



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

October 6, 2023

<b>Responsible Party Address:</b>	<b>Other Address:</b>
3380 Woodburn Rd Annandale, VA 22003	
<b>Other Address:</b>	<b>Other Address:</b>

**PROPOSED CONSENT ORDER AND  
NOTICE OF INFORMAL FACT FINDING PROCEEDING**

<b>RE:</b>	<b>Responsible Party(ies)</b>	Condominiums At Woodburn
	<b>Facility Name</b>	Condominiums At Woodburn
	<b>Registration/ Permit No.</b>	73292

Dear Sir/Madam:

The Virginia Department of Environmental Quality (“DEQ”) issued Notice(s) of Violation (the “NOV(s)”) on the following date(s) to the Responsible Party(ies) identified above for alleged violations observed at the facility identified above.

Proposed Consent Order and Notice of Informal Fact Finding Proceeding

<b>NOV Date(s)</b>	July 5, 2023
--------------------	--------------

The Responsible Party(ies) may resolve this matter quickly by entering into the enclosed Consent Order with DEQ within forty-five days from the date of this letter. If DEQ does not receive the signed Consent Order by that date, DEQ will proceed with conducting an Informal Fact Finding Proceeding as explained in Section II below.

**I. PROPOSED CONSENT ORDER**

DEQ wishes to resolve the alleged violations in the NOV by entering into a Consent Order with the Responsible Party(ies). DEQ’s proposed Consent Order is enclosed for your review. The proposed Consent Order includes:

<input checked="" type="checkbox"/>	A civil charge in the amount of <u>3,801</u>
<input checked="" type="checkbox"/>	Injunctive relief (corrective actions) in Appendix A.

If you agree with the terms of the proposed Consent Order, please sign and date the Consent Order and send it within forty-five days from the date of this letter to:

<b>Enforcement Specialist</b>	Katherine Mann
<b>Address</b>	13901 Crown Court Woodbridge, VA 22193
<b>Email</b>	katherine.mann@deq.virginia.gov

The order is subject to public notice and comment before it becomes final. A copy of the fully executed order will be returned to you for implementation upon signature on behalf of DEQ.

**II. NOTICE OF INFORMAL FACT FINDING PROCEEDING**

You are hereby notified that if DEQ does not receive the signed Consent Order within forty-five days from the date of this letter, an Informal Fact Finding Proceeding will be held via conference call at the date and time listed below. At the scheduled time, dial the Call-In Number listed below, and enter the Access Code listed below when requested.

<b>Proceeding Date</b>	December 5, 2023	<b>Proceeding Time</b>	10:00 AM
<b>Call-In No.</b>	+1 (312) 757-3121	<b>Access Code</b>	253-160-749

If you have any difficulty accessing the conference call, please call:

Proposed Consent Order and Notice of Informal Fact Finding Proceeding

<b>Agency Advocate</b>	Carla Pool
<b>Phone No.</b>	(804) 664-3666

The Informal Fact Finding Proceeding will be conducted pursuant to Va. Code §§ 2.2-4019 and 10.1-1186 to determine whether the Responsible Party(ies) violated the Virginia Code and Regulations as listed in the Findings of Fact and Conclusions of Law in Section C of the enclosed Consent Order. The Informal Fact Finding Proceeding will also determine the appropriateness of a civil penalty and/or injunctive relief.

DEQ staff will request a Special Order requiring the Responsible Party(ies) to:

<input checked="" type="checkbox"/>	Pay the maximum civil penalty authorized by law, and pay attorneys' fees of 30% of the amount outstanding should DEQ have to refer collection of the civil penalty to the Department of Law
<input checked="" type="checkbox"/>	Comply with the Virginia Code and Regulations by completing the corrective actions listed in Appendix A of the enclosed proposed Consent Order.

To ascertain the facts in this matter, DEQ staff may rely upon DEQ's inspection report(s) for the Facility, the NOV(s), any registration statement and permit for the Facility, other public documents in DEQ files, and the information presented by witnesses. DEQ staff will also rely on applicable statutes, regulations, and DEQ guidance. Full texts of statutes, regulations, and DEQ guidance can be obtained at <http://www.deq.virginia.gov/LawsRegulations.aspx> or <http://lis.virginia.gov/> (statutes and regulations) and <http://townhall.virginia.gov/L/GDocs.cfm> (DEQ guidance). Copies will be provided upon request.

You may participate in the conference call yourself or by counsel or other qualified representative pursuant to Va. Code § 2.2-4019. At this proceeding, the Responsible Party(ies) will be able to present factual data, argument, or proof in connection with this case. A Presiding Officer will hear the evidence in this case and will prepare an independent Findings of Fact and Conclusions of Law and a draft Special Order for the Director's review. Then the Director may issue a Special Order under Va. Code § 10.1-1186, which may include both injunctive relief and a civil penalty.

Be advised that if you fail to attend or appear without good cause to an informal fact-finding proceeding conducted pursuant to Va. Code § 2.2-4019, the Presiding Officer may issue a default order regarding the subject of this notice. If a default order is issued, the Presiding Officer may conduct all further proceedings necessary to complete the adjudication and shall determine all issues in the adjudication, including those affecting you. Further, an order may be issued against you based on any admissions or other evidence without notice to you.

You will be notified of the results of the proceeding in accordance with Va. Code § 2.2-4019 and have the right to appeal any adverse decision in accordance with Va. Code § 2.2-4026.

If you have any questions or require assistance, please contact the following DEQ staff who will represent DEQ at this proceeding:

<b>Agency Advocate</b>	Carla Pool
<b>Phone No.</b>	(804) 664-3666
<b>Email</b>	carla.pool@deq.virginia.gov

Proposed Consent Order and Notice of Informal Fact Finding Proceeding

Sincerely,

Miller Mark llv40425<sup>5</sup>  
Digitally signed by: Miller Mark llv40425  
DN: CN = Miller Mark llv40425 OU = COV-  
Users, End-Users, DEQ  
Date: 2023.10.06 10:07:05 -0400

Mark Miller

Environmental Manager II

Enclosure



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

NORTHERN REGIONAL OFFICE  
13901 Crown Court, Woodbridge, Virginia 22193  
(703)583-3800 FAX (804) 698-4178  
[www.deq.virginia.gov](http://www.deq.virginia.gov)

Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

Richard C. Doucette, CPG  
Regional Director

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Condominiums at Woodburn  
FOR  
Condominiums at Woodburn  
Registration No. 73292**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the Virginia Department of Environmental Quality and Condominiums at Woodburn, regarding Condominiums at Woodburn, 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 terms in this Consent Order have the meaning assigned to them in Va. Code §10.1-1300 *et seq.* and the Regulations for the Control and Abatement of Air Pollution (Regulations) at 9 VAC 5-10 *et seq.*

**SECTION C: Findings of Fact and Conclusions of Law**

1. Condominiums at Woodburn (Woodburn) is a business entity authorized to do business in Virginia and references to Condominiums at Woodburn include its affiliates, partners, and subsidiaries. Condominiums at Woodburn is a "person" within the meaning of Va. Code § 10.1-1300.
2. Woodburn owns and operates amenities for a collection of condominium units located at 3380 Woodburn Road in Fairfax County, Virginia (Facility). The Facility is the subject of the

synthetic minor operating permit, Reg. No. 73292 (Permit) which allows Woodburn to operate four (4) dual fuel boilers subject to NSPS Dc.

3. On January 1, 2023, Department staff emailed a copy of the 2022 Annual Update paperwork to the Facility, with instructions to complete and return the form by March 1, 2023. On March 23, 2023, Department staff conducted a partial compliance evaluation inspection at the Facility and a file review of the Facility record 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:

- The Facility did not provide fuel throughput records for boiler #5 when requested by DEQ.

4. Condition 5 of the November 2004 air permit states, “The new boiler (Ref.#5) shall consume no more than 5,500 gallons of distillate oil, 18 x 10<sup>6</sup> cubic feet of natural gas per year, calculated monthly as the sum of each consecutive 12-month period.”

5. Condition 18 of the November 24, 2004, air permit states, in part, “The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate Condition compliance with this permit. The content and format of such records shall be arranged with the Air Compliance Manager, Northern Virginia Regional Office. These records shall include, but are not limited to:

- a. Monthly and annual throughput of natural gas and distillate oil. Annual throughput shall be calculated monthly as the sum of each consecutive 12-month period....

These records shall be available for inspection by the DEQ and shall be current for the most recent five years.”

6. The Facility did not provide fuel certification records for all fuel deliveries when requested by DEQ.

7. Condition 6 of the November 24, 2004, air permit states, “The natural gas used in the boilers shall be of pipeline quality or equivalent. The distillate oil shall comply with the American Society for Testing and Materials (ASTM) specifications for number 2 fuel oil and with sulfur content limit, as given below:

DISTILLATE OIL with meets ASTM [D396-78, 89, 90, 92, 96, or 98] specifications for numbers 1 or 2 fuel oil, with maximum sulfur content per shipment of 0.5% by weight.”

8. Condition 7 of the November 24, 2004, air permit states, “The permittee shall obtain a certification from the fuel supplier with each shipment of distillate oil. Each fuel supplier certification shall include the following:

- a. The name of the fuel supplier.
- b. The date on which the distillate oil was received.
- c. The volume of distillate oil delivered in the shipment.

- d. A statement that the distillate oil complies with the American Society for Testing and Materials specifications [D396] for numbers 1 or 2 fuel oil.”
9. Condition 18 of the November 24, 2004, air permit states, in part, “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 Air Compliance Manager, Northern Virginia Regional Office. These records shall include, but are not limited to:...

- b. All fuel supplier certifications required in Condition 7.

These records shall be available for inspection by the DEQ and shall be current for the most recent five years.”

10. The Facility did not submit the Semi-Annual Fuel Quality Reports for January through June 2022 and July through December 2022.
11. Condition 19 of the November 24, 2004, air permit states, “The permittee shall submit fuel quality reports to the Air Compliance Manager, Northern Virginia Regional Office within 30 days after the end of each semi-annual period. If no shipments of distillate oil were received during the semi-annual period, the semi-annual report shall consist of the dates included in the semi-annual period and a statement that no oil was received during the semi-annual period. If distillate oil was received during the semi-annual period, the reports shall include:
  - a. Dates included in the semi-annual period,
  - b. A copy of all fuel supplier certifications for all shipments of distillate oil received during the semi-annual period or a semi-annual summary from each fuel supplier that includes the information specified in Condition 7 for each shipment of distillate oil, and
  - c. A signed statement from the owner or operator of the facility that the fuel supplier certifications or summaries of fuel supplier certifications represent all of the distillate oil burned or received at the facility.

One copy of the semi-annual report shall be submitted to the U.S. Environmental Protection Agency at the address specified in Condition 17.”

12. The facility did not submit the Annual Update for calendar year 2022 prior to the March 1, 2023, deadline.
13. Condition 28 of the November 24, 2004, air permit states, “Annual requirements to fulfill legal obligations to maintain current stationary source emission data will necessitate a prompt response by the permittee to requests by the DEQ or the Board for information to include, as appropriate: process and production data; changes in control equipment; and operating schedules. Such requests for information from the DEQ will either be in writing or by personal contact. The availability of information submitted to the DEQ or the Board will be governed by applicable provision of the Freedom of Information Act, §§2.1-340 through 2.1-348 of the Code of Virginia, §10.1-1314 (addressing information provided to the Board) of the Code of Virginia, and 9 VAC 5-170-60 of the State Air Pollution Control Board

Regulations. Information provided to federal officials is subject to appropriate federal law and regulations governing confidentiality of such information.

14. The facility did not provide a copy of the air permit during the June 23, 2023, inspection.
15. Condition 29 of the November 24, 2004, air permit states, "The permittee shall keep a copy of this permit on the premises of the facility to which it applies."
16. On July 5, 2023, based on the evaluation and follow-up information, the Department issued Notice of Violation No. (NOV) ANRO002575 to Woodburn for the violations described in paragraphs C(4) through C(16), above.
17. On July 14, 2023, Woodburn submitted a written response acknowledging the NOV.
18. On August 10, 2023, Department staff met with representatives of Woodburn virtually to discuss the violations.
19. On September 28, 2023, Department staff met with representatives of Woodburn and received partial fuel records. Department staff requested complete fuel records, however no further communications were received from Woodburn.
20. Based on the results of the March 23, 2023 evaluation, the August 10, 2023, meeting and the September 28, 2023 submittal, the Department concludes that Woodburn has violated Permit conditions 5, 6, 7, 18, 19, 28, and 29, as described in paragraphs C(4) through C(16), above.
21. In order for Woodburn to return to compliance, DEQ staff and representatives of Woodburn have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Consent Order (Order).

#### **SECTION D: Agreement and Order**

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

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$3,801 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



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

#### **SECTION E: Administrative Provisions**

1. The Department may modify, rewrite, or amend this Order with the consent of Woodburn for good cause shown by Woodburn, 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 and in NOV No. ANRO002575 dated July 5, 2023. This Order shall not preclude the Department 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, Woodburn admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Woodburn 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. Woodburn 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 Department to modify, rewrite, amend, or enforce this Order.
6. Failure by Woodburn to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department 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. Woodburn 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. Woodburn shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Woodburn 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 Woodburn. Nevertheless, Woodburn 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 Woodburn has completed all of the requirements of the Order;
  - b. Woodburn 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 the Department terminates the Order in his or its sole discretion upon 30 days' written notice to Woodburn.

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

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Richard Doucette, Regional Director  
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----



## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. Documents Required**

- a. Within 30 days of the execution of this Order, Woodburn shall submit to DEQ fuel throughput records for September 2018 through August 2023 for all permitted units.
- b. Within 30 days of the execution of this Order, Woodburn shall submit to DEQ fuel certification records for all fuel purchases from September 2018 through August 2023.
- c. Within 30 days of the execution of this Order, Woodburn shall submit to DEQ the Semi-Annual Fuel Quality Reports for January through June 2022, July through December 2022, and January through June 2023.
- d. Within 30 days of the execution of this Order, Woodburn shall submit to DEQ the Annual Update for calendar year 2022.
- e. Within 30 days of the execution of this Order, Woodburn shall submit to DEQ documentation that a copy of the permit is kept on the premises of the facility.

### **2. Certification of Documents and Reports**

In accordance with 9 VAC 5-20-230(A), in all documents or reports submitted to DEQ pursuant to this Consent Order, Woodburn shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

### **3. DEQ Contact**

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

Virginia Department of Environmental Quality  
Northern Regional Office  
Attention: Enforcement  
13901 Crown Ct  
Woodbridge, VA 22193