



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3821

www.deq.virginia.gov

Douglas W. Domenech  
Secretary of Natural Resources

David K. Paylor  
Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
COMCAST OF VIRGINIA, INC.  
FOR  
COMCAST-UNIVERSITY LOCATION  
Registration No. 72374**

## **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 Comcast of Virginia, Inc., regarding the Comcast-University Location for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the permit and applicable 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. "Comcast" means Comcast of Virginia, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Comcast of Virginia, Inc. is a "person" within the meaning of Va. Code § 10.1-1300.
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, as described in Va. Code § 10.1-1185.
5. "Facility" means the Comcast of Virginia, Inc. Telecommunication Service Facility, "Comcast-University Location", located at 11101 University Blvd., Manassas, Prince William County, Virginia.
6. "FCE" means a full compliance evaluation by DEQ staff.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
9. "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.
10. "Permit" means a State Operating Permit to operate a Telecommunication Service Facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Comcast Cablevision of Virginia, Inc. on August 1, 2005.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
15. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (*see* 40 CFR 60, Appendix A).

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Comcast owns and operates the Facility in Prince William County, Virginia. The Facility is a telecommunication service facility providing customer support to Comcast's northern Virginia customers. The Facility is the subject of the Permit which allows for the operation of two (2) No. 2 fuel oil-fired Detroit diesel model 9163-7311 engine driven electrical generators each rated at 1800 bhp engine output and 1,343 kW generator output, sixteen (16) Trane natural gas-fired roof-top heating units rated at a combined 10.45 MMBtu/hr, and miscellaneous natural gas-fired space and hot water heaters rated at combined 630,000 Btu/hr.

2. On February 23, 2011, and March 3, 2011, Department staff conducted a FCE at the Facility 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 Facility was unable to provide records of personnel training, operating procedures, historical records for scheduled and unscheduled maintenance, and a schedule of maintenance for the engine-generators.
  - b. The Facility was unable to provide documentation stating that the fuel used in the two engine-generator sets was distillate fuel meeting the specifications of the American Society for Testing Materials (ASTM) D396 for number 1 or 2 fuel oil.
  - c. The Facility was unable to provide documentation that a Visible Emissions Evaluation had been conducted in accordance with the requirements of permit Conditions 10 and 12 on one of the engine generator sets. A review of the DEQ facility file indicates that this testing was never conducted.
  - d. The Facility was unable to provide the monthly hours of operation for the engine generator sets annually, calculated as the sum of a 12-month rolling total and the annual consumption of natural gas for the miscellaneous natural gas fired roof equipment. The facility did not have these historical records on-site for the previous five years.
3. Permit Condition 3 requires that “[t]he permittee shall maintain records of the required training including a statement of time, place and nature of training provided. The permittee shall have available good written operating procedures and a maintenance schedule for the emergency generators. These procedures shall be based on the manufacturer's recommendations, at minimum. All records required by this condition shall be kept on site and made available for inspection by the DEQ.”
4. Permit Condition 16 requires that the permittee “[d]evelop a maintenance schedule and maintain records of all scheduled and non-scheduled maintenance” in order to “minimize the duration and frequency of excess emissions, with respect to equipment which affect such emissions.”
5. 9 VAC5-50-20(E) requires “[a]t all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.”
6. Permit Conditions 5 and 6 requires that fuel used in the two engine-generator sets is distillate fuel meeting the specifications of the American Society for Testing Materials (ASTM) D396 for number 1 or 2 fuel oil.

7. Permit Condition 10 requires that a Visible Emission Evaluation (VEE) be conducted, by the permittee on one of the emergency generators to demonstrate compliance with the visible emission limit in Condition 9. The VEE shall be conducted in accordance with 40 CFR Part 60, Appendix A, Method 9.
8. Permit Condition 12 requires that the permittee provide written notification to the Regional Air Compliance Manager of the anticipated date of the VEE required in Condition 10 postmarked at least 30 days prior to such date.
9. Permit Condition 11 requires that “[t]he permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit” and “[t]hese records shall be available for inspection by the DEQ and shall be current for the most recent five years.”
10. On March 10, 2011, based on the evaluation and follow-up information, the Department issued NOV to the Comcast for the violations described in paragraphs C(2) through C(8), above.
11. On March 18, 2011, Comcast submitted a VEE protocol to DEQ, which was approved by DEQ on March 23, 2011.
12. On March 29, 2011, Department staff met with representatives of Comcast to discuss the violations. At the meeting DEQ requested the submission of additional information regarding generator maintenance and operation from Comcast. On April 1, 2011, DEQ received the requested information.
13. On April 12, 2011, Comcast conducted the VEE.
14. On May 6, 2011, Comcast submitted the VEE report and DEQ approved the results on May 13, 2011.
15. On May 22, 2012, Comcast submitted a letter detailing a plan to remove one of the existing 1.2 MW back-up generators and replace it with a new 1.5 MW unit with a built-in secondary containment. In addition, Comcast plans to install a resistive load bank and secondary containment for the existing/remaining 1.2 MW unit.
16. Based on the results of the February 23, 2011, March 3, 2011, March 23, 2011, and May 13, 2011 evaluations, the March 29, 2011 meeting, and the documentation submitted on April 1, 2011, the Board concludes that Comcast has violated Permit conditions 3, 5, 6, 10, 11, 12, and 16, as described in paragraphs C(3) through C(8), above.
17. In order for Comcast to return to compliance, DEQ staff and representatives of Comcast have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

**SECTION D: Agreement and Order**

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

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$10,792.60 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

Comcast 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 Comcast for good cause shown by Comcast, 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, Comcast admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Comcast 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. Comcast 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 Comcast 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. Comcast 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. Comcast shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Comcast 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 Comcast. Nevertheless, Comcast 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 Comcast has completed all of the requirements of the Order;
- b. Comcast 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 Comcast.

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

And it is so ORDERED this <sup>25</sup>9th day of June, 2012.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

Comcast of Virginia, Inc. voluntarily agrees to the issuance of this Order.

Date: 6/8/2012 By: [Signature], V President  
(Person) (Title)  
Comcast of Virginia, Inc.

Commonwealth of Virginia  
City/County of Stafford

The foregoing document was signed and acknowledged before me this 8th day of June, 2012, by Richard Newcomer who is OVP, Engineering of Comcast of Virginia, Inc., on behalf of the corporation.

[Signature]  
Notary Public

\_\_\_\_\_  
Registration No.

My commission expires: 5/22/2015

Notary seal:

## **APPENDIX A SCHEDULE OF COMPLIANCE**

Comcast of Virginia, Inc. shall:

1. **Submittals**

- A. Within 30 days of the effective date of this Order, or no later than July 6, 2012, submit to NRO Permitting Staff a Form 7 application to modify the Permit to reflect the installation one new 1.5 MW diesel back-up generator to replace one of the existing 1.2 MW units.
- B. After the issuance of the amended Permit, but no later than November 30, 2012, complete the installation of the 1.5 MW unit, and a resistive load bank and secondary containment for the existing/remaining 1.2 MW unit, as detailed in the letter dated, May 22, 2012.

2. **Certification of Documents and Reports**

In accordance with 9 VAC 5-20-230(A), in all documents or reports, submitted to DEQ pursuant to this Consent Order, Comcast of Virginia, Inc., shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

3. **DEQ Contact**

Unless otherwise specified in this Order, Comcast of Virginia, Inc. shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality  
Attn: Enforcement Staff  
13901 Crown Court  
Woodbridge, VA 22193

