



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC,
AND 5055 ST, LLC
FOR
SOUTHERN TOWERS APARTMENTS
Registration No. 70045**

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 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, regarding the Southern Towers Apartments 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 Southern Towers Apartments Facility, located at 4901 Seminary Road, in Alexandria Virginia.
5. "FCE" means a full compliance evaluation by DEQ staff.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
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 a Minor New Source Review Permit to operate Southern Towers Apartments which was originally issued under the Virginia Air Pollution Control Law and the Regulations to Southern Towers Apartments on February 5, 2004 and amended on June 27, 2008, and January 5, 2013.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 chapters 10 through 80.
11. "Southern Towers" means 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, limited liability companies authorized to do business in Virginia and their affiliates, partners, and subsidiaries. 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, are a "person" within the meaning of Va. Code § 10.1-1300.
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. Southern Towers Apartments is a complex of five apartment buildings containing dual fuel fired (natural gas and #2 fuel oil) boilers for providing heat and hot water and diesel fuel fired emergency generators to provide electrical service in the event of a power

outage from the outside power provider. The facility is a synthetic minor by limitation of operating hours and fuel usage.

2. On March 1, 2017, Department staff conducted an FCE of the Facility in Alexandria, Virginia 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. Southern Towers' staff could not provide operator training records.
 - b. Southern Towers' staff did not track operating hours for the generators.
 - c. Southern Towers' staff could not provide a copy of their Permit.
 - d. Southern Towers' staff could not provide any fuel receipts demonstrating compliance with the approved fuel types specified in Permit Condition 4.
 - e. Southern Towers' staff provided a spreadsheet of natural gas usage, but data from August 2016 through February 2017 was missing.
 - f. Southern Towers' staff could not provide any records demonstrating compliance with the fuel specifications specified in Permit Condition 6.
 - g. Southern Towers' staff could not provide fuel certification records as specified in Permit Condition 7.
 - h. Southern Towers' staff could not provide accurate NO_x and SO₂ emissions calculations and totals for the generators and boilers as specified in Permit Conditions 8 and 9 due to estimating hours of operation.
3. As noted in the inspection report dated March 15, 2017, three of the emergency generators had been replaced as follows: 5201 Seminary Road (Berkley/Graham) 250 kW MTU Model 6R1600 DS250 (serial number 95010600512); 5001 Seminary Road (Sherwood) 275kW Generac Model SD0275KG17103D18HPSY3 (serial number 8466444); and 5055 Seminary Road (Monticello) 275kW Generac SD0275KG17103D18HPSY3 (serial number 8466442).
4. Permit Condition 12 states that the permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content and format of such records shall be arranged with the Regional Air Compliance Manager of the DEQs Northern Regional Office.
5. Condition 19 of the Permit states that at all times, including periods of start-up, shutdown, and malfunction, the permittee shall, to the extent practicable, maintain and

operate the affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

The permittee shall take the following measures in order to minimize the duration and frequency of excess emissions, with respect to air pollution control equipment, and process equipment which affect such emissions:

- a. Develop a maintenance schedule and maintain records of all scheduled and non-scheduled maintenance.
- b. Maintain an inventory of spare parts.
- c. Have available written operating procedures for equipment. These procedures shall be based on the manufacturer's recommendations, at a minimum.
- d. Train operators in the proper operation of all such equipment and familiarize the operators with the written operating procedures, prior to their first operation of such equipment. The permittee shall maintain records of the training provided including the names of trainees, the date of training and the nature of the training.

Records of maintenance and training shall be maintained on site for a period of five years and shall be made available to DEQ personnel upon request.

6. Permit Condition 2 states that the five diesel emergency generators combined shall not operate more than 1,250 hours per year with no individual generator operating more than 500 hours per year, calculated monthly as the sum of each consecutive twelve-month period. Compliance with the annual limit shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding eleven months.
7. Permit Condition 22 of the Permit states that the permittee shall keep a copy of this permit on the premises of the facility to which it applies.
8. Permit Condition 4 states that the approved fuels for the boilers are natural gas (primary fuel) and No. 2 fuel oil (back-up fuel). The approved fuel for the diesel emergency generators is diesel fuel. A change in the fuels may require a permit to modify and operate.
9. Permit Condition 5 states that the ten boilers (combined) shall consume no more than 400,000 gallons of No. 2 fuel oil and 163 million cubic feet of natural gas per year, calculated monthly as the sum of each consecutive twelve-month period. Compliance with the annual limits shall be demonstrated monthly by adding the total for the most recently completed calendar month to the individual monthly totals for the preceding eleven months.

10. Permit Condition 6 states that the natural gas and distillate oil (No. 2 fuel oil) shall meet the specifications below: a. DISTILLATE OIL which does not exceed the American Society for Testing and Materials (ASTM) D396 specification for numbers 1 or 2 fuel oil with maximum sulfur content per shipment no greater than 0.5 percent by weight. b. DIESEL FUEL which does not exceed the ASTM D975 specifications for grade ultra-low sulfur diesel oil No. 2-D or No. 2-D S15 which has a maximum sulfur content not to exceed 0.0015 percent by weight (15 ppm). c. NATURAL GAS: Pipeline quality or equivalent. Exceedance of these specifications may be considered credible evidence of the exceedance of emission limits.
11. Permit Condition 7 states that the permittee shall obtain a certification from the fuel supplier with each shipment of distillate oil and diesel oil. Each fuel supplier certification shall include the following: a. The name of the fuel supplier; b. The date on which the distillate oil and/or diesel fuel were received; c. The quantity of distillate oil and/or diesel fuel which were delivered in the shipment; d. The sulfur content of the distillate oil and/or diesel fuel. Fuel sampling and analysis, independent of that used for certification, as may be periodically required or conducted by DEQ may be used to determine compliance with the fuel specifications stipulated in Condition 6.
12. Permit Condition 8 states Annual emissions from the facility shall not exceed the limits specified below:

Nitrogen Oxides (as NO ₂)	15.0 tons/yr
Sulfur Dioxide (SO ₂)	15.0 tons/yr

Compliance with these annual emission limits is demonstrated monthly, as the sum of each consecutive twelve month period. These emissions are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits (Conditions 2, 4, 5 and 6) may be considered credible evidence of exceedance of emission limits. Compliance with the NO_x emission limit may be determined as stated in Condition 9.

12. Permit Condition 9 states that the facility-wide annual emissions of NO_x (as NO₂) from the boilers and generators shall be calculated monthly as the sum of each consecutive twelve-month period. Compliance for the consecutive twelve-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 eleven months.

Each month's NO_x emissions shall be calculated as follows:

$$\text{NO}_x = [(\text{Total monthly hours of operation of the 200 kW Kohler generator} \times 8.4 \text{ lb NO}_x/\text{hr}) + (\text{Total monthly hours of operation of the 180 kW Kohler generator} \times 7.6 \text{ lb NO}_x/\text{hr}) + (\text{Total monthly hours of operation of the 20 kW Kohler generator} \times 0.84 \text{ lb NO}_x/\text{hr}) + (\text{Total monthly hours of operation of the two 20 kW Perkins generators} \times 0.84 \text{ lb NO}_x/\text{hr}) + (\text{Thousand Gallons of \#2 fuel oil used by all boilers/month} \times 20.0$$

$$\frac{\text{lb NO}_x/1000 \text{ gal)} + (\text{Million cubic feet of natural gas used by all boilers/month} \times 100 \text{ lbs NO}_x/1 \times 10^6 \text{ scf})}{2000}$$

13. On March 15, 2017, based on the observations noted during the FCE, the Department issued Notice of Violation No. ANRO000609 to Southern Towers Apartments for the violations described in paragraphs C(1) through C(12), above.
14. Based on the results of March 1, 2017, FCE, the Board concludes that Southern Towers has violated Permit Conditions 12, 19, 2, 22, 4, 5, 6, 7, 8, and 9, as described in paragraphs C(1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12) above.
15. On April 10, 2017, and July 14, 2017, Southern Towers submitted all delinquent records to DEQ.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, and 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, agree to pay a civil charge of \$5,525.00 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

4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, shall include their 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, 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, 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 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC for good cause shown by 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, or

on their 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, 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, admit the jurisdictional allegations, and agree not to contest, but neither admit nor deny, the findings of fact and conclusions of law in this Order.
4. 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, declare they have 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 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, 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. 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, 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. 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, shall demonstrate that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, 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 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC. Nevertheless, 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, agree 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 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, have completed all of the requirements of the Order;
 - b. 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, petition the Director or his designee to terminate the Order after they have 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 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, from their 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 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, 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 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, 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 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, to this document.
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, 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, voluntarily agree to the issuance of this Order.

And it is so ORDERED this 29th day of September, 2017.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC voluntarily agree to the issuance of this Order.

Date: 9/25/2017

By: Southern Towers, L.L.C.,
a Virginia limited liability company, their Manager

By: Snell Construction Corporation,
a Virginia corporation, its Manager

By: Michael Eastwood (seal)
Michael Eastwood,
Senior Vice President

Commonwealth of Virginia
City/County of Arlington

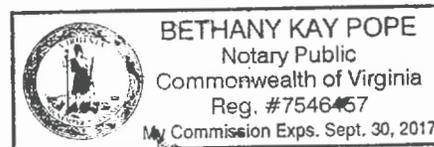
The foregoing document was signed and acknowledged before me this 25th day of September, 2017, by Michael Eastwood who is Senior Vice President of Snell Construction Corporation, which is Manager of Southern Towers, L.L.C., which is Manager of 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, on behalf of the companies.

Bethany Kay Pope
Notary Public

7546457
Registration No.

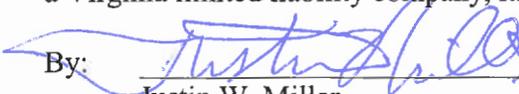
My commission expires: 9/30/17

Notary seal:



By: CP/Southern Towers, L.L.C.,
a Virginia limited liability company, their Manager

By: Caruthers Properties, L.L.C.,
a Virginia limited liability company, its Manager

By:  (seal)
Justin W. Miller
its Managing Member

Commonwealth of Virginia
City/County of Arlington

The foregoing document was signed and acknowledged before me this 25th day of September, 2017, by Justin W. Miller who is Managing Member of Caruthers Properties, L.L.C., which is Manager of CP/Southern Towers, L.L.C., which is Manager of 4901 ST, LLC, 4921 ST, LLC, 5001 ST, LLC, 5021 ST, LLC, and 5055 ST, LLC, on behalf of the companies.


Notary Public
#7546457
Registration No.

My commission expires: 9/30/17

Notary seal:

