COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTH CENTRAL REGIONAL OFFICE
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Preston Bryant
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VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION

ORDER BY CONSENT
ISSUED TO
The Town of South Boston
Sanitary Landfill Permit Number 31

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1185 and 10.1-1455.C and F between the Waste Management Board and the Town of South Boston for the purpose of addressing violations of the Virginia Waste Management Act and the Virginia Solid Waste Management 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 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.

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. "SCRO" means the South Central Regional Office of DEQ located in Lynchburg, Virginia.

6. "Order" means this document, also known as a Consent Order.

7. "South Boston" or "Town" means the Town of South Boston, Virginia, located in Halifax County.

8. "Facility" means the Sanitary Landfill, Permit Number 31, located in South Boston, which is owned and operated by the Town.

9. "VSWMR" or "Regulations" means the Virginia Solid Waste Management Regulations, 9 Virginia Administrative Code ("VAC") 20-80-12 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. The Town of South Boston was issued a permit by the Virginia Department of Health on November 29, 1971, to dispose of solid waste.

2. The South Boston Facility is commonly referred to as a "1205 landfill" in that House Bill 1205, codified at Va. Code § 10-1408.1.N, allows a solid waste facility permitted prior to the requirements of Subtitle D of the federal Resource Conservation and Recovery Act ("RCRA") to continue to receive solid waste "until they have reached their vertical design capacity[.]"

3. House Bill 1228, enacted in 2000 and codified at Va. Code § 10.1-1413.2.D, prohibits municipal landfills without a liner system approved by DEQ from continuing to accept solid waste after 2020. South Boston is due to close their Facility in 2007.

4. Based upon inspections conducted by the SCRO of DEQ in 2004 and 2005, DEQ issued three Notices of Violations ("NOVs") on July 21, 2004, June 3, 2005, and December 27, 2005. The NOVs alleged, among other things, the following:

    a. Failure to maintain accurate records of unauthorized waste inspections as required by 9 VAC 20-80-250.C.1;

    b. Failure to maintain an adequate cover (erosion of cover exposing waste) as required by 9 VAC 20-80-250.C.2;

    c. Failure to properly dispose of waste tires in contravention of 9 VAC 20-80-670.D;

    d. Failure to properly dispose of drums in contravention of 9 VAC 20-80-680;

    e. Failure to maintain storm water control system (two storm water basins over fifty-percent full of sediment) in contravention of 9 VAC 20-80-250.C.11;

    f. Waste entering surface waters (leachate observed entering storm water basin, but basin was not discharging at the time of inspection), which is prohibited by 9 VAC 20-80-250.C.10; and,

g. Failure to maintain operators at the working face of the Facility noted during the DEQ inspection of April 12, 2005, contravening 9 VAC 20-80-250.C.6.

South Boston denies the allegations made by DEQ in these three NOVs.

5. On March 9, 2006, staff of SCRO observed and documented (by e-mail) that a significant amount of solid waste was allowed to remain exposed (uncovered) on the working face at the end of the workday in contravention of 9 VAC 20-80-250.C.2. This apparent violation was not memorialized within an NOV.

6. In responses dated February 13, 2006 and April 6, 2006, South Boston addressed the deficiencies noted in the NOVs. On May 31, 2006, DEQ received South Boston's revised application for a major amendment of the Facility permit which will address additional deficiencies. The original application was submitted to DEQ in May 1999, and revised June 2001 in response to technical review comments.

7. In order to reduce the potential for environmental harm at the Facility, Appendix A of the Order requires South Boston to propose and implement a plan for partial slope closures at the Facility.

SECTION D: Agreement and Order

By virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders South Boston, and South Boston agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders South Boston, and South Boston voluntarily agrees, to pay a civil charge of **$1,500** 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", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include South Boston's Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

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

2. This Order only addresses and resolves the matters 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, South Boston admits the jurisdictional allegations in this Order, but does not admit the factual allegations or legal conclusions contained in Sections C.4 and C.5.

4. South Boston 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. South Boston declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the Waste Management Act and 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 South Boston 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. Upon execution of this Order South Boston shall be responsible for failure to comply with any of the terms and conditions herein after the date hereof unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. South Boston shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. South Boston 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 South Boston 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 South Boston.

11. This Order shall continue in effect until:

    a. South Boston petitions the Director, or his designee, to terminate the Order after it has completed all requirements of the Order; or

    b. The Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to South Boston.

12. By its signature below, South Boston consents to the issuance of this Order.

And it is so ORDERED this 12th day of December, 2006.

Thomas L. Henderson, Regional Director
Department of Environmental Quality

South Boston consents to the issuance of this Order.

By: _____

Date: Oct. 31, 2006

Commonwealth of Virginia
City/County of HALIFAX

The foregoing document was signed and acknowledged before me this 31 day of October, 2006, by Terry A. DANIEL, who is the Town Manager of South Boston on behalf of South Boston.

Jane P Jones
Notary Public

My commission expires: 02-28-09

APPENDIX A
SCHEDULE OF COMPLIANCE
THE TOWN OF SOUTH BOSTON
SANITARY LANDFILL PERMIT NO. 31

1. **Within 30 days of the Consent Order becoming final,** South Boston shall submit to DEQ a plan and schedule for permanent (final) closure of a portion[1] of the slopes of the Facility. South Boston shall respond to any comments regarding the plan and schedule within thirty (30) days or the timeframe specified in the comments, whichever is longer.

2. South Boston shall perform the slope closures in accordance with the approved plan and shall comply with the timetables specified therein which, upon DEQ's approval, shall be incorporated into and become enforceable under the Order.

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1 The land area proposed for final closure under the plan shall be at least 25% of the total area of the Facility remaining to be closed.