



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193
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Matthew J. Strickler
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
DIGITAL LOUDOUN PARKWAY CENTER NORTH, LLC
FOR
THE DIGITAL LOUDOUN II ASHBURN FACILITY
Registration No. 73670**

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 Digital Loudoun Parkway Center North, LLC, regarding the Digital Loudoun II Ashburn 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. "Digital Loudoun" means Digital Loudoun Parkway Center North, LLC a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Digital Loudoun Parkway Center North, LLC is a "person" within the meaning of Va. Code § 10.1-1300.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the Digital Loudoun Parkway Center North, LLC Facility, located at 43881 Devin Shafron Drive in Ashburn, Virginia (a.k.a. Digital Loudoun II).
6. "FCE" means Full Compliance Evaluation.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
9. "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.
10. "PCE" means Partial Compliance Evaluation.
11. "Permit" means a minor New Source Review permit to construct and operate a data center which was issued under the Virginia Air Pollution Control Law and the Regulations to Digital Loudoun II, LLC on September 24, 2009 and amended on January 31, 2011, August 30, 2012, February 8, 2013, January 29, 2014, and October 14, 2017.
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. Digital Loudoun owns and operates the Facility in Ashburn, Virginia located in Loudoun County. The Facility is a data center with emergency generators. The Facility is the subject of the Permit, which allows Digital Loudoun to construct and operate diesel engine driven electric generator sets at the Facility.

2. On November 29, 2018, Department staff conducted an FCE of the Facility in Ashburn. Based on the evaluation and follow-up information, Department staff made the following observation
 - a. Based on facility and DEQ records, initial performance testing for Caterpillar 2.5MW units (Gen 2.5-1 and Gen 2.5-19) and Cummins 2.5MW units (Gen 2.5-20 through Gen 2.5-22) had not occurred at the time of inspection. The most recent startup of Caterpillar 2.5MW units was reported to be June 18, 2018 (units 2.5-3 and 2.5-4). The most recent startup of Cummins 2.5MW units was reported to be April 6, 2016, (units 2.5-21 and 2.5-22). Facility staff informed DEQ at the time of the inspection that testing had not been scheduled.
3. Permit Condition 17 Performance Testing: Stack Test - An initial performance test shall be conducted for nitrogen oxides (as NO₂) emissions from the exhaust stacks on eight of the Caterpillar Model 3516C engine generator sets (Ref. Nos. Gen 1 through Gen 45) and for nitrogen oxides (as NO₂) and carbon monoxide (CO) on two of the Cummins Model DQKAE engine generator sets (Ref. Nos. Gen 46 through Gen 54), two of the Caterpillar Model 3516C HD engine generator sets (Ref. Nos. Gen2.5-1 through Gen2.5-19), and one of the Cummins Model DQKAN engine generator sets (Ref. Nos. Gen2.5-20 through Gen2.5-22) to determine compliance with the emission limits contained in Condition 14.
 - a. Emissions testing of for each pollutant for each selected engine-generator shall consist of three (3) one-hour test runs. The average of the three runs shall be reported as the short-term emission rate for that engine-generator.
 - b. Testing shall be conducted with the engines operating at greater than 90% capacity unless multiple load band testing is approved by DEQ.
 - c. The tests shall be performed, reported, and demonstrate compliance within sixty days after achieving maximum power demand rate at which the facility will be operated but in no event later than 180 days after start-up of the permitted facility. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5-50-30 and the test methods and procedures contained in each applicable section or subpart listed in 9 VAC 5-50-410.
 - d. The details of the tests are to be arranged with the Regional Air Compliance Manager of the DEQ's NRO. The permittee shall submit two copies, one paper copy and one on removable electronic media, of the test protocol to the Regional Air Compliance Manager of the DEQ's NRO at least thirty days prior to testing to ensure adequate time for DEQ approval. If the test protocol is received by the DEQ with less than thirty days for review and acceptance, DEQ approval may not be issued in a timely manner to allow for testing to take place according to the permittee's schedule.
 - e. Should conditions occur which would require rescheduling the testing, the permittee shall notify the Regional Air Compliance Manager of the DEQ's NRO in

writing, within seven days of the scheduled test date or as soon as the rescheduling is deemed necessary.

f. Two copies, one paper copy and one on removable electronic media, of the test results shall be submitted to the Regional Air Compliance Manager of the DEQ's NRO within sixty days after test completion and shall conform to the test report format enclosed with this permit.

4. On January 14, 2019, based on the observations noted during the November 29, 2018 FCE, the Department issued Notice of Violation No. ANRO001086-001 to Digital Loudoun Parkway Center North, LLC for the violations described in paragraphs C(2) and C(3) above.
5. A stack test protocol for the aforementioned initial performance testing was submitted by Digital Loudoun staff on February 1, 2019. The protocol was approved by DEQ on February 8, 2019. Stack testing was conducted on March 7 and 8, 2019. No further issues were noted.
6. On March 29, 2019, DEQ completed a partial compliance evaluation as a result of discussions with facility personnel. Based on this evaluation, Department staff made the following observation:
 - a. Testing for carbon monoxide on two Cummins DQKAE engine generator sets rated at 2000kW each had not been conducted pursuant to Permit Condition 17.
7. On April 8, 2019, based on the observations noted during the March 29, 2019, partial compliance evaluation, the Department issued Notice of Violation No. ANRO001086-002 to Digital Loudoun Parkway Center North, LLC for the violations described in paragraph C(6) above.
8. A stack test protocol for the aforementioned carbon monoxide testing was submitted by Digital Loudoun staff on April 17, 2019. The protocol was approved by DEQ on April 29, 2019. Stack testing was conducted on May 21, 2019. No further issues were noted.
9. Based on the results of November 29, 2018 FCE, and the March 29, 2019 PCE, the Board concludes that Digital Loudoun Parkway Center North, LLC has violated Permit Condition 17 as described in paragraphs C(2) through C(3), and C(6) above.
10. Digital Loudoun submitted stack test reports on April 2, 2019, and June 6, 2019. No further issues were noted.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Digital Loudoun Parkway Center North, LLC, and Digital Loudoun Parkway Center North, LLC agrees to pay a civil charge of \$25,204.42 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

Digital Loudoun Parkway Center North, LLC 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, Digital Loudoun Parkway Center North, 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 Digital Loudoun Parkway Center North, LLC for good cause shown by Digital Loudoun Parkway Center North, LLC, 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, Digital Loudoun Parkway Center North, LLC admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Digital Loudoun Parkway Center North, LLC 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. Digital Parkway Center North, LLC 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, except that Digital Loudoun Parkway Center North, LLC reserves its right to a hearing or other administrative proceeding authorized or required by law or to judicial review of any issue of fact or law contained in any subsequent amendments of this Order issued by the Board without the consent of Digital Loudoun Parkway Center North, LLC.
6. Failure by Digital Loudoun Parkway Center North, 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. Digital Loudoun Parkway Center North, LLC does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.
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. Digital Loudoun Parkway Center North, 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. Digital Loudoun Parkway Center North, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Digital Loudoun Parkway Center North, 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.

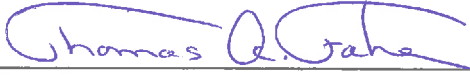
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement 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 Digital Loudoun Parkway Center North, LLC.
11. This Order shall continue in effect until:
 - e. The Director or his designee terminates the Order after Digital Loudoun Parkway Center North, LLC has completed all of the requirements of the Order;
 - f. Digital Loudoun Parkway Center North, LLC 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
 - g. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Digital Loudoun Parkway Center North, LLC.

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

And it is so ORDERED this 14th day of May, 2020.


Thomas A. Faha, Regional Director
Department of Environmental Quality

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Digital Loudoun Parkway Center North, LLC voluntarily agrees to the issuance of this Order.

Digital Loudoun Parkway Center North, LLC,
a Delaware limited liability company

By: Digital Realty Trust, L.P.,
its manager

By: Digital Realty Trust, Inc.
its general partner

Date: 5/14/2020 By: [Signature]
John Bean, VP, Associate General Counsel

Commonwealth of Virginia
City/County of RICHMOND

The foregoing document was signed and acknowledged before me this 14TH day of
MAY, 20 20, by JOHN BEAN who is
VP, Assoc. General Counsel of Digital Loudoun Parkway Center North, LLC, on behalf
of the company.

[Signature]
Notary Public

145251
Registration No.

My commission expires: June 30, 2020

Notary seal:

