



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Craig Nicol  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
COMMANDER, NAVY REGION MID-ATLANTIC  
FOR  
NAVAL AIR STATION OCEANA  
Registration No. 60294**

## **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 Commander, Navy Region Mid-Atlantic, regarding the Naval Air Station Oceana, regarding Naval Air Station Oceana, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the 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. "CNRMA" means Commander, Navy Region Mid-Atlantic, the Department of the Navy's regional command responsible for navy training in Virginia Beach. CNRMA is a "person" within the meaning of Va. Code § 62.1-44.3.
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 Naval Air Station Oceana, located at 1750 Tomcat Boulevard in Virginia Beach, Virginia.
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 partial compliance evaluation.
9. "Permit" means the Article 1 Federal Operating Permit – Title V, effective January 27, 2014 and expires January 26, 2019, issued to CNRMA to operate Naval Air Station Oceana under the Virginia Air Pollution Control Law and the Regulations.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
11. "SAMR" means semi-annual monitoring report.
12. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
13. "ULSD" means ultra-low sulfur dioxide.
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. CNRMA owns and operates the Facility located in Virginia Beach, Virginia. The Facility supports naval training activities, in general. The Facility is the subject of the Permit.
2. On February 29, 2016, CNRMA hand-delivered the SAMR for the July 1, 2015 through December 31, 2015 reporting period. Department staff conducted a PCE of the SAMR on March 2, 2016. Based on the evaluation, Department staff made the following observations:
  - a. CNRMA was unable to correlate fuel delivery invoices to individual affected units to document that each individual engine receives ULSD; and
  - b. CNRMA did not have all records for maintenance performed on individual units.

3. Condition III.A.4.a of the Permit requires that CNRMA comply with all emission limits, and fuel, compliance, testing, and notification requirements in 40 CFR § 60.42, Subpart III.
4. Condition III.5 of the Permit requires that CNRMA comply with applicable requirements in 40 CFR § 63, Subpart ZZZZ.
5. Condition III.C.20 of the Permit requires that CNRMA obtain a certification from the fuel supplier for each shipment of distillate oil, residual oil, and fuel oil reclaimed, which includes the name of fuel supplied, date received, quantity, specifications, and sulfur content.
6. 40 CFR § 60.42, Subpart III provides standards of performance for stationary compression ignition internal combustion engines.
7. 40 CFR § 63, Subpart ZZZZ establishes national emission limits and operating limits for hazardous air pollutants.
8. On August 10, 2016, based on the evaluation, the Department issued Notice of Violation No. ATRO000483 to CNRMA for the violations described in paragraphs C(2) through C(7), above.
9. Based on the results of the March 2, 2016 evaluation, and the documentation submitted on February 29, 2016, the Board concludes that CNRMA has violated Permit conditions III.A.4.a, III.5, and III.C.20, 40 CFR 60 Subpart III, and 40 CFR 63 Subpart ZZZZ, as described in paragraphs C(2) through C(7), above.
10. In order for CNRMA to return to compliance, DEQ staff and representatives of CNRMA 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 pursuant to Va. Code §§ 10.1-1309 and -1316, the Board orders CNRMA, and CNRMA agrees to perform the actions described in Appendix A of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of CNRMA for good cause shown by CNRMA, 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, CNRMA admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. CNRMA consents to venue in the Circuit Court of the City of Richmond for any civil action taken by the Board to enforce the terms of this Order. However, CNRMA does not waive any rights it may have to seek removal of such action to Federal court pursuant to 28 United States Code §§ 1441 et seq.
5. CNRMA declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 et seq., and the State Water 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 CNRMA 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. CNRMA 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 occurrence. CNRMA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CNRMA 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 CNRMA intends 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, 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 CNRMA. Nevertheless, CNRMA 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. CNRMA 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
  - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to CNRMA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CNRMA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. In accordance with the Federal Anti-Deficiency Act, the obligations of CNRMA under this section are expressly conditioned on the availability of Congressional appropriations, which CNRMA agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, CNRMA will promptly inform the DEQ Regional Director. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with CNRMA's consent or in accordance with the Administrative Process Act.
13. Any plans, reports, schedules or specifications attached hereto or submitted by CNRMA 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.
14. The undersigned representative of CNRMA 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 CNRMA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of CNRMA.

15. 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.

16. By its signature below, CNRMA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17<sup>th</sup> day of January, 2017.



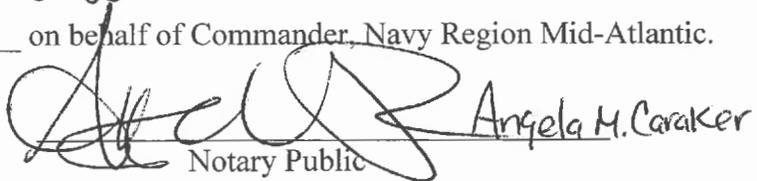
Craig Nicol, Regional Director  
Department of Environmental Quality

Commander, Navy Region Mid-Atlantic voluntarily agrees to the issuance of this Order.

Date: 17 Jan 17 By: Mike Jones, N45 EV Director  
(Person) (Title)  
Commander, Navy Region Mid-Atlantic

Commonwealth of Virginia  
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 17<sup>th</sup> day of January, 2017, by Mike Jones who is N45 EV Director on behalf of Commander, Navy Region Mid-Atlantic.

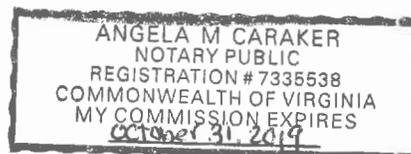


Angela M. Caraker  
Notary Public

7335538  
Registration No.

My commission expires: October 31, 2019

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

By January 1, 2018, CNRMA shall comply with the requirements described below:

1. **Compliance Plan - 40 CFR 63, Subpart ZZZZ (National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines)** – The permittee shall provide copies of the initial notifications for each non-emergency generator, as required in 40 CFR 63.6645(a) and 40 CFR 63.9. (9VAC5-80-110 K.3, 40 CFR 63.6645(a), and Conditions 6, 7, 8 and 9).
2. **Compliance Plan - 40 CFR 60, Subpart IIII (Standards of Performance for Stationary Compression Ignition Internal Combustion Engines)** – The permittee shall provide to DEQ a demonstration (i.e. sample record) that shows that the diesel fuel used in each stationary compression ignition internal combustion engine subject to the requirements of 40 CFR 60, Subpart IIII meets the requirements of 40 CFR 60.4207(b).
3. **Compliance Plan - Reporting Requirements** - The permittee shall provide written confirmation that the milestone has been achieved. If the milestone is not achieved by the date required in the compliance schedule, the source shall, within 14 days of the date, provide a written explanation of the reason the compliance date was not met, a proposed alternate date and a statement as to the impact on the final compliance date. Extension of a compliance date may be cause for modification of this permit. (9VAC5-80-110 K.4)
4. **Compliance Plan - Certified Progress Report** - The permittee shall submit a certified progress report semi-annually detailing the progress made toward completion of the milestones in the Compliance Plans above. The progress report must be certified by a responsible official and shall contain the following:
  - a. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved.
  - b. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventative or corrective measures adopted.

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

Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Boulevard  
Virginia Beach, VA 23462