



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO REGIONAL ENTERPRISES, INC. Registration Number 52407

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 Regional Enterprises, Inc., 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. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
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 Regional Enterprises, Inc. facility, located at 410 Walter Street, Hopewell, 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 a partial compliance evaluation by DEQ staff.
9. "Permit" means a New Stationary Source (NSR) Permit, to modify and operate a petroleum and chemical liquid storage and transfer facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Regional Enterprises, Inc. on September 17, 2012.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Regional Enterprises" means Regional Enterprises, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Regional Enterprises is a "person" within the meaning of Va. Code § 10.1-1300.
12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
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 Fact and Conclusions of Law

1. Regional Enterprises owns and operates the Facility in Hopewell, Virginia. The Facility receives petroleum and liquid chemicals by barge and rail. The Facility has eight large tanks and six smaller tanks which store sodium hydroxide, number 2 oil, number 6 oil and asphaltic tar. The materials are stored, and then transloaded to tanker trucks and/or tanker rail cars. In order to aid the transfer and storage of tar and number 6 oil, the Facility operates two boilers that fire number 2 oil. One boiler, installed in 1990, has a

heat rating of 5,300,000 Btu per hour, and the other boiler, installed in 1994, has a heat rating of 10,500,000 Btu per hour.

2. On April 19, 2012, Department staff conducted a PCE at the Facility in response to an odor complaint. Based on the inspection and evaluation of information pertaining to the Facility, Department staff made the following observation:
 - a) Regional Enterprises had installed and operated a 10,500,000 Btu per hour, number 2 oil fired boiler, which exceeds the permitting exemption for the maximum heat input of 10,000,000 Btu per hour.
3. Regulation 9 VAC 5-80-1105.B.1.a.2, which replaced 9 VAC 5-80-1320.B.1.b, states that facilities as specified below shall be *exempt* from the provisions of this article as they pertain to construction, modification, reconstruction or relocation: Fuel burning equipment units (external combustion units, not engines and turbines) using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.
4. Regulation 9 VAC 80-1100.E states that an affected facility subject to Article 5 (9 VAC 5-50-400 *et seq.*) of Part II of 9 VAC 5 Chapter 50 shall not be exempt from the provisions of this article, except where:
 - a. The affected facility would be subject only to recordkeeping or reporting requirements or both under Article 5 (9 VAC 5-50-400 *et seq.*) of 9 VAC 5 Chapter 50); or
 - b. The affected facility is constructed, reconstructed or modified at a stationary source which has a current permit for similar affected facilities that requires compliance with emission standards and other requirements that are not less stringent than the provisions of Article 5 (9 VAC 5-50-400 *et seq.*) of 9 VAC-5 Chapter 50.
5. The 10,500,000 Btu per hour, number 2 oil fired boiler, also requires a permit to be issued prior to construction and operation because New Source Performance Standard 40 CFR 60 subpart Dc applies. The Regulations incorporate the New Source Performance Standards by reference as stated in 9 VAC 5-50-400 *et seq.*
6. On May 18, 2012, based on the inspection and evaluation of information, the DEQ issued Notice of Violation, Number 12-05-PRO-8355, for the violations described in paragraph C(2), above.
7. On June 18, 2012, Regional Enterprises applied for a Permit to modify and operate a 10,500,000 Btu per hour maximum rated capacity asphalt heater located at 410 Water Street in Hopewell, Virginia.

8. On September 17, 2012, the Department issued a Permit to Regional Enterprises and the Facility is subject to the Permit which authorizes the construction, modification and operation of an asphalt heater. The Permit subjects the Facility to National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources
9. Based on the results of the April 19, 2012 inspection and evaluation of information pertaining to the Facility, the Board concludes that Regional Enterprises violated 9 VAC 5-80-1120 and 9 VAC 5-80-1105, as described in paragraphs C(2) through C(5), above.
10. Regional Enterprises has completed the corrective actions by applying for a Permit, and was issued an NSR Permit to modify and operate the 10,500,000 Btu per hour asphalt heater on September 17, 2012. Regional Enterprises has made the corrective actions that demonstrate the violations described in paragraphs C(2) through C(5) above have been addressed.

SECTION D: Agreement and Order

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

1. Pay a civil charge of **\$22,750** in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
December 10, 2013	\$ 5,688 or balance
March 10, 2014	\$ 5,688 or balance
June 10, 2014	\$ 5,688 or balance
September 10, 2014	\$ 5,686 or balance

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance under this order by Regional Enterprises, Inc., and the entire remaining balance of the civil charge shall be immediately due and owing. Regional Enterprises, Inc. shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or of a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.
3. All payments 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

4. Regional Enterprises 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 Regional Enterprises, for good cause shown by Regional Enterprises, 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, Regional Enterprises admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact, and conclusions of law in this Order.
4. Regional Enterprises 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. Regional Enterprises declares it has received fair and due process under the Administrative Process Act and 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 Regional Enterprises 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. Regional Enterprises 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. Regional Enterprises shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Regional Enterprises 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 Regional Enterprises. Nevertheless, Regional Enterprises agrees to be bound by any compliance date, which precedes the effective date of this Order.

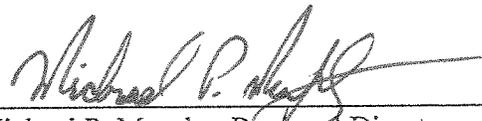
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Regional Enterprises has completed all of the requirements of the Order; or
 - b. Regional Enterprises petitions the Director or his designee to terminate the Order after it has completed all 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 Regional Enterprises.

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

And it is so ORDERED this 30th day of SEPTEMBER, 2013.



Michael P. Murphy, Regional Director
Department of Environmental Quality

Regional Enterprises, Inc., voluntarily agrees to the issuance of this Order.

Date: 24 Sept 13 By: [Signature], VP/GM
(Person) (Title)
Regional Enterprises, Inc.

State of Virginia
City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 24 day of
September, 2013, by Daniel Matthews, who is
(name)
VP/GM of Regional Enterprises, Inc., on behalf of the
corporation.

[Signature]
Notary Public
7546511
Registration No.

My commission expires: 03/31/17

Notary seal:

