



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Blue Ridge Regional Office

www.deq.virginia.gov

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO OSCAR L. NUNLEY

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 Oscar L. Nunley, for the purpose of resolving certain violations of environmental law and 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 Code §§ 10.1-1401 and 10.1-1184.
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.
4. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.
5. "Facility" means the parcel identified on the Henry County Virginia tax maps as Tax Parcel ID: 71.8(006)000/003A.

6. "Order" means this document, also known as a Consent Order.
7. "Nunley" means Oscar L. Nunley.
8. "Treatment" means any method, technique or process, including but not limited to incineration, designed to change the physical, chemical or biological character or composition of any waste to render it more stable, safer for transport, or more amenable to use, reuse, reclamation or recovery.
9. "Solid waste" means any of those materials defined as 'solid waste' in Part III of 9 VAC 20-80-140 et seq.
10. "Storage" means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. Nunley owns and operates the Facility as defined in 9 VAC 20-80-10.
2. Complaint history files show that Nunley operated a salvage yard at this same Facility prior to 2003. His Department of Motor Vehicle license to operate a salvage yard expired in the early to mid 1990's. In July of 2003 DEQ issued a Warning Letter to Nunley for improper storage of waste tires (3000+) and other solid waste. The tires had been removed to the Martinsville landfill from the storage areas as observed during a follow-up inspection in March of 2004. Nunley now states that the tires at the Facility are left over from the salvage operation days.
3. On September 4, 2008, DEQ conducted a compliance inspection of the approximately 14 acre Facility which is owned by Oscar L. Nunley near Ridgeway Virginia (Tax Parcel ID: 71.8(006)000/003A). Henry County Public Safety Officials were also present at the time of this inspection. DEQ observed that the activity appeared to have been "on-going" for several years.
4. During the September 4, 2008, inspection DEQ observed ten areas on the Facility where solid waste has been burned. Additionally, a tire pile was observed along a gully/ravine behind a garage at the Facility and in at least three other areas scattered throughout the 14 acre parcel. The number of tires located at the Facility exceeded 500. Facility waste was estimated to exceed 500 cubic yards.

5. Unpermitted treatment, storage, and disposal of solid waste has occurred from the demolition of mobile home trailers, tires, electric motors, insulation, siding, linoleum, shingles, plastics and aerosol cans.
6. On September 24, 2008, DEQ issued a Notice of Violation to Nunley.
7. Under the Virginia Solid Waste Management Regulations 9 VAC 20-80-90, "Unpermitted facilities, A., Prohibitions and duties, 1. provides: 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. 2. No person shall allow waste to be disposed of or otherwise managed on his property without a permit from the director. 3. It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner."
8. No permit has been issued by the Director for any type of waste management practices at this Facility.
9. Nunley has treated solid waste at the Facility, disposed of solid waste on Facility grounds, stored/speculatively accumulated tires and other solid waste at the Facility, and operated the Facility without a permit. Nunley is in violation of 9 VAC 20-80-90 for the following reasons: 1. No permit has ever been issued by the Director for any type of waste management practices at this Facility, 2. The Facility treated, stored, and disposed of solid waste on-site without a permit.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455 (C) and (F), orders Nunley, and Nunley agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Nunley, and Nunley voluntarily agrees, to pay a civil charge of \$5,200 in settlement of the violations cited in this Order. Nunley agrees to the following payment schedule. Payment shall be made in four installments of \$1300.00 each and due as provided in the following schedule:

Installment #	Amount Due	Due Date
1	\$1300.00	June 5, 2009
2	\$1300.00	July 5, 2009
3	\$1300.00	August 5, 2009
4	\$1300.00	September 5, 2009

Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

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

The payment check must include the Federal Identification Number and a notation that it is for payment of a civil charge pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Nunley, for good cause shown by Nunley, 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 Nunley by DEQ on September 24, 2008. 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, Nunley admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Nunley 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. Nunley declares he has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Waste Management Act and he 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 Nunley 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. Nunley 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. Nunley shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Nunley 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 Nunley 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 Nunley hereto, his 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 Nunley. Notwithstanding the foregoing, Nunley 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. Nunley petitions the Regional Director to terminate the Order after he has completed all requirements of the Order. The Director's determination that Nunley has satisfied all the requirements of the Order is a "case decision" within the meaning of the Virginia Administrative Process Act; or
 - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to Nunley.

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

12. By his signature below, Nunley voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18th day of MAY, 2009.

Steven A. Dietrich

Steven A. Dietrich, Regional Director
Blue Ridge Regional Office
Department of Environmental Quality

Nunley voluntarily agrees to the issuance of this Order.

By Oscar Nunley
Date: 4/1/09

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 1st day of

April, 2009, by Oscar Nunley
(Nunley)

Cathy D. Kibler

Notary Public

My commission expires: 8/31/09



APPENDIX A

Nunley shall:

1. By **April 30, 2009**, begin the removal and disposal of the remainder of the Facility waste material for disposal at a permitted facility.
2. By **May 30, 2009**, complete the removal of all waste materials, complete grading and seeding of the restored surface to prevent any erosion and sedimentation from occurring, and submit all receipts or original disposal tickets of all material (including tires) disposed.
3. All submissions and/or reports shall be made to:
Steven Wright
VA DEQ Enforcement
Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019