# *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*
TIDEWATER REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director


## VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

## THE CITY OF PORTSMOUTH
## EPA ID Number VAR000508697

## And

## AIM SERVICES, INCORPORATED

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455 between the Virginia Waste Management Board, the City of Portsmouth, and AIM Services, Incorporated, for the purpose of resolving certain alleged 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. "AIM" means AIM Services, Incorporated, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

2. "Va. Code" means the Code of Virginia (1950), as amended.

3. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1401 and 10.1-1184.

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. "City" means the City of Portsmouth, Virginia.

7. "Order" means this document, also known as a consent order.

8. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

9. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9VAC 20-60-12 *et seq.* ("VHWMR"). The specific provisions of Title 40 of the Code of Federal Regulations ("CFR") cited herein are incorporated by reference at 9 VAC 20-60-262, -266, and –268.

**SECTION C: Findings of Fact and Conclusions of Law**

1. The City owns the building ("facility") located at 711 Crawford Street in Portsmouth, Virginia. The facility has been in use as a Police Operations Center, including offices for police functions and a pistol shooting range where lead ammunition was used.

2. The facility was extensively renovated which included demolition and relocation of the shooting range. According to the City, the shooting range demolition included removal of ventilation ductwork, ceiling tiles, wall and flooring materials. The City reports that it contracted with AIM, an asbestos and lead abatement demolition company, to handle the shooting range demolition including proper labeling, transportation and disposal of the demolition material in accordance with applicable federal and State environmental laws.

3. Reportedly, AIM wrapped the shooting range demolition material in polyethylene bags, sealed with tape, and placed in an open top dumpster which was located in the parking lot on the facility property. Reportedly, the dumpster was not marked with any distinguishing labels or warnings as to the contents and was not in a controlled access area.

4. On January 24, 2005 the shooting range demolition material in the dumpster was sampled for lead by Applied Laboratory Services, Norfolk, VA. Analysis results were reported to AIM on January 28, 2005. The results revealed the demolition waste contained 15.0 parts per million of lead.

5. 40 CFR 261.24 establishes a level of 5.0 parts per million as the regulatory level for the toxicity characteristic of lead to be considered as a hazardous waste. EPA Hazardous Waste Number D008 indicates a hazardous waste characteristic of toxicity.

6. Neither the City nor AIM had filed an EPA Notification of Regulated Waste Activity for hazardous waste, nor had they applied for or received an EPA hazardous waste identification number for the demolition waste.

7. On February 3, 2005, the demolition material in the dumpster was picked up by Waste Industries and transported to the Waste Industries Material Recovery Facility, solid waste permit #PBR077, in Chesapeake, Virginia. The Waste Industries Material Recovery Facility is not permitted to accept hazardous waste for disposal. According to Waste Industries, the driver was delivering an empty dumpster to the facility, noted the filled dumpster, and elected to take the filled dumpster for disposal. The dumpster was not marked as containing a hazardous waste. A hazardous waste manifest was not completed for this transport.

8. Waste Industries transported the demolition material on February 3, 2005, from the Waste Industries Recovery Facility to the Brunswick Sanitary Landfill, in Brunswick County, Virginia. The Brunswick Sanitary Landfill is not permitted to accept hazardous waste for disposal. A hazardous waste manifest was not completed for this transport.

9. At DEQ's request, the City initiated recovery of the demolition material on February 3, 2005 following discovery of the transport without hazardous waste notification or manifesting. Upon notification of the hazardous demolition waste, the Brunswick Landfill identified and held separately the poly wrapped demolition material.

10. On March 14, 2005, for the purpose of disposal, 30 cubic yards hazardous waste were described and manifested for disposal as a hazardous waste with the EPA Hazardous Waste Number of D008 from the Brunswick Landfill to the Michigan Disposal Waste Treatment Plant, an EPA permitted hazardous waste disposal facility.

11. DEQ issued the City a provisional EPA hazardous waste identification number on February 9, 2005 and EPA issued permanent identification number VAR000508697 on March 2, 2005.

12. The demolition waste removed from the City's facility by AIM exceeded the hazardous waste toxicity characteristic for lead and is a hazardous waste pursuant to 40 CFR 261.24 with the EPA identification number of D008.

13. 40 CFR 260.10 and 9 VAC 20-60-260 define a generator as any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR 261, Subpart D, or whose act first causes a hazardous waste to become subject to regulation. DEQ alleges that both the City and AIM were a generator of hazardous waste.

14. 40 CFR 262.12(a) and 9 VAC 20-60-262 provides that a generator must not treat, store, dispose of, transport, or offer for transportation hazardous waste without

having received an EPA identification number. DEQ alleges that the City and AIM violated 40 CFR 262.12(a) by not obtaining an EPA identification number prior to stored and offered for transport D008 hazardous waste.

15. 40 CFR 262.20(a) and 9 VAC 20-60-262 provides that a generator who transports, or offers for transportation, hazardous waste for offsite treatment, storage, or disposal must prepare a hazardous waste manifest. DEQ alleges that the City and AIM violated 40 CFR 262.20(a) by failing to prepare a hazardous waste manifest for the transport of the shooting range demolition material.

16. 40 CFR 262.31 and 9 VAC 20-60-262 provides that a generator must label each package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR Part 172. DEQ alleges that the City and AIM violated 40 CFR 262.31 by failing to label the shooting range demolition material as hazardous waste.

17. DEQ issued the City a Notice of Violation on July 13, 2005 informing the City of the above listed observations and applicable citations regarding hazardous waste management.

**SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders and the City and AIM voluntarily agree to pay a civil charge of $8,000.00 in settlement of the violations alleged in this Order. Civil charge payments shall be made as follows:

1. The City shall pay a civil charge of $4,000.00 within 30 days of the effective date of this Order.

2. AIM shall pay a civil charge of $4,000.00. within 30 days of the effective date of this Order.

3. Civil charge payments shall be made by check payable to the "Treasurer of Virginia," shall indicate the City's or AIM's Federal Identification Number as appropriate according to Section D.1 or D.2 of this Order, and shall be sent to:

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

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the City and AIM for good cause shown by the City or AIM, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those alleged violations specifically identified herein, including those matters addressed in the Notice of Violation issued to the City by DEQ on July 13, 2005. 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 the purposes of this Order and subsequent actions with respect to this Order, the City and AIM admit to the jurisdictional allegations in the Order, but do not admit the factual allegations or legal conclusions contained herein.

4. The City and AIM consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. The City and AIM declare that they have received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act and they waive 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 the City or AIM 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. The City and AIM 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. The City and AIM shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. The City and AIM 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 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, 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, the City, and AIM. Notwithstanding the foregoing, the City and AIM agree to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the City and AIM. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the City or AIM from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By their signatures below, the City and AIM voluntarily agree to the issuance of this Order.

And it is so ORDERED this day of Dec. 21, 2006.

Francis L. Daniel

Francis L. Daniel

The City voluntarily agrees to the issuance of this Order.

By: _____

Date: 11/14/06

Commonwealth of Virginia
City/County of Portsmouth

The foregoing document was signed and acknowledged before me this 14th day of November, 2006, by G. Timothy Oksman, who is City Attorney of the City of Portsmouth, on behalf of the City of Portsmouth.

(month) (name) (title)

_____
Notary Public

My commission expires: 3/31/08

AIM voluntarily agrees to the issuance of this Order.

By: Michael Miller

Date: 11/17/06

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 17 day of November, 2006, by Michael Miller, who is
(month) (name)

Vice President of AIM Services, Incorporated, on behalf of the AIM Services
(title)

Incorporated.

Jennifer Wyatt
Notary Public

My commission expires: 3.31.08

JENNIFER WYATT NOTARY PUBLIC MY COMMISSION EXPIRES 3/31/08 COMMONWEALTH OF VIRGINIA