



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO THEODORE FISHER & SONS, INC.

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and Theodore Fisher & Sons, Inc. for the purpose of addressing certain violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations.

SECTION B: Definitions

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

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
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.
5. "Order" means this document, also known as a Consent Order.
6. "Theodore Fisher" means Theodore Fisher & Sons, Inc. certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Site" means the property owned by Theodore Fisher located at 2234 Irvington Road in Lancaster County, Virginia.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "VSWMR" means the Virginia Solid Waste Management Regulations 9 VAC 20-80-10 *et seq.*

SECTION C: Findings of Fact

1. Theodore Fisher owns and operates the sand mining site at 2234 Irvington Road in Lancaster County, Virginia. The Site is permitted by the Virginia Department of Mines, Mineral and Energy as an open pit mine.
2. On October 11, 2006, DEQ staff conducted an inspection of the Site and found piles of solid waste including construction, demolition, and other debris on top of the ground. The Department also found evidence of open burning of waste at the Site.
3. On November 21, 2006, a Notice of Violation ("NOV") was issued for the above findings.
4. On December 21, 2006, a meeting was held with Theodore Fisher to discuss the issues cited in the NOV. During the meeting, Theodore Fisher indicated that the solid waste was largely a result of others in the community dumping on their property. They stated that the measures they have taken to prevent open dumping, has been only partially successful.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted in Va. Code § 10.1-1455(F) orders Theodore Fisher, and Theodore Fisher voluntarily agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders Theodore Fisher, and Theodore Fisher voluntarily agrees to pay a civil charge of \$1,015 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 payable to the "Treasurer of Virginia," deliverable to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Theodore Fisher shall note on the check its Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Theodore Fisher, for good cause shown by Theodore Fisher, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Theodore Fisher on November 21, 2006. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Theodore Fisher admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Theodore Fisher 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. Theodore Fisher declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the 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 enforce this Order.
6. Failure by Theodore Fisher 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. Theodore Fisher 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 occurrence. Theodore Fisher shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Theodore Fisher shall notify the DEQ Regional Director in writing 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 within 24 hours 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 of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their 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 Theodore Fisher. Notwithstanding the foregoing, Theodore Fisher agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Theodore Fisher. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Theodore Fisher from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Theodore Fisher voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of May, 2007.



Gerard Seeley, Jr., Regional Director
Department of Environmental Quality

Theodore Fisher voluntarily agrees to the issuance of this Order.

By: Oriel P. Fisher

Date: Wednesday, March 21, 2007.

Commonwealth of Virginia

City/County of Laureate

The foregoing document was signed and acknowledged before me this 21st day of March, 2007, by Oriel P. Fisher, on behalf of Theodore Fisher & Sons, Inc. (name)

Margaret H. Headley
Notary Public

My commission expires: October 31, 2010

APPENDIX A

Theodore Fisher shall:

1. Remove and dispose in a permitted landfill all of the solid waste at the Site no later than June 21, 2008. Landfill receipts of this removal shall be kept on site for DEQ review for one year after completion of the removal.
2. Theodore Fisher shall secure the site from further unpermitted disposal of solid waste no later than January 20, 2007.
3. Theodore Fisher shall notify the Department of the removal progress each quarter until removal of the unpermitted solid waste has been completed. These quarterly reports shall begin in the first quarter of 2007 and due no later than the 10th day of the following month at the end of the quarter. The first report shall be due no later than April 10, 2007.
4. Theodore Fisher shall notify the Department in writing within 10 days of completion when the solid waste removal requirement has been completed.

Pursuant to this Order all communications regarding this Order and its requirements shall be addressed as follows:

Jennifer Hoeffner
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060