



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE

Douglas W. Domenech
Secretary of Natural Resources

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
(540) 574-7800 Fax (540) 574-7878
www.deq.virginia.gov

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CITY OF HARRISONBURG
FOR
RESOURCE RECOVERY FACILITY
Registration No. 81016**

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 the City of Harrisonburg, regarding the Resource Recovery Facility for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and the 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. "Facility" means the Resource Recovery Facility (RRF), located at 1630 Driver Drive in Harrisonburg, Virginia.
5. "Harrisonburg" means the City of Harrisonburg, a political subdivision of the Commonwealth of Virginia. Harrisonburg is a "person" within the meaning of Va. Code § 10.1-1300/§ 10.1-1400/§ 62.1-44.3.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "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.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means the Title V permit to operate a municipal solid waste combustion facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to the City of Harrisonburg on January 15, 2009.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
14. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. The City of Harrisonburg owns and operates the Facility in Harrisonburg, Virginia. The Facility is the subject of the Permit which allows combustion of municipal solid waste in two incinerators and natural gas/distillate oil in two boilers in order to supply steam and chilled water to the James Madison University campus.
2. On April 10, 2012 DEQ staff conducted a PCE of the Facility record 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) The Title V Prompt Deviation Report for a 4 hour carbon monoxide (CO) exceedance from Municipal Waste Combustion Unit (MWCU) – 1 submitted by Harrisonburg on February 27, 2012, indicated that on February 19, 2012 the 4-

hour block average CO concentration, determined by the Continuous Emission Monitor (CEM), was 145.6 ppm. The report also indicated that this level of CO was not due to startup, shutdown or malfunction.

3. Condition IV.A.7 of Harrisonburg's Permit states that CO emissions from the operation of each MWCU (Ref. Nos. 1 and 2) shall not exceed 100 parts per million by dry volume per four-hours as determined by continuous emission monitoring systems as required by Condition IV.B.1.
4. Condition IV.A.8 of Harrisonburg's Permit states "The emission limits contained in Condition IV.A.7 apply at all times except during periods of MWCU startup, shutdown, or malfunction..."
5. On April 16, 2012, based on the evaluation and follow-up information, the Department issued NOV No. AVRO8335 to Harrisonburg for the violations described in paragraphs C(2) through C(4), above.
6. On April 23, 2012, Harrisonburg responded to the NOV by telephone. They stated that the violation was unintentional and the result of operator error.
7. On April 26, 2012, Department staff met with representatives of Harrisonburg to discuss the violations. Harrisonburg submitted a document that detailed programming changes to the facility's operational control system that were implemented to prevent a recurrence of the operator error that resulted in the February 19, 2012 emission violation. In addition, records were attached that showed that all of the facility's operators received training on the events that led to the violation as well as training on the program changes.
8. Based on the results of April 11, 2012 evaluation, the April 23, 2012 phone call, the April 26, 2012 meeting, and documentation submitted on April 26, 2012, the Board concludes that Harrisonburg has violated permit condition IV.A.7 and IV.A.8 as described in paragraphs C(3) and C(4), above.
9. Harrisonburg has submitted documentation that verifies that the violations described in paragraphs C(3) and C(4), above, have been corrected

SECTION D: Agreement and Order

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

1. Pay a civil charge of \$1,708.00 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

The City of Harrisonburg 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 Harrisonburg for good cause shown by Harrisonburg, 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, Harrisonburg admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Harrisonburg 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. Harrisonburg 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 Harrisonburg 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. Harrisonburg 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. Harrisonburg shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Harrisonburg 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.

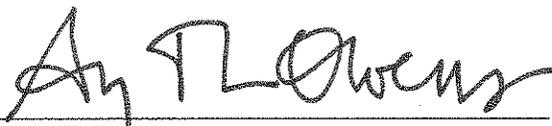
10. This Order shall become effective upon execution by both the Director or his designee and Harrisonburg.

11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Harrisonburg has completed all of the requirements of the Order;
 - b. Harrisonburg 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 Harrisonburg.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Harrisonburg 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 Harrisonburg 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 Harrisonburg certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Harrisonburg to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Harrisonburg.
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, Harrisonburg voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15th day of May, 2012.



Amy Thatcher Owens, Regional Director
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----

The City Harrisonburg voluntarily agrees to the issuance of this Order.

Date: 5/14/12 By: Kurt D. Hodgen,
Kurt Hodgen City Manager
City of Harrisonburg

Commonwealth of Virginia
City/County of Harrisonburg

The foregoing document was signed and acknowledged before me this 14th day of
May, 2012, by Kurt D. Hodgen who is
City Manager of the City of Harrisonburg on behalf of the Resource
Recovery Facility.

Erica S. Kann
Notary Public

7272629

Registration No.

My commission expires: 3/31/2013

Notary seal:

