



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY Blue Ridge Regional Office

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MARSHALL CONSTRUCTION CO., INC. FOR

SOYARS PROPERTY UNPERMITTED FACILITY: IR 2014-L-2024

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 Marshall Construction Co., Inc., 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. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
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. "Demolition waste" means that solid waste that is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Facility" or "Site" means that portion of the Soyars Property on which demolition waste was placed by MCC.
8. "MCC" means Marshall Construction Co., Inc., a company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. MCC 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.
11. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
12. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
13. "Soyars Property" means the parcels located at the end of Kingoff Drive in Danville, Virginia and jointly owned by Mr. William Soyars, Vic Lane Soyars, and Dorothy Wilson. These parcels are assigned City of Danville property identification numbers 74690 and 74720.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "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. MCC is a company located in Danville, Virginia that performs construction and demolition work. Mr. Robert T. Marshall is president of MCC. On January 12, 1999, the Department issued a consent order to MCC pertaining to unpermitted disposal of solid waste by MCC. On October 30, 2008, the Department issued a second consent order to MCC, also pertaining to unpermitted disposal of solid waste by MCC.
2. On January 7 and 8, 2014, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on

the inspection and follow-up information, Department staff made the following observations:

- a. At least eight piles, each approximately the volume of a dump truck load, of demolition waste, which included woody wastes, metals, plastics, paper and carpet, from a demolition project performed by MCC in Danville, Virginia had been placed at the Facility by MCC.
 - b. This waste was subsequently covered by soil.
3. 9 VAC 20-81-40(A), 9 VAC 20-81-40(C), and 9 VAC 20-81-40(D) prohibit disposal of solid waste without a permit from the Director.
4. Va. Code § 10.1-1408.1(A) provides 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. In a phone call on February 6, 2014, Mr. William Soyars told Department staff that, although he had given Mr. Robert Marshall, who is President of MCC, permission to bring fill material to the Soyars property, Mr. Soyars had specified that any material brought to the site must be inert.
6. On February 3, 2014, based on the inspection and follow-up information, the Department issued Notice of Violation No. NOV-14-01-BRRO-003 to MCC for the violations described in Paragraphs C(2) – C(3).
7. In a letter dated February 19, 2014, MCC agreed to remove the demolition waste described in Paragraph C(2) above as soon as weather conditions permit.
8. On August 6, 2014, Mr. Marshall met with DEQ staff at the Site and reviewed the progress of removal of the waste. During this visit DEQ staff observed that not all of the waste that MCC had placed on the Site had been removed. Mr. Marshall concurred with this observation and agreed to remove the remaining solid waste that had been disposed of at the Site by MCC.
9. Based on the results of the January 7 and 8, 2014 inspections, the August 6, 2014 meeting, and the documentation submitted by MCC, the Board concludes that MCC has violated 9 VAC 20-81-40(A), 9 VAC 20-81-40(C), 9 VAC 20-81-40(D) and Va. Code § 10.1-1408.1(A), as described in paragraphs C(2) – C(3), above.
10. On August 8, 2014, MCC submitted tipping receipts documenting the proper disposal of 95.39 tons of waste removed from the Site. On August 25, 2014, DEQ staff observed removal of solid waste from the Site by MCC personnel and concluded that MCC had succeeded in removing all waste placed by MCC on the Site. On August 26, 2014, MCC submitted tipping receipts documenting proper disposal of 4.24 additional tons of solid waste removed from the site. Accordingly, MCC has submitted documentation that

verifies proper removal of the waste placed by MCC at the Site and DEQ staff have inspected the Site and verified that the violations described in paragraph C(2), 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 Marshall Construction Co., Inc., and Marshall Construction Co., Inc. agrees to pay a civil charge of \$12,620.00 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

Marshall Construction Co., Inc. shall include its Federal Employer Identification Number (FEIN) (54-0736805) 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 MCC for good cause shown by MCC, 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, MCC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. MCC 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. MCC declares that 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 MCC 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. MCC 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. MCC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. MCC 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 MCC intends 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, 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 MCC.

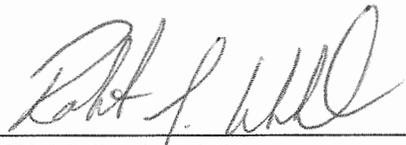
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after MCC has completed all of the requirements of the Order;
- b. MCC 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 MCC.

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

And it is so ORDERED this 2nd day of October, 2015.



Robert J. Weld, Regional Director
Department of Environmental Quality

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Marshall Construction Co., Inc. voluntarily agrees to the issuance of this Order.

Date: 8/14/15 By: Robert J Marshall
Marshall Construction Co., Inc.

Commonwealth of Virginia
City/County of PITTSYLVANIA

The foregoing document was signed and acknowledged before me this 14 day of

August, 2015, by ROBERT MARSHALL JR., who is
VICE PRESIDENT for Marshall Construction Co., Inc.

Ann Louise Baynes
Notary Public
7095101
Registration No.

My commission expires: 5-31-2019

Notary seal: