



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

355-A Deadmore Street, Abingdon, Virginia 24210

Phone (276) 676-4800 Fax (276) 676-4899

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Jeffrey Hurst
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO BUCHANAN GENERATION, LLC

Registration No. 11390

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 Buchanan Generation, LLC, 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 meanings 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. “Buchanan Generation, LLC” means Buchanan Generation, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Buchanan Generation, LLC is a ‘person’ within the meaning of Va. Code § 10.1-1300.
3. “CFR” means the Code of Federal Regulations, as incorporated into the Regulations.
4. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" means the Buchanan Generation, LLC, located off State Route 626 in Buchanan County, Virginia, which is permitted to operate a peaking electric power generation facility.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "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.
9. "PCE" means a partial compliance evaluation by DEQ staff.
10. "Permit" means the Phase II Acid Rain permit to operate a peaking electric power generation facility which was issued under the Virginia Air Pollution Control Law and the Regulations to Buchanan Generation, LLC effective January 1, 2012.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution", means 9 VAC 5 chapters 10 through 80.
12. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
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.

SECTION C: Findings of Facts and Conclusions of Law

1. Buchanan Generation, LLC owns and operates the Facility in Buchanan County, Virginia. The Facility is the subject of the Permit which allows the company to operate a peaking electric power generation facility.
2. On April 18, 2017, DEQ staff conducted a PCE for review of the Buchanan Generation, LLC Phase II Acid Rain permit application submittal date of December 19, 2016. The Phase II Acid Rain Permit effective date was January 1, 2012 through December 31, 2016.
3. The Permit states, "Permit Requirements (1) The designated representative of

each affected source and each affected unit at the source shall: (i) Submit a complete Acid Rain permit application (including compliance plan) under 40 CFR part 72 in accordance with the deadlines specified in 40 CFR 72.30;...”

4. 40 CFR 72.30(c) states, “Duty to reapply. The designated representative shall submit a complete Acid Rain permit application for each affected source with an affected unit at least 6 months prior to the expiration of an existing Acid Rain permit governing the unit during Phase II or an opt-in permit governing an opt-in source or such longer time as may be approved under part 70 of this chapter that ensure that the term of the existing permit will not expire before the effective date of the permit for which application is submitted.”
5. 9 VAC 5-80-430(C)(5) states: “For purposes of permit renewal, the owner shall submit an application at least six months but no earlier than 18 months prior to the date of permit expiration.”
6. 9 VAC 5-170-160(A) states: “The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.”
7. Va. Code § 10.1-1322(A) gives the Department the authority to issue, amend, revoke or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.
8. On April 18, 2017, based on the results of the April 18, 2017 PCE, the Department issued a Notice of Violation No. ASWRO000625 to Buchanan Generation, LLC for the alleged violations described in paragraphs C(2) above.
9. On April 19, 2017, the Phase II Acid Rain Permit modified renewal was issued.
10. On April 24, 2017, the Department received a telephone response to the NOV from the Facility.
11. On May 5, 2017, the Department received electronic correspondence regarding the circumstances for the late submittal of the Phase II Acid Rain Permit application.
12. Based on the results of the April 18, 2017 PCE, the April 24, 2017 response and the May 5, 2017 electronic correspondence, the Board concludes that Buchanan

Generation, LLC has violated Permit Requirements, 9 VAC 5-80-430(C)(5) and 40 CFR 72.30(c) as described in paragraphs C(2).

SECTION D: Agreement and Order

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

1. Pay a civil charge of \$4,654 within 30 days of the effective date of the Order in settlement of the violation cited in this Order.

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 1104
Richmond, Virginia 23218

Buchanan Generation, LLC shall include its Federal 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Buchanan Generation, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Buchanan Generation, LLC for good cause shown by Buchanan Generation, LLC, 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 only those violations specifically identified in Section C of this Order and NOV No.ASWRO000625 dated April 18, 2017. This Order shall not preclude the Board or 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, Buchanan Generation, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein. The parties do not authorize any other persons to use the findings or conclusions of law in this Order in any matter or

proceeding.

4. Buchanan Generation, LLC 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. Buchanan Generation, LLC 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 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 or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by Buchanan Generation, LLC 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. Buchanan Generation, LLC 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. Buchanan Generation, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Buchanan Generation, LLC shall notify 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 this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of 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 listed above, which the parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of 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 Buchanan Generation, LLC. Nevertheless, Buchanan Generation, LLC 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 Buchanan Generation, LLC has completed all of the requirements of the Order.
 - b. Buchanan Generation, LLC 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 Buchanan Generation, LLC.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Buchanan Generation, LLC 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 Buchanan Generation, LLC 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 Buchanan Generation, LLC 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 Buchanan Generation, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Buchanan Generation, LLC.
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, Buchanan Generation, LLC voluntarily agrees to the issuance of this Order.

And it is ORDERED this 31st day of July, 2017



Jeffrey L. Hurst - Regional Director
Department of Environmental Quality

Buchanan Generation, LLC voluntarily agrees to the issuance of this Order.

Date: 7-26-2017 By: William H. Harker
William H. Harker, Executive Director
FE Fleet Operations
First Energy

Commonwealth of ~~Virginia~~ Pennsylvania
City/County of Greensburg/Westmoreland

The foregoing document was signed and acknowledged before me this 26th day of
July, 2017 by William H. Harker who is
Operator of Buchanan Generation, LLC, on behalf of
the corporation.

Suzanne Palcic
Notary Public

1278214
NOTARY ID Registration No.

My commission expires: 8/5/2017

Notary Seal:

