



# **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](http://www.deq.virginia.gov)

Molly Joseph Ward  
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 RICHMOND ENERGY LLC Registration Number 52198**

#### **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 Richmond Energy LLC 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 a landfill and natural gas to energy electric power generating facility at the BFI Old Dominion Landfill located at 1700 Darbytown Road, in Henrico 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. "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 New Source Review (NSR) Permit, Registration No. 52198, that has had a minor amendment to the August 24, 2012 Permit, to modify and operate the landfill gas and natural gas-fired electrical power generation facility in accordance with the Virginia State Air Pollution Control Board Regulations. The Permit was issued under the Virginia Air Pollution Control Law and the Regulations to Richmond Energy LLC on August 20, 2014.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Richmond Energy" means Richmond Energy LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Richmond Energy is a "person" within the meaning of Va. Code § 10.1-1300.
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. Richmond Energy has constructed and operates the Facility, a landfill gas and natural gas-to-energy plant utilizing the landfill gas from the adjacent BFI Old Dominion municipal solid waste landfill in Henrico County, Virginia. The Facility consists of four Caterpillar C3520C LE landfill gas-fired internal combustion engine generators. There is

the potential to emit Carbon Monoxide (CO), in addition to other pollutants, during the electrical power generation process.

2. DEQ issued a minor amendment for the New Source Review (NSR) Permit, Registration No. 52198, which supersedes the August 24, 2012 Permit, to Richmond Energy on August 20, 2014.
3. On June 3, 2015, the Department received a stack test report, titled 'Emissions Testing of Four Caterpillar G3520C LE Engines for 40 CFR Part 60 Subpart JJJJ and Permit Requirements at the Richmond Energy LLC Facility in Richmond, Virginia', dated May 11, 2015. Based on the May 11, 2015 stack test report, Department staff made the following observation:
  - a) The results of the stack test reported the combined average CO emission of 0.792 lb/MMBtu from three runs conducted on each of the four engines operating on treated landfill gas during the stack tests conducted on April 13 – 17, 2015.
4. Condition No. 21 of the Permit states that, "Emissions from the operation of the Four Caterpillar 3520 spark-ignited gas only engines when the Facility is operated on treated landfill gas shall not exceed the CO limit of 0.765 lb/MMBtu. (9 VAC5-50-260 and 9 VAC 5-80-1180)
5. On August 27, 2015, the Department issued Notice of Violation No. APRO000231-001, for the violation as described above.
6. On September 23, 2015, Department received a letter and additional information from Richmond Energy, in response to the NOV. In the letter, Richmond Energy disputed the CO limit in the NOV, stating that the company had been in negotiations with the Department since 2014 to modify the Permit, which included increasing the CO emissions limit. An incomplete permit application was received by DEQ staff on September 23, 2014. DEQ staff notified Richmond Energy of the incomplete application status by letter dated December 18, 2014.
7. Based on the results of the April 13-17, 2015 stack test, on the May 11, 2015 Stack Test final report, and upon review of the report by DEQ staff, the Board concludes that Richmond Energy violated Condition No. 21 of the Permit, as described above.
8. In order for Richmond Energy to complete its return to compliance, DEQ staff and representatives of Richmond energy 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 Richmond Energy, and Richmond Energy agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$ 7,815 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", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Richmond Energy 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, Richmond shall be liable for attorney's 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 Richmond Energy, for good cause shown by Richmond Energy, 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.
3. 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, Richmond Energy admits the jurisdictional allegations, the findings of fact, and conclusions of law in this Order.
4. Richmond Energy 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. Richmond Energy 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 Richmond Energy 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. Richmond Energy 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. Richmond Energy shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Richmond Energy 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.

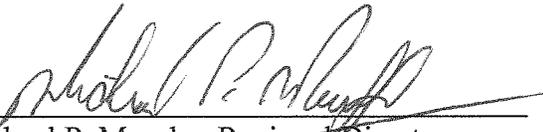
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Richmond Energy. Nevertheless, Richmond Energy agrees to be bound by any compliance 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 Richmond Energy has completed all of the requirements of the Order; or
  - b. Richmond Energy 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 Richmond Energy.

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

And it is so ORDERED this 10<sup>th</sup> day of FEBRUARY, 2016.

  
\_\_\_\_\_  
Michael P. Murphy, Regional Director  
Department of Environmental Quality

Richmond Energy LLC voluntarily agrees to the issuance of this Order.

Date: 8 FEB 2016 By: Chris Wall, Sr. Vice President  
(Person) (Title)  
Richmond Energy LLC

State of <sup>West</sup>Virginia New York  
City/County of Wagaw

The foregoing document was signed and acknowledged before me this 8th day of  
February, 2016, by Anthony J. Falbo, who is  
(name)  
Sr. Vice President of Richmond Energy LLC on behalf of the company.

Margaret M. Hereth  
Notary Public

01HE6006545  
Registration No.

My commission expires: May 4, 2018

Notary seal: **MARGARET M. HERETH**  
Notary Public, State Of New York  
No. 01HE6006545  
Qualified In Erie County  
My Commission Expires May 4, 2018

## APPENDIX A

In order to maintain compliance with the Permit and Regulations, Richmond Energy shall:

1. **Submittal**

By **March 1, 2016**, submit a complete permit application to address the requested changes to Conditions 18 and 21 in the NSR Permit, Registration No. 52198.

2. **DEQ Contact**

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

Cynthia Akers  
Enforcement Specialist, Sr.  
VA DEQ-PRO  
4949-A Cox Road  
Glen Allen, VA 23060  
(804) 527-5079 – phone  
(804) 527-5106 - Fax  
[Cynthia.Akers@deq.virginia.gov](mailto:Cynthia.Akers@deq.virginia.gov)