COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ATLANTIC WASTE DISPOSAL, INC.
FOR THE
ATLANTIC WASTE LANDFILL
Solid Waste Permit No. 562

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 Atlantic Waste Disposal, Inc., regarding the Atlantic Waste Landfill, for the purpose of resolving certain 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. "Atlantic" means Atlantic Waste Disposal, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Atlantic is a "person" within the meaning of Va. Code § 10.1-1400.

2. "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.

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

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

5. "Facility" or "Landfill" means the Atlantic Facility located at 3474 Atlantic Lane in Waverly, Virginia.

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

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

8. "Permit" means Solid Waste Permit No. 562, which was issued under the Virginia Waste Management Act and the Regulations to Atlantic on December 29, 1993.

9. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

10. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*

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

12. "VAC" means the Virginia Administrative Code.

13. "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 10.1-1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

14. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

SECTION C: Findings of Fact and Conclusions of Law

1. On December 29, 1993, Atlantic was granted a permit to operate a sanitary Landfill by the Commissioner of the Virginia Department of Health, predecessor-in-interest to the Director of DEQ. The Permit allows for the disposal of sanitary waste.

2. The Facility has been operated as a sanitary Landfill since the Permit was issued. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit.

3. On July 19th and August 15th of 2011, the Department conducted inspections of the Atlantic Site, and observed leachate seeps and the use of unauthorized leachate containment structures. In addition, DEQ staff observed areas of excessive erosion and lack of stabilizing vegetation in cells 4, 5A, 5B, and 6A. 9 VAC 20-81- 210(F)(2) requires owner or operators when discovering a leachate seep, to take immediate action to

minimize, control, or eliminate the seep, and to contain and properly manage the leachate at the source of the seep. In addition, stabilizing vegetation controls erosion off the face of the landfill cells and the failure to maintain vegetative growth is contrary to 9 VAC 20-81-140(A)(7) which states owners or operators shall maintain the run-on/runoff control systems designed and constructed in accordance with 9VAC20-81-130(H).

4. On August 8th and August 26th of 2011, the Department issued deficiency letters to Atlantic. On August 25, 2011, the Department met with Atlantic to discuss the issues.

5. On September 23, 2011, DEQ was notified by Atlantic that a 10 acre slope failure occurred on September 22, 2011, which resulted in solid waste being deposited outside the lined disposal area. The waste entered the cell 11 area of the landfill and Atlantic has a permit to construct the cell, but construction had not yet begun. The permit and regulations require a lined landfill, Department notification, and a Department issued certificate to operate (CTO). 9 VAC 20-81-100(B), states that all solid waste disposal facilities shall be maintained and operated in accordance with the permit issued pursuant to this regulation, and in accordance with the approved design and intended use of the facility. 9 VAC 20-81-130(J)(1), states that all sanitary landfills shall be underlain by a composite liner system and 9 VAC 20-81-490(A)(1) states the facility shall not receive waste until the Department has been notified in writing that construction is complete. In addition, the Department never issued a CTO for cell 11 and 9 VAC 20-81-490(B) and 9 VAC 20-81-130(Q)(3) states that the Facility shall not receive waste until a CTO has been issued by the Department.

6. DEQ personnel conducted a site visit on September 23, 2011 and observed a strong odor and that an estimated 150,000 tons of nonhazardous solid waste had moved from the lined area into the unlined future Cell 11 area, and crossed over the main access road and entered a small pond. A cleanup response was begun immediately by Atlantic, however several citizen odor complaints were received by the Department and it was anticipated that the odor would continue until the waste material could be properly remediated. 9 VAC 20-81-140(A)(10) states that odors and vectors shall be effectively controlled so they do not constitute nuisances or hazards.

7. On September 23, 2011, the Department also observed that there was inadequate daily cover provided for the volume of waste involved in the slide as well as waste located in other cells. 9 VAC 20-81- 140(B) requires solid waste facilities to provide daily cover.

8. On December 15, 2011, based on the inspections and information provided by Atlantic, the Department issued NOV No. 2011-PRO-602 to Atlantic for the violations in C(3) through C(6).

9. On January 18, 2012, the Department met with Atlantic to discuss the slope failure and the violations cited in the NOV. Atlantic stated that they had investigated the landslide and determined the cause to be a non-frictional boundary that formed during the addition of fresh waste into a cell with older, settled waste. Heavy rains during Hurricane Irene combined with the fact that Atlantic was using Posi-shell daily cover, allowed excess

water and pressure to build up in the cell. As a result, the newly placed solid waste gave way and slid along the old waste/new waste interface.

10. Based on the results of the July 19 and August 15, 2011 inspections, and the September 23, 2011 report of the waste slide by Atlantic, the Board concludes that Atlantic has violated 9 VAC 20-81-100(B), 9 VAC 20-81-130(J)(1), 9 VAC 20-81-130(Q)(3), 9 VAC 20-81-490(A)&(B), 9 VAC 20-81-130(H)(3), 9 VAC 20-81-140(A)(7), 9 VAC 20-81-140(A)(10), 9 VAC 20-81-140(B), and 9 VAC 20-81-210(F)(2), as described in paragraphs C(3) through C(7).

11. DEQ staff inspected the Facility on January 30, 2012 and verified that debris from the waste slope failure had been placed in lined cells and there were no longer any continuing odor, vegetation, or daily cover violations.

12. In order for Atlantic to complete its return to compliance, DEQ staff and representatives of Atlantic have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Atlantic, and Atlantic agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $56,400 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

Atlantic 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Atlantic for good cause shown by Atlantic, 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, Atlantic 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. Atlantic 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. Atlantic 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 Atlantic 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. Atlantic 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. Atlantic shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Atlantic 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 Atlantic. Nevertheless, Atlantic 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 Atlantic has completed all of the requirements of the Order;

b. Atlantic 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 Atlantic.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Atlantic 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 Atlantic 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 Atlantic certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Atlantic to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Atlantic.

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, Atlantic voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 1st day of August, 2012.

Michael P. Murphy, Regional Director
Department of Environmental Quality

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Atlantic Waste Disposal, Inc. voluntarily agrees to the issuance of this Order.

Date: 6/12/12 By: _____, _____
Scott Thacker Director of Disposal Operations
Atlantic Waste Disposal, Inc.

Commonwealth of Virginia
City/County of Sussex

The foregoing document was signed and acknowledged before me this 12th day of June, 2012, by Scott Thacker who is Director of Disposal Operations at Atlantic Waste Disposal, Inc., on behalf of the corporation.

Terry W. Duesberry
Notary Public

285662
Registration No.

My commission expires: 4/30/16

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Leachate Management

   a. On or before August 1, 2012, Atlantic shall modify and implement an updated operations plan for the Facility. The plan shall include operational adjustments based on the investigation conducted on the cause of the slope failure. The operations plan shall be kept at the Facility for Department review during routine inspections.

   b. On or before August 1, 2012, submit to the Department for review and approval a Leachate and Stormwater Management Plan (LSMP) with a schedule for the reduction of leachate seeps and drainage issues at the Facility. Once approved by the Department, the LSMP and implementation schedule shall become a part of the operations plan.

   c. The LSMP submitted by Atlantic shall contain a statement that if the LSMP is found by Atlantic to be ineffective in minimizing leachate seeps or managing stormwater, Atlantic shall adjust and amend the LSMP plan within 10 days and inform the Department of the changes.

2. Contact

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

   Frank Lupini
   Enforcement Specialist
   VA DEQ –Piedmont Regional Office
   4949A Cox Road,
   Glen Allen, Virginia 23060
   Frank.Lupini@deq.virginia.gov