



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO SHOOSMITH BROS., INC. Registration Number 50752

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Shoosmith Bros., Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable Permit 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 State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
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, as described in Va. Code § 10.1-1185.
5. "Facility" means the Shoosmith Bros. Inc. municipal solid waste landfill facility, located at 11800 Lewis Road, Chester, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a Consent Order or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means a Title V Permit and a New Source Review (NSR) Permit, to operate, modify, and maintain the active landfill gas (LFG) collection and control system at the Shoosmith municipal solid waste (MSW) landfill; the Title V and NSR Permit, issued under the Virginia Air Pollution Control Law and the Regulations to Shoosmith on September 24, 2008 and January 31, 2006 respectively.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Shoosmith" means Shoosmith Bros., Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Shoosmith is a "person" within the meaning of Va. Code § 10.1-1300.
12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Shoosmith owns and operates the Facility in Chester, Virginia. The Facility receives and manages municipal solid waste. The anaerobic decomposition of buried municipal solid waste in active and closed cells at the Facility, produces landfill gas (LFG). In order to manage the LFG at the Facility, Shoosmith is subject to a Title V Permit, and a New Source Review (NSR) Permit that contains New Source Performance Standards (NSPS)

subpart WWW, Maximum Achievable Control Technology (MACT) AAAA, which is the National Emission Standard for Hazardous Air Pollutants.

2. In order to meet the requirements of the NSR and the Title V Permits, Shoosmith has installed an active LFG collection and control system at the Facility. The landfill gas that is collected at the Facility is burned in flares, or as fuel at the INGENCO plant. Shoosmith is required to extract the LFG at a sufficient rate to meet all operational requirements, is required to operate the system such that negative pressure is maintained at each active wellhead, except as provided in 40 CFR 60.753(b), and the oxygen-content is less than 5%, as determined by EPA Method 3A, unless a higher operating value has been approved by DEQ.
3. On August 30, 2013, the Department received the Semi-Annual NSPS Compliance Report, the Title V Semi-Annual Monitoring Report, and the Semi-Annual SSM Plan Report from Shoosmith. DEQ received supplemental information pertaining to the reports on September 23, 2013, October 1, 2013, and October 2, 2013.
4. On September 26, 2013 and October 10, 2013, DEQ staff conducted a PCE of the Facility without a site visit. Based on the PCE evaluation of information provided in the Semi-Annual NSPS Compliance Report and the Title V Semi-annual Monitoring Report by the Facility, Department staff made the following observations:
 - 1) In the Title V Semi-Annual Monitoring Report, Shoosmith reported that a total of 12 wellhead operating parameter exceedances, 2 wellhead readings without negative pressure and 10 wellheads with oxygen levels greater than 5%; the landfill gas flares were not in operation for greater than 1 hour four different times from January 22, 2013 through June 14, 2013 due to power surges or power outages *; a total of 6 surface monitoring results exceeded 500 ppm. The Title V Semi-Annual Monitoring Report dated August 30, 2013, covering January 1, 2013 through June 30, 2013, states that all monitoring and associated record keeping requirements in the Title V Permit were met and no deviation from these requirements or any other conditions occurred.
 - 2) In the Semi-Annual Compliance Report, Shoosmith reported that from January 1, 2013 through June 30, 2013, a total of 12 wellhead operating parameter exceedances were reported. The monitoring results showed 2 wellhead readings without negative pressure and 10 wellhead readings with oxygen levels greater than 5%. Corrections of these exceedances occurred greater than 15 days from the initial exceedance and no alternative timeline requests were received by DEQ staff nor was the gas collection system expanded within 120 days.

*The flare outages were addressed in the "Request for Corrective Action" (RCA) dated November 14, 2013.

5. Condition IV.C.3 of the Title V Permit states that the permittee shall submit the results of monitoring contained in any applicable requirement to DEQ no later than March 1 and

September 1 of each calendar year. This report must be signed by a responsible official, consistent with 9 VAC 5-80-80.G, and shall include:

- a) The time period included in the report. The time periods to be addressed are January 1 to June 30 and July 1 to December 31.
 - b) All deviations from permit requirements. For purposes of this permit, deviations include, but are not limited to:
 - 1) Exceedance of emissions limitations or operational restrictions;
 - 2) Excursions from control device operating parameter requirements, as documented by continuous emission monitoring, periodic monitoring, or compliance assurance monitoring which indicates an exceedance of emission limitations or operational restrictions; or
 - 3) Failure to meet monitoring, recordkeeping, or reporting requirements contained in this permit.
 - c) If there were no deviations from permit conditions during the time period, the permittee shall include a statement in the report that “no deviations from permit requirements occurred during this semi-annual reporting period. (9 VAC 5-80-110.F)”
6. 40 CFR 60.753(b) requires that each owner or operator of an MSW landfill with a gas collection and control system, “Operate the collection system with negative pressure at each wellhead ...”
 7. 40 CFR 60.755(a)(3) states, “For the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with § 60.752(b)(2)(ii)(A)(3), the owner or operator shall measure gauge pressure in the gas collection header at each individual well, monthly. If a positive pressure exists, action shall be initiated to correct the exceedance within 5 calendar days, except for the three conditions allowed under § 60.753(b). If negative pressure cannot be achieved without excess air infiltration within 15 calendar days of the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days of the initial measurement of positive pressure. Any attempted corrective measure shall not cause exceedances of other operational or performance standards. An alternative timeline for correcting the exceedance may be submitted to the Administrator for approval.”
 8. 40 CFR 60.755(a)(5) states, “For the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner or operator shall monitor each well monthly for temperature and nitrogen or oxygen as provided in § 60.753(c). If a well exceeds one of these operating parameters, action shall be initiated to correct the exceedance within 5 calendar days of the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days of the initial exceedance. Any attempted corrective measure shall not cause exceedances of other operational or performance

standards. An alternative timeline for correcting the exceedance may be submitted to the Administrator for approval.”

9. Condition I.7 of the Title V Permit, states, “The permittee shall demonstrate compliance with operational standards for the landfill gas collection and control system required by Subpart WWW (40 CFR 60.753) in accordance with appropriate subsection(s) of Subpart WWW (40 CFR 60.755). The permittee shall demonstrate compliance with the landfill gas collection and control system requirements of Subpart WWW (40 CFR 60.752) in accordance with appropriate subsection(s) of Subpart WWW (40 CFR 60.755). All reports required to demonstrate compliance with the compliance requirements of Subpart WWW (40 CFR 60.755) shall be prepared and submitted to the Piedmont Regional Office as required by Subpart WWW (40 CFR 60.755).
10. On November 5, 2013, Department issued a Notice of Violation (NOV) No. APRO8813 to Shoosmith for the violations described in Paragraph 4.
11. On November 25, 2013, DEQ met with representatives of Shoosmith to discuss the violations cited in the NOV. Shoosmith agreed to resubmit its Title V Semi-Annual Monitoring Report with the deviations noted.
12. By letter dated December 16, 2013, Shoosmith submitted a revised Semi-Annual NSPS Report, dated December 13, 2013, and Title V Semi-Annual Monitoring Report, dated December 16, 2013, to DEQ for review. Shoosmith also submitted information regarding its response to the exceedances.
13. On January 23, 2014, DEQ met with representatives of Shoosmith to discuss the revised report submitted on December 16, 2013, and the violations cited in the NOV. DEQ requested additional information regarding Shoosmith’s connection date(s) of the new wells as referenced in item # 12 above.
14. On February 6, 2014, Shoosmith submitted a letter to DEQ that provided additional information and resolved 2 of the 12 wellhead exceedences cited in the November 5, 2013 NOV No. APRO8813.
15. On March 4, 2014, DEQ received the Title V Annual Compliance Certification, dated February 28, 2014, which covered the timeframe of January 1, 2013 through December 31, 2013. The Certification reported “Continuous” Compliance for Conditions I.3.d, I.3.e, I.3.j, I.7, I.9, I.17, I.24, I.26.a, I.26.f, and IV.E. The 2013 NSPS Semi-Annual Compliance Reports dated August 30, 2013 and February 28, 2014, documented instances of non-compliance for these permit conditions. At the time Shoosmith filed the Title V Annual Compliance Certification for 2013, the NOV had not been fully resolved and DEQ had not responded to Shoosmith’s letter dated February 6, 2014.
16. Condition IV.D of the Title V Permit, states, “Exclusive of any reporting required to assure compliance with the terms and conditions of this permit or as part of a schedule of compliance contained in this permit, the permittee shall submit to EPA and DEQ no later

than March 1 each calendar year a certification of compliance with all terms and conditions of this permit including emission limitation standards or work practices. The compliance certification shall comply with such additional requirements that may be specified pursuant to §114(a)(3) and § 504(b) of the federal Clean Air Act. This certification shall be signed by a responsible official, consistent with 9 VAC 5-80-80.G, and shall include:

- a) The time period included in the certification. The time period to be addressed is January 1 to December 31.
- b) The identification of each term or condition of the permit that is the basis of the certification.
- c) The compliance status.
- d) Whether compliance was continuous or intermittent, and if not continuous, documentation of each incidence of non-compliance.
- e) Consistent with subsection 9 VAC 5-80-110.E, the method or methods used for determining the compliance status of the source at the time of certification and over the reporting period.
- f) Such other facts as the permit may require to determine the compliance status of the source.
- g) One copy of the annual compliance certification shall be sent to EPA.”

17. Based on the results of the September 26, 2013 and October 10, 2013 PCE, and evaluation of information pertaining to the Facility provided by Shoosmith on August 30, 2013, September 23, 2013, October 1, 2013, October 2, 2013, December 16, 2013, February 6, 2014 and March 4, 2014, the Board concludes that Shoosmith violated Conditions I.7, IV.C.3, and IV.D of the Title V Permit, 9 VAC 5-80-110.F, 40 CFR 60.753(b), 40 CFR 60.755(a)(3), 40 CFR 60.755(a)(5) and Va. Code § 10.1-1322, as described in paragraphs C(4) through C(9), and C(15) through C(16), above.

18. DEQ staff and representatives of Shoosmith have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1309 and -1316, the Board orders Shoosmith, and Shoosmith agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$33,150** 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

Shoosmith shall include its Federal Employer Identification Number (FEIN) 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Shoosmith shall be liable for attorney's fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Shoosmith, for good cause shown by Shoosmith, 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.
3. 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, Shoosmith admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies the findings of fact and conclusions of law in this Order.
4. Shoosmith 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. Shoosmith declares it has received fair and due process under the Administrative Process Act and Virginia 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 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 Shoosmith 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. Shoosmith 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Shoosmith shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Shoosmith 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 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 and any 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 Shoosmith. Nevertheless, Shoosmith 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. The Director or his designee terminates the Order after Shoosmith has completed all of the requirements of the Order; or
 - b. Shoosmith 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 Shoosmith.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Shoosmith 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 Shoosmith 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 Shoosmith certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Shoosmith to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of Shoosmith.
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, Shoosmith voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21ST day of MAY, 2014.



Michael P. Murphy, Regional Director
Department of Environmental Quality

Shoosmith Bros., Inc., voluntarily agrees to the issuance of this Order.

Date: 5-16-14 By: [Signature], VICE PRESIDENT
(Person) (Title)
Shoosmith Bros., Inc.

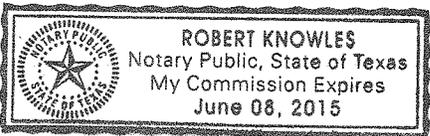
State of ~~Virginia~~ TEXAS
City/County of Brewer

The foregoing document was signed and acknowledged before me this 16 day of
May, 2014, by J. Fletcher Kelly, who is
(name)
Vice President of Shoosmith Bros., Inc., on behalf of the
corporation.

[Signature]
Notary Public
167304
Registration No.

My commission expires: 06-08-2015

Notary seal:



APPENDIX A

Shoosmith shall:

1. By no later than August 31, 2014, submit for DEQ approval, an updated Landfill Gas Collection and Control System (GCCS) design plan, including all information required by 40 CFR 60.752(b)(2)(i)(A), (B) and (C).
2. Respond to all DEQ requests for additional information and/or revisions to the GCCS plan within 30 days of the request.
3. By no later than December 15, 2014, submit a revised GCCS plan incorporating DEQ's comments and/or revisions.
4. Certification of Documents and Reports

In accordance with 9 VAC05-20-230(A), in all documents or reports, submitted to DEQ pursuant to this Consent Order, Shoosmith, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

5. DEQ contact

Unless otherwise specified in this Order, Shoosmith shall submit all requirements of Appendix A of this Order to:

Cynthia Akers
Enforcement
VA DEQ-PRO
4949-A Cox Rd.
Glen Allen, VA 23060
Cynthia.Akers@deq.virginia.gov