

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION

ORDER BY CONSENT ISSUED TO

**Town of Shenandoah,
Commonwealth of Virginia
IR: #2004-V-296**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and the Town of Shenandoah, 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. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. 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 Special Order.
6. “Shenandoah” or “Town” means the Town of Shenandoah.
7. “Facility” means the 30 x 60-foot town-owned municipal property located near the Town’s Public Works Building on Long Avenue.
8. “VRO” means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
9. “CFR” means Code of Federal Regulations.

SECTION C: Findings of Facts and Conclusions of Law

1. Responding to a neighbor’s complaint to DEQ regarding a Town of Shenandoah-sponsored refuse fire, DEQ inspectors on April 22, 2004 observed a refuse fire at a site measuring approximately 30 feet by 60 feet at a town-owned location near the Public Works Building on Long Avenue in Shenandoah. The refuse and materials being burned included air conditioners, paint cans, furniture, and car seats in apparent violation of 9 VAC 5-40-5620.B and F of the Virginia Administrative Code. DEQ inspectors directed the Town’s fire department to extinguish the refuse fire.
2. 9 VAC 5-40-5620.B provides that: “No owner or 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.”
3. Some of the material observed by DEQ inspectors appeared to be open-burned in violation of the above-state regulation.
4. A Notice of Violation (NOV) was issued to the Town on May 12, 2004.
5. DEQ officials met with Shenandoah Town Manager Larry Dovel to discuss the circumstances involving the fire. Mr. Dovel stated that the Town held a public, open burning of brush and yard wastes annually and that a failure to properly oversee the open burning event this year may have contributed to prohibited materials being burned. Mr. Dovel was informed by DEQ air and waste compliance staff that, under state regulation, municipalities were prohibited from the off-site, open burning of any materials, including brush and yard waste.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1186(2), 10.1-1309, and 10.1-1316(C), orders Shenandoah, and Shenandoah voluntarily agrees, to pay a civil charge of \$1,000.00 in settlement of the violations cited in this Order. Therefore:

1. Shenandoah agrees to pay the amount of **\$1,000.00** of this civil charge within 30 days of the effective date of this Order. Payment must indicate that the civil charge is paid pursuant to this Order, and shall include Shenandoah's Federal Identification Number. Payment shall be by check, certified check, money order, or cashier's check payable to "**Treasurer of the Commonwealth of Virginia**" and sent to:

**Receipts Control
Department of Environmental Quality
P. O. Box 10150
Richmond, Virginia 23240**

2. And, Shenandoah shall contact DEQ prior to planning any municipal or public open burning events.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Shenandoah, for good cause shown by Shenandoah, or on its own motion after notice to Shenandoah and its opportunity to be heard.
2. This Order addresses and resolves 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; or (3) taking subsequent action to enforce this 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, Shenandoah admits to the allegations in Section C of this Order.
4. Shenandoah 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. Shenandoah declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law 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 Shenandoah to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Shenandoah 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

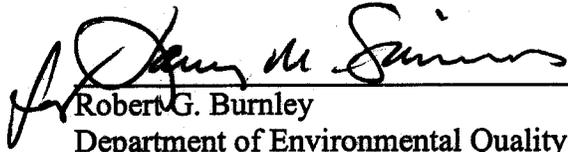
Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

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. Shenandoah 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. Shenandoah shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Shenandoah 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.

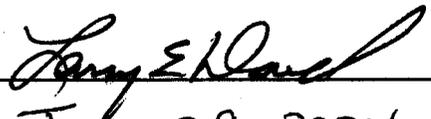
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Shenandoah intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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 Shenandoah. Notwithstanding the foregoing, Shenandoah agrees 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 Shenandoah. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Shenandoah 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, Shenandoah voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of July 6, 2004.


Robert G. Burnley
Department of Environmental Quality

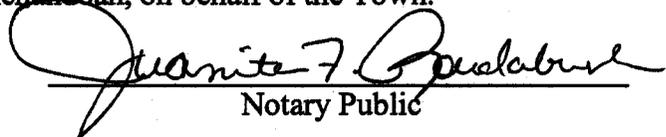
Shenandoah voluntarily agrees to the issuance of this Order.

By: 
Date: June 28, 2004

Commonwealth of Virginia
City/County of Page

The foregoing document was signed and acknowledged before me this 28th day of
June, 2004, by Larry E. Dorel, who is
(name)

Town Manager of the Town of Shenandoah, on behalf of the Town.
(title)


Notary Public

My commission expires: October 31, 2006