



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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David K. Paylor
Director

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION AMENDMENT TO A SPECIAL ORDER BY CONSENT ISSUED TO Tire Energy Corporation Registration No. 21415

SECTION A: Purpose

This is an Amendment to a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and Tire Energy Corporation, for the purpose of amending a Consent Special Order issued to Tire Energy Corporation on April 20, 2006 to resolve certain violations of State Air Pollution Control Laws 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 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 the Consent Special Order issued by the Board April 20, 2006. "Order Amendment" or "Amendment" means this document.
6. "Tire Energy Corporation" or "TEC" means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the structure located at Industrial Park Drive in Ridgeway, Virginia.
8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means the Stationary Source Permit to Construct and Operate dated October 15, 2003, as amended September 22, 2004.

SECTION C: Findings of Fact and Conclusions of Law

1. Tire Energy owns and operates a facility located at Industrial Park Drive in Ridgeway, Virginia. The facility was issued a Stationary Source Permit to Construct and Operate on October 15, 2003, as amended September 22, 2004. This permit authorizes the facility to operate a steam production facility.
2. On April 20, 2006, the Board issued a Consent Special Order to Tire Energy to resolve certain violations its permit, including violations for lb/MMBTU and lb/hr for PM-10, sulfur dioxide, nitrogen dioxide and lead compounds; and for failing to achieve the required, twenty percent relative accuracy on its carbon monoxide monitor (as demonstrate by a Relative Accuracy Test Audit or RATA).
3. At the time the Order was signed, the parties agreed that the Order might be amended on a timely basis to include a suitable Supplemental Environmental Project ("SEP"). This Order Amendment is being executed to include such a SEP.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1186(2), 10.1-1309 and 10.1-1316, orders Tire Energy Corporation and Tire Energy Corporation agrees to pay a civil charge of \$ 22,035.00 subject to the following conditions, in settlement of the violations cited in this Order:

1. \$5,535 of this civil charge shall be paid by June 15, 2006. 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 10150
Richmond, Virginia 23240

2. **\$16,500** of this civil charge shall be satisfied by the performance of a SEP by TEC pursuant to Va. Code §10.1-1186(2), as described in **Appendix A** of this Order Amendment. TEC's SEP participation payments shall be as follows: **\$5,500** shall be paid on **July 15, 2006**, **\$5,500** shall be paid on **August 15, 2006**, and **\$5,500** shall be paid on **September 15, 2006**. Payment shall be according to terms established by DEQ.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order Amendment with the consent of Tire Energy Corporation for good cause shown by Tire Energy Corporation, or on its own motion after notice and opportunity to be heard.
2. For purposes of this Order Amendment and subsequent actions with respect to this Order Amendment, Tire Energy Corporation admits the jurisdictional allegations, but does not admit the factual allegations or legal conclusion of law contained herein. DEQ and Tire Energy Corporation agree that the actions undertaken by Tire Energy Corporation in accordance with this Order Amendment do not constitute an admission of liability by Tire Energy Corporation. Tire Energy Corporation does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order Amendment, the validity of the Findings of Facts and Conclusions of Law contained in Section C of this Order Amendment.
3. Tire Energy Corporation consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order Amendment.
4. Tire Energy Corporation declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *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 to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order Amendment.
5. Failure by Tire Energy Corporation to comply with any of the terms of this Order Amendment 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.

6. If any provision of this Order Amendment is found to be unenforceable for any reason, the remainder of the Order Amendment shall remain in full force and effect.
7. Tire Energy Corporation shall be responsible for failure to comply with any of the terms and conditions of this Order Amendment unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Tire Energy Corporation shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tire Energy Corporation 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 Amendment. 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 Amendment.

8. This Order Amendment is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order Amendment shall become effective upon execution by both the Director or his designee and Tire Energy Corporation.
10. This Order Amendment shall continue in effect until the Director or Board terminates the Order Amendment in his or its sole discretion upon 30 days written notice to Tire Energy Corporation. Termination of this Order Amendment, or any obligation imposed in this Order Amendment, shall not operate to relieve Tire Energy Corporation from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

11. By its signatures below, Tire Energy Corporation agrees to the issuance of this Order Amendment.

And it is so ORDERED this 19th day of MAY, 2006.

Steven A. Dietrich
David K. Paylor, Director
Department of Environmental Quality

Tire Energy Corporation agrees to the issuance of this Order Amendment.

By: W. Larry McDorman - President
Date: 5/19/06

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 19th day of May, 2006, by W. Larry McDorman, who is
(name)

President of Tire Energy Corporation on behalf of the Corporation.
(title)

Cathy D. Kibler
Notary Public

My commission expires: 8/31/09



APPENDIX A

SUPPLEMENTAL ENVIRONMENTAL PROJECT

The Virginia State Air Pollution Control Board orders Tire Energy to undertake, and Tire Energy agrees to implement the Supplemental Environmental Project detailed below, in accordance with the following terms and conditions:

1. A school bus retrofit program to be carried out in Henry County, Virginia or other suitable location pursuant to a Plan approved by DEQ, in which \$16,500 is used to accomplish any combination of the following concerning in-service diesel-powered school buses in Henry County: retrofitting school buses with pollution control devices and techniques and infrastructure needed to support such retrofits; engine replacements that will reduce emissions of particulates or ozone precursors; and/or cover the incremental costs of changeover to CNG fuel or ultra low sulfur diesel fuel.
2. The Plan must describe how the work or project to be performed is consistent with the requirements of Item #1; include a general schedule and budget for completion of the work; and describe generally how the work or project described in the proposed plan benefits the environment and meets DEQ's SEP policy requirements and guidelines.
3. Tire Energy's obligation for this project shall terminate once DEQ has approved the Plan and Tire Energy has transferred \$16,500 to DEQ for the purpose of funding the project as described in the Plan.
4. In the event that Tire Energy publicizes the SEP or the results of the SEP, Tire Energy shall state in a prominent manner that the project is part of a settlement for an enforcement action with DEQ.