COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT

ISSUED TO

Higgerson-Buchanan, Incorporated

FOR

Higgerson-Buchanan Construction/Demolition/Debris Landfill

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 Higgerson-Buchanan, Incorporated for the purpose of resolving 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. "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.

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

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

4. "Facility" means Higgerson-Buchanan Construction/Demolition/Debris Landfill owned and operated by Higgerson-Buchanan Incorporated, located at 5300 Bainbridge Boulevard in Chesapeake, Virginia.

5. "Higgerson" means Higgerson-Buchanan, Incorporated, a corporation authorized to do business in Virginia and its affiliates, partners and subsidiaries. Higgerson-Buchanan, Incorporated is a "person" within the meaning of Va. Code § 10.1-1400.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

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

8. "Permit" means Solid Waste Permit #493, which was issued under the Waste Management Act and the Regulations to Higgerson-Buchanan, Incorporated on January 2, 1986.

9. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC20-80-10 *et seq.*

10. "Solid Waste" means any of those materials defined as 'solid waste' in 9 VAC 20-80-140 *et seq.*

11. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

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

13. "VAC" means the Virginia Administrative Code.

14. "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. Higgerson owns and operates the Facility located at 5300 Bainbridge Boulevard in Chesapeake, Virginia. On January 2, 1986, Higgerson was granted a permit to operate a Construction/Demolition/Debris Landfill by the Commissioner of the Virginia Department of Health, predecessor-in-interest to the Director of DEQ. The Permit allows Higgerson to dispose of construction waste, demolition waste, brush, tree trimmings, stumps and inert waste materials at the Facility.

2. The Facility has been operated as a Construction/Demolition/Debris 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 May 7, 2013, Department staff conducted a review of the Higgerson Fall 2012 Semi-Annual Groundwater Report ("Fall 2012 GW Report") for compliance with the requirements of the Virginia Waste Management Act, the Regulations and the Permit. Based on the review and follow-up information, Department staff made the following observations:

    a. The Fall 2012 GW Report did not include supporting statistical calculations for statistically significant increases of groundwater concentration over background concentrations reported in the Fall 2012 GW Report;
    b. The full Laboratory Analytical Report for the October 11, 2012 groundwater sampling event was not included in the Fall 2012 GW Report;
    c. Higgerson conducted its first semi-annual sampling event 252 days after the last sampling event of the background establishing period;
    d. Higgerson failed to identify Table 3.1 Column A constituents that exceeded background concentrations and failed to notify DEQ that it would commence Phase II monitoring or submit an Alternate Source Demonstration within 14 days of recognizing background exceedances;
    e. Higgerson failed to initiate Phase II monitoring within 90 days of noting the exceedance over background concentrations or submit a successful Alternate Source Demonstration;
    f. Higgerson failed to submit the 2012 Annual Groundwater Report within 120 days of completion of sampling and analysis. The 2012 Annual Groundwater Report was submitted 221 days after the completion of sampling and analysis.

4. 9 VAC 20-81-250(E)(2)(b)(1)(f) requires owners and operators to submit a semi-annual report following groundwater monitoring events that include a statement whether or not there were statistically significant increases over background or groundwater protection standards and supporting statistical calculations.

5. 9 VAC 20-81-250(E)(2)(b)(1)(g) requires owners or operators to submit a copy of the Full Laboratory Analytical Report with its semi-annual groundwater monitoring report to demonstrate compliance with prescribed timeframes.

6. 9 VAC 20-81-250(C)(2)(c) requires owners or operators to conduct groundwater sampling of Table 3.1 Column A constituents within 90 days of the last sampling event during the background establishing period.

7. 9 VAC 20-81-250(C)(2)(d)(2) requires an owner or operator that recognizes a statistically significant increase over background groundwater concentrations for any Table 3.1 Column A constituent to notify DEQ within 14 days of this finding and identify the Table 3.1 Column A constituents that have exceeded background levels and include a statement whether the owner or operator will initiate a Phase II sampling program or submit an Alternate Source Demonstration within 90 days.

8. 9 VAC 20-81-250(C)(2)(d)(4), 9 VAC 20-81-250(A)(5)(b) and 9 VAC 20-81-250(C)(3)(a)(1) require an owner or operator to initiate a Phase II sampling program if a successful ASD is not made and approved by DEQ within 90 days of noting a statistically significant increase above groundwater background concentrations.

9. 9 VAC 20-81-250(E)(2)(a)(1) requires an owner or operator to submit an annual groundwater monitoring report within 120 days of the completion of sampling and analysis.

10. On May 29, 2013, based on the review of the Fall 2012 GW Report and follow-up information, the Department issued a Notice of Violation to Higgerson for the violations described in paragraphs C(3) through C(9), above.

11. On June 13, 2013, DEQ met with representatives of Higgerson to discuss the violations.

12. On June 20, 2013, Higgerson submitted additional information to DEQ. Department staff reviewed the additional information and made the following observations:

    a. Higgerson's initial semi-annual groundwater sampling event occurred on March 27, 2012, meeting the 90-day requirement of 9 VAC 20-81-250(C)(2)(c).
    b. Higgerson submitted its initial semi-annual groundwater report 435 days from the date Higgerson completed the sampling and analysis of the March 27, 2012 groundwater sampling event.

13. 9 VAC 20-81-250(E)(2)(b) requires an owner or operator to submit a semi-annual groundwater monitoring report within 120 days of completion of sampling and analysis.

14. Based on the results of the May 7, 2013 review of the Fall 2012 GW Report, the June 13 meeting with Higgerson representatives, and the June 20, 2013 submittal by Higgerson, the Board concludes that Higgerson has violated 9 VAC 20-81-250(E)(2)(b)(1)(f), 9 VAC 20-81-250(E)(2)(b)(1)(g), 9 VAC 20-81-250(C)(2)(d)(2), 9 VAC 20-81-250(C)(2)(d)(4), 9 VAC 20-81-250(A)(5)(b), 9 VAC 20-81-250(C)(3)(a)(1), 9 VAC 20-81-250(E)(2)(a)(1) and 9 VAC 20-81-250(E)(2)(b) as described in paragraph C(3) through C(9), C(12) and C(13) above.

15. Higgerson has submitted documentation that verifies that the violations described in paragraphs C(3) through C(9), C12 and C(13), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455, the Board orders Higgerson, and Higgerson agrees to pay a civil charge of $7,963.00 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

Higgerson 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, Higgerson 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 Higgerson for good cause shown by Higgerson, 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, Higgerson admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Higgerson 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. Higgerson 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 Higgerson 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. Higgerson 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. Higgerson shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Higgerson 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 Higgerson. Nevertheless, Higgerson 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 Higgerson has completed all of the requirements of the Order;

   b) Higgerson 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 Higgerson.

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

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, Higgerson voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 12 day of June, 2014.

Regional Director
Department of Environmental Quality

Higgerson-Buchanan, Incorporated voluntarily agrees to the issuance of this Order.

Date: 1/31/2014 By: Ivan L. Higgerson, President
(Person) (Title)

of Higgerson-Buchanan, Incorporated.

Commonwealth of Virginia

City/~~County~~ of Chesapeake

The foregoing document was signed and acknowledged before me this 31 day of January, 20 14, by Ivan L. Higgerson, who is President of Higgerson-Buchanan, Incorporated on behalf of the company.

Ann C. Burks
Notary Public
Ann C. Burks
188659
Registration No.

My commission expires: December 31, 2014

Notary Seal:

ANN C. BURKS
NOTARY ID # 188659
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES 12-31-2014