



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD and STATE AIR POLLUTION CONTROL BOARD ORDER BY CONSENT ISSUED TO Pine Knoll Construction Co.

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1455(C) and (F), and of Va. Code § 10.1-1309 and 10.1-1316, by the Virginia Waste Management Board and the State Air Pollution Control Board to Pine Knoll Construction Co., for the purpose of resolving certain violations of the Virginia Waste Management Act, the Virginia Solid Waste Management Regulations, the Virginia Air Pollution Control Law and the Regulations for the Control and Abatement of Air Pollution.

SECTION B: Definitions

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

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Waste 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 10.1-1401
3. "Air Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.
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.
6. "Order" means this document, also known as a Consent Order.

7. "Pine Knoll" means Pine Knoll Construction Co., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
8. "Location" or "Facility" means the land across the road from 3656 Martinsburg Pike, northeast of Clear Brook, in Frederick County, Va. Further identified as lot 33 A 123 on Frederick County tax map 33, and listed by Frederick County as being owned by R & J Land Development LLC.
8. "VRO" means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
9. "Air Regulations" mean the Regulations for the Control and Abatement of Air Pollution, located in the Virginia Administrative Code ("VAC"), 9 VAC 5-10-10 *et seq.*
10. "Waste Regulations" means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*
11. "VAC" means the Virginia Administrative Code.
12. "Virginia Air Pollution Control Law" means the laws located in the Virginia Code ("Va. Code") (1950), as amended, Va. Code § 10.1-1300 *et seq.*

SECTION C: Findings of Facts and Conclusions of Law

1. On July 31, 2008, the DEQ received a complaint (IR #2009-V-041) alleging that tires and other solid wastes were being burned by Pine Knoll at the Location in Frederick County, Virginia. The complainant stated that open burning occurs regularly at the Location and that the burning activity was initiated and controlled by Pine Knoll.
2. DEQ staff performed multiple site visits at the Location on July 31, August 7, August 13, and August 18, 2008, and at each time observed the following:
 - A. Commercial waste, demolition waste, tires, petroleum-based materials (for example, plastics and foam materials), wire, sheet metal, structural support metal, and painted and treated wood were being disposed of and stored on site. The waste came from multiple sources.
 - B. The items noted in paragraph 2.A. were being disposed of and stored on site without a permit.
 - C. The items noted in paragraph 2.A. were being burned on site.
3. DEQ staff interviews with Jeffery G. Jenkins, vice-president of Pine Knoll Construction Co., and Jay Bauserman, the Assistant Frederick County Fire Marshall, confirmed that open burning of the items noted in paragraph 2.A. occurred continuously at the Location from July 29, 2008 through August 22, 2008.
4. Va. Code § 10.1-1408.1(H) states,
"[n]o person shall own, operate or allow to be operated on his property an open dump"

and Waste Regulations Section 9 VAC 20-80-80(A)(1) states,

“No person shall own, operate or allow to be operated on his property any sanitary landfill or other facility for the disposal, treatment or storage of solid waste in a manner that constitutes open dumping as provided for in Part IV (9 VAC 20-80-170 et seq.) of this chapter.”

Additionally, 9 VAC 20-80-180 (B)(7)(a) provides criteria for classifying open dumps as being any site, other than a municipal solid waste landfill, which engages in the open burning of residential, commercial, institutional or industrial solid waste.

5. Va. Code § 10.1-1408.1(A) states,

“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”

and Waste Regulations Section 9 VAC 20-80-90(A)(1-2) state,

“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.” and “No person shall allow waste to be disposed of or otherwise managed on his property without a permit from the director.”

6. Air Regulations Section 9 VAC 5-40-5620 (A-D) states,

A. No owner or other person shall cause or permit open burning of refuse (9 VAC 5-40-5610) or the use of special incineration devices except as provided in 9 VAC 5-40-5630.

B. No owner of other person shall cause or permit open burning or the use of a special incineration device for disposal of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner of other person shall cause or permit open burning or the use of a special incineration device for disposal of hazardous waste or containers for such materials.

D. No owner of other person shall cause or permit open burning or the use of special incineration device for the purpose of a salvage operation or for the disposal of commercial./industrial waste.”

7. Based on the observations made by DEQ staff in paragraph 2 of this section, Pine Knoll operated an open dump and allowed open dumping at the Location in violation of Va. Code 10.1-1408.1(H) and 9 VAC 20-80-80(A)(1); operated a facility for the disposal, treatment or storage of nonhazardous solid waste without a permit in violation of Va. Code 10.1-1408.1(A) and 9 VAC 20-80-90(A)(1-2); and caused or permitted the open burning of refuse in violation of 9 VAC 5-40-5620(A-D)
8. On September 4, 2008, DEQ staff issued a Notice of Violation (NOV) to Pine Knoll for the above noted violations of the Waste Regulations and the Air Regulations
9. On October 22, 2008, DEQ staff met with a representative of Pine Knoll to discuss current status of the waste at the location and possible remedies to the situation including a corrective action plan and the settlement of the above noted violations.

10. On November 18, 2008, DEQ staff performed a site visit to confirm that the waste had been removed from the Location. All of the previously observed waste piles and burned materials had been removed.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455(C) and (F) and in Va. Code §§10.1-1309, 10.1-1184, and 10.1-1316(C), the Boards order, Pine Knoll, and Pine Knoll agrees that:

1. To remedy the violations described above and to reduce the chances of these violations occurring again, Pine Knoll shall perform the actions described in Appendix A to the Order.
2. Pine Knoll shall pay a total civil charge of \$6,213.00, in three equal installments of \$2,071.00, according to the following schedule:
First installment shall be made **within 30 days of the effective date** of this Order.
Second installment shall be made by **July 31, 2009**.
Third installment shall be made by **September 30, 2009**.
3. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of the Commonwealth of Va." and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Va. 23218-1104
4. Pine Knoll shall also include its Federal Tax Identification Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Boards may modify, rewrite, or amend the Order with the consent of Pine Knoll, for good cause shown by Pine Knoll, 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 September 4, 2008. This Order shall not preclude the Boards or 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 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, Pine Knoll admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Pine Knoll 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. Pine Knoll declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, the Air Pollution Control Law 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 of Pine Knoll to any administrative proceeding for, or to judicial review of, any action taken by the Boards to enforce this Order.
6. Failure by Pine Knoll to comply with any of the terms of this Order shall constitute a violation of an order of the Boards. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Boards 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. Pine Knoll 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 act of God, war, strike, or such other occurrence. Pine Knoll shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Pine Knoll shall notify DEQ-VRO 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 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 of the Regional Office within 10 days of learning of any condition listed above, which Pine Knoll intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of 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 Pine Knoll. Notwithstanding the foregoing, Pine Knoll 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. Pine Knoll petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director, his designee, or the Board may terminate this Order, upon his or its own initiative, upon 30 days' written notice to Pine Knoll, and in accordance with the provisions of the Administrative Process Act.

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

12. By its signature below, Pine Knoll Construction Co. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of April, 2009.

Amy Thatcher Owens
Amy Thatcher Owens, Regional Director
Valley Regional Office
Department of Environmental Quality

Pine Knoll Construction Co. voluntarily agrees to the issuance of this Order.

By: [Signature]
Date: 4-2-09

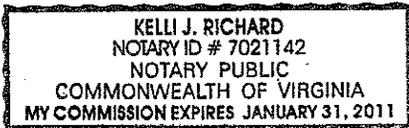
Commonwealth of Virginia
City/County of Frederick

The foregoing document was signed and acknowledged before me this 2 day of April, 2009, by Jeff Jenkins, who is
(name)

V.P. of Pine Knoll, on behalf of Pine Knoll.
(title)

[Signature]
Notary Public

My commission expires: 1-31-11



APPENDIX A

In addition to the foregoing, the Boards orders Pine Knoll, and Pine Knoll voluntarily agrees, to implement this corrective action plan as an additional provision to this Order

1. Post "No Dumping" signs at the entrance to and at every 100 feet along the property road frontage at the Location by April 30, 2009.

Documents to be submitted to DEQ, other than the civil charge payment described in Section D of the Order, shall be sent to:

Mr. David Robinett
DEQ Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801