COMMONWEALTH of VIRGINIA

David K. Paylor
Director

Douglas W. Domenech
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
Blue Ridge Regional Office
www.deq.virginia.gov

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

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO JEB REALTY, LLC. FOR 1750 SOUTH MAIN STREET, DANVILLE, VIRGINIA IDENTIFIED AS TAX PARCEL ID 75912

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 JEB Realty, LLC, regarding the unpermitted facility located at 1750 South Main Street, Danville, Virginia and identified as Tax Parcel ID 75912, 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" means regulated asbestos-containing material waste and materials contaminated with asbestos from demolition and renovation of installations, structures or buildings, or other waste-generating activities as defined in 40 CFR, Chapter 61, Subpart M and incorporated by reference in 9 VAC 20-81-620(A).

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

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

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

6. "DOLI" means the Department of Labor and Industry, an agency of the Commonwealth of Virginia, as described in Va. Code § 40.1-1.

7. "Facility" or "Site" means Tax Parcel ID 75912, located at 1750 South Main Street in Danville, Virginia, which is owned by JEB Realty, LLC.

8. "JEB" means JEB Realty, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. JEB is a "person" within the meaning of Va. Code § 10.1-1400.

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

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. On July 11, 2011, DEQ staff visited the Site. An area was observed at the end of a gravel road which was located north of the JEB warehouse. Numerous loads of construction demolition and debris ("CDD") material, co-mingled with inert fill, had been dumped at the Site. The area of the observed solid waste was approximately 400 feet long by 200 feet wide. The area depth began at the current grade and increased to 30 to 40 feet. The solid waste included structural timbers, flooring, roofing, particle board, and apparent asbestos containing materials. A review of Department files indicates that JEB has not been issued a permit to operate a sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste or asbestos containing materials.

2. On July 14, 2011, DEQ staff along with DOLI staff conducted a second inspection of the Site. A representative of JEB attended the inspection. DOLI staff took samples of the suspect flooring and roofing debris and submitted the samples to an independent laboratory for ACM analysis. At the time of this inspection, it did not appear that additional solid waste had been dumped since the previous inspection.

3. On July 20, 2011, the DEQ received the results of the ACM sample analysis. The flooring debris tested positive for containing asbestos.

4. Va. Code § 10.1-1408.1(A) requires 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.

5. Va. Code § 10.1-1408.1(I) requires that no person shall allow waste to be disposed of on his property without a permit.

6. 9 VAC 20-81-40(A) requires that no person shall operate any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste without a permit from the director.

7. 9 VAC 20-81-40(B) requires that no person shall allow waste to be disposed of or otherwise managed on his property except in compliance with this chapter.

8. 9 VAC 20-81-40(D) requires 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(C)(2) allows for asbestos-containing waste materials to be disposed in asbestos disposal cells or units located at existing disposal facilities above the natural ground level, provided they comply with all other appropriate regulatory requirements contained in Part III (9 VAC 20-81-100 et seq.) of this chapter.

10. On August 18, 2011, the DEQ issued Notice of Violation ("NOV") No. NOV-11-07-BRRO-L-002 to JEB for the violations described in paragraphs C(1) through C(9), above.

11. In response to the NOV, JEB hired a contractor and coordinated with DOLI staff for the proper management and disposal of the solid waste. All solid waste was disposed of as ACM.

12. On August 30, 2011, DOLI staff conducted a site inspection and confirmed completion of the clean-up.

13. On September 2, 2011, DEQ staff conducted a site inspection and confirmed completion of the clean-up. At the time of the inspection, DEQ staff received documentation related to the clean-up and proper disposal of the solid waste.

14. Based on the results of the July 11, 2011 and July 14, 2011 inspections and the results of the sample analysis received by the DEQ on July 20, 2011, the Board concludes that JEB has violated Va. Code § 10.1-1408.1(A) & (I), 9 VAC 20-81-40(A), (B), (D), and 9 VAC 20-81-620(C)(2) as described in paragraphs C(1) through C(9), above.

15. JEB has submitted documentation that verifies that the violations described in paragraphs C(1) through C(9), above, have been corrected. DEQ staff inspected the Site on September 2, 2011 and confirmed that the violations described in paragraphs C(1) 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 JEB, and JEB agrees to pay a civil charge of **$26,000** 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

JEB shall include its Federal Employer Identification Number (FEIN) 26-3318299 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 JEB for good cause shown by JEB, 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, JEB admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.

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

    b. JEB 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 JEB

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

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, JEB voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10th day of January, ~~2011~~ 2012

Robert J. Weld, Regional Director
Department of Environmental Quality

JEB Realty, LLC voluntarily agrees to the issuance of this Order.

Date: 11/29/11 By: _____, Managing Member
Jay Barker
JEB Realty, LLC

Commonwealth of Virginia
City/County of Danville

The foregoing document was signed and acknowledged before me this 29th day of November, 2011, by Jay Barker who is the Managing Member of JEB Realty, LLC, on behalf of the company.

Phyllis P Raines
Notary Public

158486
Registration No.

My commission expires: 7-31-2015

Notary seal:

PHYLLIS PERKINS RAINES
COMMONWEALTH OF VIRGINIA
REGISTRATION NO. 158486
MY COMM. EXPIRES 07/31/2015
NOTARY PUBLIC