess emissions and the reasons and description of corrective actions for the exceedances which occurred during that period were reported in Section IV of that report.

3. On October 4, 2001, DEQ staff was contacted by DEQ Central Office concerning missing EER's from Covanta Alexandria/Arlington (71895). It was discovered during review of Covanta's source file and CEDS that Covanta had not submitted the required EER by the 30th day following the end of the calendar quarter for the 1st and 2nd calendar quarters of calendar year 2001. 9 VAC 5-40-40, 9 VAC 5-50-40, and Condition 181 of the permit state: "Each owner required to install a continuous monitoring system shall submit a written report of excess emissions (as defined in the applicable emission standard) to the board for every calendar quarter. All quarterly reports shall be post marked by the 30th day following the end of each calendar quarter..."
4. On November 9, 2001 at 1420 hrs. EST, DEQ-NVRO personnel responded to a request made by Mr. Leon Brasowski of Covanta to clarify malfunction notification requirements to DEQ-NVRO. In that conversation it was stated by DEQ personnel that Covanta had not submitted the 1st or 2nd quarter 2001 EER's to the DEQ-NVRO as required. Covanta indicated that excess emissions were being reported as part of the semi-annual reports.
5. On November 19, 2001 at 1120 hrs. EST, DEQ-NVRO was contacted by Mr. George Ball-Llovera, the Facility General Manager at Covanta, regarding the quarterly EER's that had not been received by the NVRO.
6. On January 3, 2002 at 0950 hrs. EST, Mr. George Ball-Llovera contacted NVRO to report a malfunction that resulted in a 4-hour exceedance of the carbon monoxide limit set forth in the air permit. During that call Mr. Ball-Llovera was informed that Covanta needed to provide quarterly EER's for the facility in addition to the Annual and Semi-Annual reports. Mr. Ball-Llovera indicated that he would provide the required documents. At 1440 hrs. EST, Mr. Ball-Llovera again contacted NVRO personnel to say that by January 31, 2002 the Annual Report and the 4th Quarter EER would be provided to NVRO and that the 1st, 2nd, and 3rd Quarter 2001 EER's would be provided soon after.
7. On January 30, 2002, Covanta submitted the 4th Quarter 2001 EER to DEQ-NVRO for the reporting period of October 1, 2001 – December 31, 2001.
8. On February 1, 2002, Covanta submitted the semi-annual report to DEQ-NVRO for the reporting period of July 1, 2001 – December 31, 2001.

9. On February 6, 2002 at 1450 hrs. EST, Mr. George Ball-Llovera contacted NVRO personnel regarding a message left concerning the Annual Update and Emission Statement for calendar year 2001. In the course of that conversation, Mr. Ball-Llovera was informed that formal enforcement would be necessary because of the missing 1st, 2nd, and 3rd quarter 2001 EER's.
10. On February 11, 2002 Mr. George Ball-Llovera hand delivered the 1st quarter 2001 EER for Covanta to the NVRO.
11. On February 19, 2002 Mr. George Ball-Llovera hand delivered the 2nd quarter 2001 EER for Covanta to the NVRO.
12. On February 25, 2002 Mr. George Ball-Llovera hand delivered the 3rd quarter 2001 EER for Covanta to the NVRO.
13. On April 1, 2002 Covanta filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. ("Bankruptcy Court")
14. On April 18, 2002 a NOV was issued to Covanta for the alleged violations of SAPCB Regulations and applicable permit conditions.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1316(C), the Board orders, and Covanta Alexandria / Arlington, Inc. agrees, to perform the actions described in Appendix A of this Order. In addition, the Board hereby enters an order imposing upon Covanta Alexandria / Arlington, Inc., a civil charge of Fourteen Thousand Six Hundred Ninety Five Dollars (\$14,695.00), the payment of which shall be subject to the terms and conditions of Covanta's confirmed plan of reorganization. It is understood between the parties that DEQ does not waive its right to seek the payment of the civil charge. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Covanta Alexandria / Arlington, Inc., for good cause shown by Covanta, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Covanta by DEQ on April 18, 2002. 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.
3. For purposes of this Order and subsequent actions with respect to this Order, Covanta admits the jurisdictional allegations contained herein.
4. Covanta 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. Covanta declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *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. 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 Covanta 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. Covanta 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. Covanta shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Covanta shall notify the DEQ-NVRO 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. As soon as practicable after this Order has been executed by both the Director or his designee and Covanta, Covanta shall amend its schedules of assets and liabilities to include a liquidated, not contingent, undisputed prepetition claim in favor of the DEQ in respect of this order. Notwithstanding the foregoing, Covanta agrees to be bound by any compliance date that 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 Covanta. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Covanta 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, Covanta voluntarily agrees to the issuance of this Order. Nothing herein shall be deemed a waiver by Covanta of the automatic stay imposed by 11 U.S.C. § 362.

And it is so ORDERED this day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

Covanta Alexandria / Arlington, Inc. voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this ___ day of

_____, 2003, by _____, who is
(name)

_____ Of Covanta Alexandria / Arlington, Inc.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

Covanta Alexandria / Arlington, Inc. shall upon execution of this order:

1. Prepare and submit in a manner set forth in the SAPCB regulations and their permit all required and future EER's.
2. Develop, implement, and submit to DEQ-NVRO Air Compliance Manager a training plan for operators, managers, and environmental personnel to familiarize them with all aspects and reporting requirements of the PSD Permit issued February 4, 2002.

A copy of the training plan shall be submitted to the Air Compliance Manager – DEQ NVRO within 30 days of the execution of this order.