COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Blue Ridge Regional Office

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Robert J. Weld
Regional Director

Lynchburg Office
7705 Timberlake Road
Lynchburg, Virginia 24502
(434) 582-5120
Fax (434) 582-5125

Roanoke Office
3019 Peters Creek Road
Roanoke, Virginia 24019
(540) 562-6700
Fax (540) 562-6725

April 4, 2014

Mr. John M. Hellman, Manager
American Infrastructure
301 Concourse Blvd
Suite 300
Glen Allen, VA 23059

RE: Consent Order – American Infrastructure - VA, Inc.
BR13-0914

Dear Mr. Hellman:

Enclosed is a copy of the fully executed Consent Order for American Infrastructure - VA, Inc. concerning the violations in Roanoke, Virginia. No comments were received during the 30-day public comment period. The Order was signed by the Regional Director on behalf of the Virginia Waste Management Board on **April 3, 2014** and is effective from that date.

Please note that the civil charge of **$36,400** is to be sent to the Department within 30 days of the effective date of the order. Please be sure that the checks are payable per the instructions described in Section D of the Consent Order.

Thank you for your cooperation in this matter. If you have questions, please contact me at 540/562-6817 or Jerry.Ford@deq.virginia.gov.

Sincerely,

Jerry Ford, Jr.

Jerry Ford, Jr.
Enforcement Specialist Senior

Enclosure

cc: Case File
Regional Enforcement Manager
Regional Compliance Manager

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VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
AMERICAN INFRASTRUCTURE – VA, INC.
FOR
PROJECT SITE – VDOT BRIDGE PROJECT, ELM AVE, ROANOKE CITY, VIRGINIA
AND
DISPOSAL SITE – 16000 STEWARTSVILLE ROAD, VINTON, VIRGINIA
Unpermitted Facility

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and American Infrastructure – VA, Inc., regarding the project and disposal sites located in Roanoke City and Vinton, Virginia, for the purpose of resolving violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "ACM" or "asbestos-containing material" mean (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations, as defined in 40 CFR 61.141.

2. "AI" means American Infrastructure – VA, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. AI is a "person" within the meaning of Va. Code § 10.1-1400.

3. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.

4. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

7. "Disposal Site" means 16000 Stewartsville Road, Vinton, Virginia, which is owned and operated by Jason Enterprises.

8. "DOLI" means the Virginia Department of Labor and Industry, an agency of the Commonwealth of Virginia.

9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

10. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

11. "Project Site" means the Virginia Department of Transportation construction project located at Elm Avenue interchange at I-581 in Roanoke City, Virginia, which is owned by the Commonwealth of Virginia and contract operated by the AI.

12. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*

13. "Va. Code" means the Code of Virginia (1950), as amended.

14. "VAC" means the Virginia Administrative Code.

15. "VDOT" means the Virginia Department of Transportation, and agency of the Commonwealth of Virginia.

16. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. VDOT contracted with AI for construction improvements at the Project Site. The contracted construction improvements at the Project Site included the demolition of sections of two bridges; the Elm Avenue bridge over the Norfolk Southern ("NS") railroad and the Elm Avenue bridge over I-581.

2. On June 24, 2013, AI notified VDOT that the company proposed to use the Disposal Site as the site for disposal of inert debris originating from the Project Site. The Disposal Site is operated as an inert fill operation and AI intended to dispose of concrete, soil, and asphalt from the Project Site. AI entered into a contract with Jason Enterprises on July 15, 2012 for use of the Disposal Site.

3. On July 29, 2013, AI began demolition of the bridge structures. The curbing, sidewalks and deck of the bridge sections were broken up at the Project Site and transported to the Disposal Site beginning on July 31, 2013.

4. On September 3, 2013, Department staff, accompanied by representatives of DOLI, VDOT, WACO (asbestos remediation contractor), and AI, inspected the Disposal Site for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

    a. There is no permit for the disposal or storage of solid waste at the Disposal Site.
    b. It was observed that concrete rubble and debris from the Project Site contained material identified as ACM.

5. Following the inspection of the Disposal Site, an inspection of the Project Site was conducted. It was observed that pieces of ACM were on the side slopes under the bridge, which is NS railroad property.

6. Va. Code § 10.1-1408.1(A) states that no person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the director.

7. 9 VAC 20-81-40 (C) states that it shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner.

8. 9 VAC 20-81-40 (D) states that any person who violates subsection A, B, or C of this section shall immediately cease the activity of improper management and the treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place.

9. 9 VAC 20-81-620 (A) states that the additional standards contained in this section apply to the management of all asbestos-containing waste materials ("ACM") generated by asbestos mills, by manufacturing, fabricating, and spraying operations, and Regulated Asbestos Containing Material (RACM) as defined by 40 CFR Part 61, Subpart M, as amended, generated in the course of demolition and renovation of installations, structures

or buildings, or other waste-generating activities....all definitions included in 40 CFR Part 61, Subpart M, as amended, are hereby included by reference and (B) in order for ACM to accepted at the disposal site, these materials shall meet the transporting and packaging requirements for ACM according to 40 CFR Part 61, Subpart M, as amended, which is hereby incorporated.

10. On September 11, 2013, based on the inspection and follow-up information, the Department issued Notice of Violation No. 13-09-BRRO-002 to AI for the violations described in paragraphs C(4) through C(9), above.

11. On September 20, 2013, Department staff met with representatives of AI to discuss the violations. AI hired a contractor and coordinated with DOLI staff for the proper management and disposal of the solid waste at the Disposal Site as well as proper clean-up and disposal of the solid waste at the Project Site. All solid waste was disposed of as ACM.

12. On October 3, 2013, the Disposal Site was inspected by representatives of DEQ, DOLI, VDOT, WACO, AI and Mr. Saunders, the property owner. The purpose of the inspection was to verify that the cleanup of the ACM had been completed and that no further remedial action was required.

13. The Disposal Site was over-excavated to ensure proper removal of the ACM. Over 100 roll-off containers of debris containing asbestos were removed from the Disposal Site during the cleanup in addition to roll-off containers removed from the Demolition Site. The debris was disposed at H.A.M. Sanitary Landfill, near Peterstown, West Virginia, which is authorized to accept ACM. The work was done in accordance with the work plan submitted by AI prior to the cleanup.

14. Most of the concrete rubble from the Demolition Site had been removed from the Disposal Site and very little remained at the time of the inspection. The remaining concrete consisted of large pieces which had been cleaned and did not contain asbestos materials. DEQ, DOLI and VDOT representatives expressed satisfaction with the cleanup and concurred with the opinion that further remediation at the Disposal Site was not necessary.

15. On October 31, 2013, AI submitted documentation related to the clean-up and proper disposal of the solid waste from the Project Site and Disposal Site.

16. Based on the results of the September 3, 2013 inspection, the September 20, 2013 meeting, and the documentation submitted on October 31, 2013, the Board concludes that AI has violated Va. Code § 10.1-1408.1(A), 9 VAC 20-81-40 (C), 9 VAC 20-81-40 (D), and 9 VAC 20-81-620, as described in paragraphs C(4) through C(9), above.

17. AI has ubmitted documentation that verifies and DEQ staff inspected the Disposal Site on October 3, 2013 and verified that the violations described in paragraphs C(4) through C(9), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders AI, and AI agrees to pay a civil charge of **$36,400** 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

AI shall include its Federal Employer Identification Number (FEIN) 54-0836881 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, AI 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 AI for good cause shown by AI, 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. 13-09-BRRO-002 dated September 11, 2013. 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, AI admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. AI 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. AI declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act 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 AI 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. AI 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. AI shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. AI 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 AI. Nevertheless, AI 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 AI has completed all of the requirements of the Order;

b. AI 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 AI.

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

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, AI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3rd day of April, 2014.

Robert J. Weld, Regional Director
Department of Environmental Quality

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

American Infrastructure – VA, Inc. voluntarily agrees to the issuance of this Order.

Date: 2/26/14 By: _____ Vice President/General Manager
Aaron Myers
American Infrastructure – VA, Inc.

Commonwealth of Virginia
City/County of Henrico

The foregoing document was signed and acknowledged before me this 26th day of February, 2014, by Aaron Myers who is Vice President/General Manager of American Infrastructure – VA, Inc., on behalf of the corporation.

Georgina L. Thurston
Notary Public

284762
Registration No.

My commission expires: 1/31/16

Notary seal:

GEORGINA L. THURSTON
COMMONWEALTH OF VIRGINIA
REGISTRATION NO. 284762
MY COMM. EXPIRES: 01/31/2016
NOTARY PUBLIC