



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

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Dennis H. Treacy
Director
Thomas L. Henderson
Regional Director

**COMMONWEALTH OF VIRGINIA
WASTE MANAGEMENT BOARD
CONSENT ORDER WITH
MARSHALL CONSTRUCTION CO., INC.**

Section A: Purpose

This is a Consent Order issued under the authority of §§ 10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455 of the Code of Virginia (1950), as amended, between the Virginia Waste Management Board and Marshall Construction Co., Inc. ("Marshall") to resolve certain violations of environmental laws and/or regulations at property owned by Marshall in Pittsylvania County, Virginia.

Section B: Definitions

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

1. "Code" means the Code of Virginia (1950), as amended.
2. "Waste 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 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. "Regulations" means the Virginia Solid Waste Management Regulations ("SWMR"), 9 VAC 20-80-10 *et seq.*
7. "Marshall" means Marshall Construction Co., Inc.

Section C: Findings of Fact and Conclusions of Law

1. Mr. Robert Marshall is the owner and operator of Marshall Construction Co., Inc., a construction company based in Pittsylvania County, Virginia. Mr. Marshall owns property off Old Richmond Road (Rt. 360) in Pittsylvania County, Virginia. On this property there is a site which has been operated as an unpermitted solid waste management facility for the disposal of solid waste ("the Facility").
2. On October 9, 1998, DEQ received a complaint about open burning at the Facility. After an inspection of the Facility on October 14, 1998, DEQ sent Marshall a Notice of Violation dated October 15, 1998 indicating that open burning constituted unpermitted disposal of solid waste.
3. The solid waste disposed of at the Facility by open burning consists of demolition debris, including but not limited to stainless steel sinks, bathtubs, lumber, fragments of insulation, carpet, lighting fixtures, drywall, and miscellaneous household items. The total quantity of solid waste improperly disposed of by open burning at the Facility was approximately 20 tons.
4. Neither the Director of the Department, his predecessor-in-interest, nor the Board have ever issued a permit under Code § 10.1-1408.1 for operation of the Facility.
5. Operation of the Facility without a permit violated Code § 10.1-1408.1 and 9 VAC 20-80-90.A, and 9 VAC 20-80-480.A. Open burning at the Facility violated Code § 10.1-1408.1.H and 9 VAC 20-80-80.A.
6. On October 15, 1998, the Department completed an Initial Site Evaluation ("ISE") pursuant to 9 VAC 20-80-210.A.1. The ISE has been terminated under 9 VAC 20-80-210.A.4.i.

Section D: Agreement and Order

Accordingly, by virtue of the authority of Code §§ 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455, the Board orders and Marshall agree that:

1. Marshall shall pay a civil charge of TWO THOUSAND ONE HUNDRED DOLLARS (\$2,100) within thirty (30) days of the effective date of this Order. Of this amount, \$600.00 is based on recovery of the economic benefit of noncompliance and \$1,500 is based on the EPA gravity-based civil penalty matrix. Payment shall be by check, certified check, money order, or cashier's check payable to "Department of Environmental Quality" and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, VA 23240

Either on a transmittal letter or as a notation on the check, Marshall shall indicate that the check is submitted pursuant to this Order. Marshall shall also write the federal identification number (FIN) for the facility on the check.

Section E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Marshall for good cause shown by Marshall, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. 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; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Marshall admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Marshall declares that he has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:11 *et seq.* and the Virginia Waste Management Act, Code §§ 10.1-1400 *et seq.*, and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to 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, or to judicial review of, any action taken by the Board or the Director to enforce this Order.
5. Failure by Marshall 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 Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

6. 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.
7. Marshall 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, or other act of God, war, strike, or other such occurrences. Marshall must show that the circumstances resulting in the noncompliance were beyond his control and were not due to a lack of good faith or diligence on its part. Marshall shall notify the Director and the Director of the Department's West Central Regional Office ("WCRO") in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of 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 Director and the Director of the Department's West Central Regional Office as soon as reasonably practicable under the circumstances then existing of the commencement of the condition causing or anticipated to cause the delay or noncompliance shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director of the Department of Environmental Quality or his designee and Marshall. Notwithstanding the foregoing, Marshall agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until:
 - a. Marshall petitions the Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that Marshall has satisfied all the requirements of the Order is a "case decision" within the meaning

of the Administrative Process Act.

- b. The Director may terminate this Order in his sole discretion upon 30 days' written notice to Marshall.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Marshall from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 11. By his signature below, Marshall voluntarily agrees to the issuance of this Order.

Dennis H. Treacy for Date *1/12/99*
Dennis H. Treacy, Director
Department of Environmental Quality

Seen and Agreed to:

Robert J. Marshall (Pres.)
Marshall Construction Co., Inc.

The foregoing instrument was acknowledged before me on *December 8, 1998*

by *Robert J. Marshall* *President* of Marshall Construction
Company,
(name) (title)

a Virginia Corporation, on behalf of the corporation, in the ~~County~~/City

of *Roanoke*, Commonwealth/State of *Virginia*

Mary S. Monroe
Notary Public

My Commission expires: *June 30, 1999*