WEST VIRGINIA AIR QUALITY BOARD
CHARLESTON, WEST VIRGINIA

DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

v.

DEPARTMENT OF VETERANS MEDICAL AFFAIRS MEDICAL CENTER

Appeal No. 99-03-AQB

CONSENT ORDER

The Appellant, Department of Veterans Affairs Medical Center, by its counsel, and the Appellee, Chief of the Office of Air Quality, Division of Environmental Protection, by its counsel, hereby represent to the Board that they agree to the entry of the following Consent Order, which will resolve the issues in Appeal No. 99-03-AQB.

Pursuant to West Virginia Code § 22B-1-5(2), the attached Settlement Agreement signed by the parties has been reviewed by the Air Quality Board and is incorporated into this Order by reference and will have the same effect as an order entered after a hearing.

This Appeal is dismissed and stricken from the docket of the Air Quality Board.

Entered this 27th day of August, 1999.

Chairman, Air Quality Board

Approved:

THOMAS H. ZERBE
Attorney for Chief, Office of Air Quality

Approved:

RAY L. WAMPLINGTON
Attorney for Dept. Of Veteran Affairs Medical Center
SETTLEMENT AGREEMENT
BETWEEN
DEPARTMENT OF VETERAN AFFAIRS MEDICAL CENTER
AND
THE CHIEF, OFFICE OF AIR QUALITY
DIVISION OF ENVIRONMENTAL PROTECTION

I. INTRODUCTION

1. The Department of Veteran Affairs Medical Center ("VA") and the Chief, Office of Air Quality, Division of Environmental Protection ("Chief"), hereby enter into this settlement agreement in which the Chief agrees to forego filing a civil suit seeking a penalty against the VA pursuant to West Virginia Code §22-5-6 for a violation of 45 CSR 13 on March 9, 1999 in consideration of which the VA agrees to comply with the requirements and stipulated payments described in Section III, "Compliance Program."

II. FINDINGS OF FACT

2. The VA operates and maintains a medical center in Huntington, West Virginia for the treatment of veterans of military service. A boiler plant located at the facilitycombusts natural gas and No. 2 fuel oil in four indirect heat exchange boilers to produce heat and hot water.

3. The Chief, Office of Air Quality, is the principal administrative officer of the Office of Air Quality, an office within the Division of Environmental Protection. The Chief is the designee of the Director of the Division of Environmental Protection and is empowered pursuant to West Virginia Code §22-1-6 and §22-5-4 to enforce West Virginia Code §22-5-1 through §22-5-18 and the rules promulgated thereunder.

4. On June 20, 1998 the VA began construction and modification of its boilers at its medical center in Huntington, West Virginia. Specifically, two $10.5 \times 10^6$ BTU/hr Cleaver Brooks boilers were replaced with a $12.6 \times 10^6$ BTU/hr Kewanee boiler and a $14.7 \times 10^6$ BTU/hr
Kewanee boiler. Two existing boilers, a 10.5 X 10^6 BTU/hr Cleaver Brooks boiler and a
16.4 X 10^6 BTU/hr Johnston boiler were retrofitted with Low-NOx burners.

5. On October 5, 1998, the Chief received a permit determination form from the VA to
determine if the construction and modification of its natural gas/No. 2 fuel oil-fired boilers
would require a permit pursuant to 45 CSR 13.

6. On October 14, 1998, the Chief determined that the facility needed a permit pursuant to 45
CSR 13, based on the information provided in the VA's October 5, 1998 permit
determination form.

7. On November 16, 1998, the Chief received permit application R13-2290 from the VA for
the construction of two new boilers and the modification of two other existing boilers. The
VA's permit application was deemed to be complete as of November 16, 1998.

8. On December 2, 1998 the VA operated the two new Kewanee boilers.

9. On March 9, 1999, an inspection by Jeff Hedgecock, an Environmental Resource Specialist
employed by the Office of Air Quality, revealed that the VA had installed and were operating
the two new Kewanee boilers without first obtaining a Regulation 13 Permit in violation of
45 CSR 13.

10. On April 29, 1999, the Chief of the Office of Air Quality issued a Notice of Violation (NOV)
to the VA for causing the construction and modification of natural gas fired boilers without
first obtaining a permit for construction and modification.

11. On April 29, 1999, the Chief issued a Cease and Desist Order to the VA to cease violating
45 CSR 13 within 45 days.

12. The VA appealed the Cease and Desist Order to the Air Quality Board on May 25, 1999
requesting a stay of the Order.
13. On June 3, 1999, the Chief granted a stay of the Cease and Desist Order until the Air Quality Board enters an order resolving the appeal.

14. On June 8, 1999, the VA withdrew its motion to the Air Quality Board for the stay.

15. On July 19, 1999 the Chief issued to the VA a permit to construct two new Kewanee boilers to replace two existing boilers and to modify two other existing boilers.

III. COMPLIANCE PROGRAM

16. The VA will not construct, modify, relocate, or operate a stationary source of air pollutants without first obtaining a permit from the Chief if a permit for such activity is required by 45 CSR 13.

17. If the VA engages in activity required to be permitted by 45 CSR 13 without first obtaining a permit from the Chief, then the VA will pay $500.00 for each day it is in violation of 45 CSR 13 to the West Virginia Education and Environment Fund ("the Fund"), which payment will be mailed to Chief, Office of Air Quality; 1558 Washington Street, East; Charleston, West Virginia 25311.

18. The payments to the Fund in paragraph 17 will not apply to the two ethylene oxide sterilizers previously installed by the VA after a determination by the Chief's predecessor that no permit was needed, provided that:

a. The VA submits an application for a permit for the two (2) ethylene oxide sterilizers within a sixty days time after the Chief's new determination, dated July 7, 1999, that a permit is needed, and

b. The VA responds to any notice of deficiencies that the application is incomplete within fifteen days of the receipt of such notice, and
c. The Chief issues a permit for the two ethylene oxide sterilizers, or
d. The VA ceases operation of the ethylene oxide sterilizers immediately upon receipt of a final order denying the permit.

V. OTHER PROVISIONS

19. This Settlement Agreement shall become immediately binding upon signing by both parties provided that if a Consent Order agreed to by both parties is not entered by the Air Quality Board in Appeal No. 99-03-AQB, within ninety (90) days of the signing of this Settlement Agreement by both parties, this Settlement Agreement will become void and of no effect unless otherwise agreed in writing by both parties.

20. The parties will submit this Settlement Agreement with an agreed Consent Order in Appeal No. 99-03-AQB to the Air Quality Board. This Settlement Agreement will be incorporated by reference into the Consent Order in order that the parties can enforce this Settlement Agreement either as a settlement agreement or as an order of the Air Quality Board.

21. This Settlement Agreement is binding on the VA, its successors and assigns and on the Chief, the Office of Air Quality and his successors and assigns.

22. This Settlement Agreement will terminate on the ten year anniversary of the date it is signed by the second party to sign the agreement.

AND NOW, this ___ day of __________, 1999, the CHIEF, OFFICE OF AIR QUALITY agrees to and enters into this Settlement Agreement.
AND NOW, this 24th day of July, 1999, the DEPT. OF VETERAN AFFAIRS MEDICAL CENTER, agrees and enters into this Settlement Agreement.

DEPT. OF VETERAN AFFAIRS MEDICAL CENTER

Ray L. Hampton II
Office of Regional Counsel
Dept. Of Veteran Affairs Medical Center