



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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

P.O. Box 1105, Richmond, Virginia 23218

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www.deq.virginia.gov

Travis A. Voyles
Secretary of Natural and Historic Resources

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

May 8, 2024

Responsible Party Address:	Other Address:
4901 Seminary Road Alexandria, VA 22311	
Other Address:	Other Address:

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

RE:	Responsible Party(ies)	CIM VA Management, LLC
	Facility Name	Southern Towers Apartments
	Registration/ Permit No.	70045

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

NOV Date(s)	March 29, 2024
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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>\$4,958</u>
<input 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:

Enforcement Specialist	Katherine Mann
Address	13901 Crown Ct Woodbridge, VA 22193
Email	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.

Proceeding Date	July 22, 2024	Proceeding Time	10:00 AM
Call-In No.	(312) 575-3121	Access Code	253-160-749

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

Proposed Consent Order and Notice of Informal Fact Finding Proceeding

Agency Advocate	Carla Pool
Phone No.	(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 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:

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

Proposed Consent Order and Notice of Informal Fact Finding Proceeding

Sincerely,

Miller Mark llv40425 Digitally signed by: Miller Mark llv40425
DN: CN = Miller Mark llv40425 OU = COV-
Users, End-Users, DEQ
Date: 2024.05.08 11:24:28 -04'00'

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
www.deq.virginia.gov

Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

Richard C. Doucette, CPG
Regional Director

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CIM VA MANAGEMENT, 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 Virginia Department of Environmental Quality and CIM VA Management, LLC, regarding Southern Towers Apartments, 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. CIM VA Management, LLC (CIM) is a business entity authorized to do business in Virginia and references to CIM include its affiliates, partners, and subsidiaries. CIM is a "person" within the meaning of Va. Code § 10.1-1300.
2. CIM owns and operates a grouping of 5 apartment buildings located at 4901 Seminary Road in Alexandria, Virginia (Facility). The Facility is the subject of the Synthetic Minor

air permit No. 70045 issued February 5, 2004, and most recently amended January 5, 2013, (Permit) which allows for the operation of 10 boilers and 5 emergency generators.

3. On February 23, 2024, Department staff conducted a full compliance evaluation at the Facility 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. CIM could not provide the operating hours for the generators.

Condition 2 of Air Permit 70045 requires 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.

- b. CIM could not provide fuel consumption, specifications, or certifications.

Condition 4 of Air Permit 70045 requires 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.

Condition 5 of the Air Permit 70045 requires 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.

Condition 6 of the Air Permit 70045 requires 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.

Condition 7 of the Air Permit 70045 requires 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.

- c. CIM could not provide facility wide emission calculations for NOX and SOX.

Condition 8 of Air Permit 70045 requires that annual emissions from the facility shall not exceed the limits specified below:

Nitrogen Oxides (as NO₂)	15.0 tons/year
Sulfur Dioxide (SO₂)	15.0 tons/year

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 emission limits. Compliance with the NOC emission limit may be determined as stated in Condition 9.

Condition 9 of Air Permit 70045 requires that the facility-wide emissions of NOX 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 month recently completed calendar month to the individual monthly totals for the preceding eleven months....

- d. CIM could not provide records of scheduled and unscheduled maintenance, equipment operating procedures, spare parts inventory, and operator training.

Condition 19 of Air Permit 70045 requires 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 measure in order to minimize the duration and frequency of excess emissions, with respect to air pollution control equipment, and process equipment with 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.

e. CIM could not provide a copy of the current operating permit.

Condition 22 of Air Permit 70045 requires that the permittee shall keep a copy of this permit on the premises of the facility to which it applies.

4. On March 29, 2024, based on the evaluation and follow-up information, the Department issued Notice of Violation No. (NOV) ANRO002831 to the CIM for the violations described in paragraphs 3(a) through 3(e), above.
5. On April 17, 2024, Department staff met with representatives of CIM to discuss the violations, including the records CIM had submitted and had yet to submit.
6. Based on the results of the February 23, 2024, evaluation and the April 17, 2024, meeting, the Department concludes that CIM has violated Permit conditions 2, 4, 5, 6, 7, 8, 9, 19, and 22 as described in paragraphs 3(a) through 3(e), above.
7. CIM has submitted documentation on April 15 and 19, 2024, that verifies that the violations described in paragraphs 3(a) through 3(e), above, have been corrected.

SECTION D: Agreement and Order

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

1. Pay a civil charge of \$4,958 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

CIM 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, CIM 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 CIM for good cause shown by CIM, 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. ANRO002831 dated March 29, 2024. 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, CIM admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. CIM 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. CIM 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 CIM 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. CIM 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. CIM shall demonstrate that such circumstances

were beyond its control and not due to a lack of good faith or diligence on its part. CIM 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 CIM. Nevertheless, CIM 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 CIM has completed all of the requirements of the Order;
 - b. CIM 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 CIM.

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

And it is so ORDERED this _____ day of _____, 2024.

Richard C. Doucette, Regional Director
Department of Environmental Quality

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

CIM VA Management, LLC voluntarily agrees to the issuance of this Order.

Date: _____ By: _____, _____
(Person) (Title)
CIM VA Management, LLC