



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2009
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources



David K. Paylor
Director

Maria R. Nold
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO WHEELABRATOR PORTSMOUTH INC.

Registration No. 61018

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 WHEELABRATOR PORTSMOUTH 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. "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 refuse derived fuel ("RDF") processing facility and municipal solid waste-to-energy plant located at 3809 Elm Avenue in Portsmouth, 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. "Permit" means the Title V air permit issued on October 11, 2013 under Air Registration No. 61018 to combust RDF, non-hazardous solid waste, and oil (for boiler startup) to produce electricity and steam in four combustion/steam boiler trains
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.
10. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
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.
14. "Wheelabrator" means WHEELABRATOR PORTSMOUTH INC., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Wheelabrator is a "person" within the meaning of Va. Code § 10.1-1300.

SECTION C: Findings of Fact and Conclusions of Law

1. Wheelabrator owns and operates the Facility located at 3809 Elm Avenue in Portsmouth, Virginia. The Facility is the subject of the Permit, which allows the combustion of refuse derived fuel ("RDF"), non-hazardous solid waste (liquid), or oil in four Waste-to-Energy ("WTE") boilers to produce steam and electricity.
2. On August 15, 2016, DEQ received a stack test report for the Permit-required annual performance stack test conducted on June 13-15, 2016 at Facility Emission Unit ID 045, Stack ID Unit 002 (listed in the stack test report as "Boiler No. 2"). The stack test report listed the average Dioxin/Furan emissions result at 32 ng/dscm @ 7% O₂ during RDF combustion. The stack test report listed that the result was due to the first of the three (3) test runs being started prior to boiler operating conditions stabilizing after reaching the representative boiler load required for stack testing.
3. Permit Condition IV.A.8 states that emissions from the operation of each WTE boiler during the combustion of RDF, by itself or in combination with any other approved fuel, shall not exceed 30 ng/dscm @ 7% O₂.
4. 9 VAC 5-170-160 (A) states in part, "The Board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the Board.

Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the Board in this regard. If the owner or other person fails to adhere to the conditions, the Board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permit."

5. On August 25, 2016, based on the June 13-15, 2016 stack test results in the August 15, 2016 stack test report, DEQ issued a NOV to Wheelabrator for the violations described in paragraphs C(2) and C(3) above.
6. Based on the June 13-15, 2016 stack test results in the August 15, 2016 stack test report, the Board also concludes that Wheelabrator has violated Permit Condition IV.A.8, as described in paragraph C(3) above.
7. On July 28, 2016, Dioxin/Furan stack tests were repeated on Emission Unit 45, Stack ID Unit 002. The stack test report received August 15, 2016 also included the results for the stack tests repeated on July 28, 2016 for Emission Unit 45, Stack ID Unit 002. The repeated stack test results were below the 30 ng/dscm @7% O₂ Dioxin/Furan Permit limit with an average result of 12 ng/dscm @ 7% O₂. Therefore, Emission Unit 045, Stack ID Unit 002 was designated out of compliance between the date of the failed stack test on June 13, 2016 and the date of the stack test on July 28, 2016 demonstrating compliance with the limit.
8. Based on the passing results of the Emission Unit 45, Stack ID Unit 002 July 28, 2016 Dioxin/Furan for the repeated stack test as described in the August 15, 2016 stack test report, the violations described in paragraphs C(2) and C(3), above, have been corrected.

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 Wheelabrator and Wheelabrator agrees to pay a civil charge of \$7,669 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

Wheelabrator 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, Wheelabrator shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Wheelabrator, for good cause shown by Wheelabrator, 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 the purposes of this Order and subsequent actions with respect to this Order only, Wheelabrator admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Wheelabrator 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. Wheelabrator declares it has received fair and due process under the Administrative Process Act, Va. Code 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 Wheelabrator 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. Wheelabrator 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. Wheelabrator shall show that such circumstances were beyond its control and not due to a lack of good faith or

diligence on its part. Wheelabrator 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 within 24 hours and in writing within three business days, of learning of any condition above, which Wheelabrator intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of 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 Wheelabrator. Nevertheless, Wheelabrator 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 Wheelabrator has completed all of the requirements of the Order;
 - (b) Wheelabrator 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 Wheelabrator.

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

And it is so ORDERED this 7 day of November, 2016.

Maria R. Nold
 Maria R. Nold, Regional Director
 Department of Environmental Quality

WHEELABRATOR PORTSMOUTH INC. voluntarily agrees to the issuance of this Order.

Date: 11/4/2016 By: [Signature], Plant Manager
 (Person) (Title)
 WHEELABRATOR PORTSMOUTH INC.

Commonwealth of Virginia
 City/County of Portsmouth

The foregoing document was signed and acknowledged before me this 4th day of November, 2016, by Robert Johnson, who is Plant Manager of WHEELABRATOR PORTSMOUTH INC. on behalf of the corporation.

Lindsey R. Rodgers
 Notary Public
7606918
 Registration No.

LINDSEY R. RODGERS
 NOTARY PUBLIC
 REG. #7606918
 COMMONWEALTH OF VIRGINIA
 MY COMMISSION EXPIRES AUGUST 31, 2018

My commission expires: August 31, 2018
 Notary Seal: