



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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Thomas A. Fahs
Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
QTS Investment Properties Manassas, LLC
FOR
QTS Investment Properties Manassas Facility
Registration No. 74161**

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 QTS Investment Properties Manassas, LLC, regarding the QTS Investment Properties Manassas 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 QTS Investment Properties Manassas facility, located at 9340 Godwin Drive in the City of Manassas, Virginia.
5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
6. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
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. "Permit" means a Minor New Source Review Permit to construct and operate emergency diesel engine generators at the Facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to QTS Investment Properties Manassas, LLC on December 7, 2018.
9. "QTS" means QTS Investment Properties Manassas, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. QTS is a "person" within the meaning of Va. Code § 10.1-1300.
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.

SECTION C: Findings of Fact and Conclusions of Law

1. QTS owns and operates the Facility in Manassas City, Virginia. The Facility operates as a data center.
2. The Facility is subject to the Permit, issued to QTS on December 7, 2018, which allows QTS to construct and operate 20 emergency diesel engine generators at the Facility.
3. On September 4, 2019, DEQ staff received a written submission from QTS containing several notifications concerning the construction and start-up of emergency generators GEN 01 through GEN 07 at the Facility.
4. QTS's September 4, 2019, written submission stated that generators GEN 01 through GEN 04 were constructed at the Facility on September 26, 2018, and that generators GEN 05 through GEN 07 were constructed on November 29, 2018.

5. The construction of generators GEN 01 through GEN 04 occurred 71 days prior to the issuance of the Permit, which was on December 7, 2018.

The construction of generators GEN 05 through GEN 07 occurred 8 days prior to issuance of the Permit.

6. 9 VAC 5-80-1120 states that no owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of the permit.
7. QTS's September 4, 2019 written submission stated that generators GEN 01 through GEN 04 commenced start-up on February 1, 2019, and that generators GEN 05 through GEN 07 commenced start-up on April 1, 2019.
8. Condition 18.b of the Permit requires that the permittee furnish written notification to the Regional Air Compliance Manager of DEQ's NRO of the actual startup date of each emergency diesel engine gen-set, to be reported or postmarked not more than 15 days after the start-up date.
9. On September 18, 2019, based on the QTS's submissions, evaluation, and follow-up information, the Department issued Notice of Violation (NOV) No. ANRO001314 to QTS for the construction of new stationary sources without a permit and for late start-up notifications, as described above in paragraphs C(1) through C(8).
10. On October 3, 2019, DEQ received a written response to the NOV from QTS, and on November 12, 2019, DEQ staff met with representatives of QTS to discuss the NOV, QTS's response, and enforcement proceedings.
11. QTS expressed a desire to comply with Regulations and the Permit and explained that internal communication failures ultimately led to the circumstances that resulted in the violations. QTS implemented corrective actions in the form of internal procedural changes and revised its organizational structure for new site developments in an effort to comply moving forward.
12. Based on the documentation submitted to DEQ on September 4, 2019, and October 3, 2019, DEQ's evaluation of submissions, issuance of the Permit on December 7, 2018, the November 12, 2019 meeting, and related correspondence between DEQ and QTS, the Board concludes that QTS has violated Permit condition 18.b and 9 VAC 5-80-1120, as described above in paragraphs C(1) through C(11).

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders QTS, and QTS agrees to pay a civil charge of **\$5,644.32** 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

QTS 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, QTS 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 QTS for good cause shown by QTS, 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. ANRO001314 dated September 18, 2019. 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, QTS admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. QTS 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. QTS 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 QTS 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. QTS 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. QTS shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. QTS 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 QTS. Nevertheless, QTS 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 QTS has completed all of the requirements of the Order;
- b. QTS 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 QTS.

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

And it is so ORDERED this 12 day of March, 2020.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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QTS Investment Properties Manassas, LLC voluntarily agrees to the issuance of this Order.

Date: 3/9/20 By: [Signature] Executive VP Facilities
(Person) (Title)
QTS Investment Properties Manassas, LLC

State of Georgia
~~Commonwealth of Virginia~~
City/County of Gwinnett

The foregoing document was signed and acknowledged before me this 9 day of MARCH, 2020, by Kevin Shead who is Executive Vice President of QTS Investment Properties Manassas, LLC, on behalf of the corporation.

[Signature]
Notary Public

N53
Registration No.

My commission expires: 15 JULY 2021

Notary seal:

