



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
LifeNet Health
FOR
The LifeNet Health Virginia Beach Facility
Registration No. 61491**

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 LifeNet Health, regarding the LifeNet Health Virginia Beach Facility, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and 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 LifeNet Health Virginia Beach facility, located at 1864 Concert Drive in Virginia Beach, Virginia.
5. "FCE" means a full compliance evaluation by DEQ staff.

6. "LifeNet" means LifeNet Health, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. LifeNet is a "person" within the meaning of Va. Code § 10.1-1300.
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. "Permit" means an Article 6 minor New Source Review permit to modify and operate a human tissue processing and equipment sterilization facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to LifeNet on March 21, 2016 under Registration No. 61491.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
11. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
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.

SECTION C: Findings of Fact and Conclusions of Law

1. LifeNet owns and operates the Facility located in Virginia Beach, Virginia. The Facility is the subject of the Permit, which allows it to modify and operate a human tissue processing and equipment sterilization facility.
2. On June 1, 2018, 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 ethylene oxide ("EO") abators AB-A, AB-B, and AB-C were not equipped with a device to continuously measure and record temperature of the catalyst bed concurrently with the EO sterilizer operating cycle.
 - b. The EO Abator Ready Lights for abators AB-A, AB-B, and AB-C were not being observed by the permittee at least once per day.

- c. Records of the following were not being maintained: (1) the annual hours of operation of each emergency generator BG-1, BG-2, and BG-3; (2) the annual fuel consumption for boilers B-1V and B-2V; (3) the annual throughput of ethylene oxide; (4) the control efficiency of the EO abators (i.e. stack tests); and (5) the operation and control device monitoring records for the EO abators.
 - d. There were no records showing that a stack test had been conducted once every three years on any one of the EO abators AB-A, AB-B, and AB-C since the initial stack test of abator AB-B (SN: 170110) on September 24, 2011.
3. Condition 3 of the Permit states that EO abators AB-A, AB-B, and AB-C shall each be equipped with devices to continuously measure and record the temperature of the catalyst bed concurrently with the EO sterilizer operating cycle parameters sufficient to demonstrate compliance with the minimum operating temperatures established during initial stack test.
4. Condition 4 of the Permit states that to ensure good performance, the EO abator monitoring devices used to continuously measure the temperature of the catalyst beds shall be observed by the permittee with a frequency of not less than once per day. The permittee shall continuously record measurements from each EO abator monitoring device. Daily observations shall be recorded in a log book including name of observer, date and time of observation and catalyst bed temperature or monitoring-device readout by verification of the Abator Ready Light.
5. Condition 18(a) of the Permit states that the permittee shall maintain records of annual hours of operation of each emergency generator BG-1, BG-2, and BG-3, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.
6. Condition 18(b) of the Permit states that the permittee shall maintain records of annual consumption of fuel for the boilers B-1V and B-2V, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months. Natural gas and distillate oil records for the NSPS boilers to be kept on a daily basis.
7. Condition 18(c) of the Permit states that the permittee shall maintain records of the annual throughput of ethylene oxide, calculated monthly as the sum of each consecutive 12-month period. Compliance for the consecutive 12-month period shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding 11 months.

8. Condition 18(d) of the Permit states that the permittee shall retain records of the control efficiency of the EO abators demonstrated by the stack tests required by Permit Condition 20.
9. Condition 18(f) of the Permit states that the permittee shall retain records of the operation and control device monitoring records for the EO abators as required in Permit Conditions 3 and 4.g.
10. Condition 20 of the Permit requires that once every three (3) years, or upon request by the DEQ, the permittee shall conduct a performance test for ethylene oxide emissions from one of EO abators AB-A, AB-B, and AB-C to demonstrate compliance with the control efficiency in Condition 2. Each of the three (3) EO abators shall be tested once in a nine (9) year period.
11. 9 VAC 5-170-160(A) states that 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.
12. Va. Code § 10.1-1322(A) states that Department has authority to issue, amend, revoke or terminate and reissue permits, and the failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law
13. On July 9, 2018, based on the evaluation and follow-up information, the Department issued Notice of Violation No. ATRO000958 to LifeNet for the violations described in paragraphs C(2) through C(12), above.
14. LifeNet responded to the NOV by telephone on July 10, 2018 and July 11, 2018 and by letter on July 16, 2018. In LifeNet's written response to the NOV, LifeNet identified corrective actions that it had taken to address observations cited in the NOV and return the facility to compliance.
15. Based on the results of the June 1, 2018 evaluation and the documentation submitted on July 16, 2018, the Board concludes that LifeNet has violated Permit conditions 3, 4, 18, and 20, 9 VAC 5-170-160(A), and Va. Code § 10.1-1322(A), as described in paragraphs C(2) through C(12), above.
16. On July 16, 2018, LifeNet submitted documentation that verifies that the violations described in paragraphs C(2) and C(12), above, have been corrected. LifeNet reported that it created an observation log for the "abator ready" light and started using a tracking spreadsheet for the recordkeeping requirements identified in paragraph C2(c).
17. In order for LifeNet to complete its return to compliance, DEQ staff and representatives of LifeNet 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 LifeNet, and LifeNet agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$64,324 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

LifeNet shall include its Federal Employer Identification Number (FEIN) 52-1273592 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, LifeNet shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of LifeNet for good cause shown by LifeNet, 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 and in NOV No. ATRO000958 dated July 9, 2018. 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, LifeNet admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. LifeNet 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. LifeNet 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 LifeNet 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. LifeNet does not waive any rights or objections it may have in any enforcement action by other federal, state or local authorities arising out of the same or similar facts to those recited in this Order.
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. LifeNet 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. LifeNet shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. LifeNet 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 LifeNet. Nevertheless, LifeNet 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 LifeNet has completed all of the requirements of the Order;
 - b. LifeNet 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 LifeNet.

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

And it is so ORDERED this 5th day of DECEMBER, 2018.



Craig R. Nicol, Regional Director
Department of Environmental Quality

LifeNet Health voluntarily agrees to the issuance of this Order.

Date: 12/03/18 By: [Signature]
Gordon Berkstresser CFO
LifeNet Health

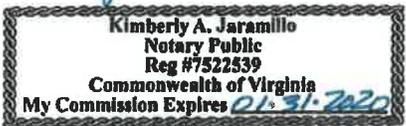
Commonwealth of Virginia
City/County of VIRGINIA BEACH

The foregoing document was signed and acknowledged before me this 03 day of DECEMBER, 2018, by GORDON BERKSTRESSER who is CFO of LifeNet Health, on behalf of the corporation.

[Signature]
Notary Public
7522539
Registration No.

My commission expires: Jan 31, 2020

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Install Temperature Device

- a. By February 1, 2019, LifeNet shall install a device to continuously measure and record temperature of the catalyst bed concurrently with the EO sterilizer operating cycle on EO abators AB-A, AB-B, and AB-C in accordance with Condition 4 of the Permit.
- b. Within 30 days of completion of the work required in Appendix A.1.a, , submit to DEQ invoices or other documentation documenting the completion of this work.

2. Conduct Stack Testing

- a. LifeNet shall conduct stack testing in accordance with Condition 20 of the Permit.
LifeNet shall:
 - i) Submit to DEQ for review and approval a test protocol at least 30 days prior to testing.
 - ii) Arrange details of test with DEQ.
 - iii) Conduct the test by June 1, 2019 in accordance with an approved test method on EO abators AB-A, AB-B, and AB-C.
 - iv) Submit the test results to DEQ staff of DEQ TRO within 60 days after completion of the test.

3. Records

- a. Within 90 days of the effective date of the Order, LifeNet shall maintain onsite records including, but are not limited to:
 - i) Annual hours of each emergency generator BG-1, BG-2, and BG-3;
 - ii) Annual fuel consumption for boilers B-1V and B-2V;
 - iii) Annual throughput of ethylene oxide;
 - iv) The control efficiency of the EO abators; and
 - v) The operation and control device monitoring records for the EO abators.

4. 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, LifeNet, 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.”

5. DEQ Contact

Unless otherwise specified in this Order, LifeNet shall submit all requirements of Appendix A of this Order to:

Enforcement
VA DEQ – Tidewater Regional Office
5636 Southern Blvd
Virginia Beach, VA 23462