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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO VIRGINIA CASTING INDUSTRIES, LLC FOR VCI RADFORD LANDFILL Solid Waste Permit No. 355

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and the Virginia Casting Industries, LLC, regarding the VCI Radford Landfill, for the purpose of resolving violations of the Virginia Waste Management Act 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 Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.

2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

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", "Radford Landfill", or "Landfill" means the VCI Radford Landfill, located 1701 West Main Street, in Radford, Virginia, which is owned and operated by VCI.

6. "FAR" means the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, 9 VAC 20-70-10 *et seq.*

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

8. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

9. "Permit" means Solid Waste Permit (SWP) No. 355, which was issued under the Virginia Waste Management Act and the Regulations to VCI on May 6, 2010. The Permit was originally issued to Lynchburg Foundry Company on July 16, 1982.

10. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*

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

12. "VAC" means the Virginia Administrative Code.

13. "VCI" means Virginia Casting Industries, LLC, a limited liability company authorized to do business in Virginia. VCI is a "person" within the meaning of Va. Code § 10.1-1400.

14. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

15. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

SECTION C: Findings of Fact and Conclusions of Law

1. On May 6, 2010, VCI was granted a permit to operate an Industrial Landfill by the Director of DEQ or his designee. VCI purchased the property on which the Landfill was located from Intermet Lender Liquidating Trust DST, Lynchburg Foundry Company and Intermet U.S. Holding, Inc. in April 2010. The Permit requires closure and post-closure care of the Landfill.

2. The Facility has been operated as an industrial landfill since a Permit was originally issued to Lynchburg Foundry Company in 1982. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit. Intermet Corporation, the successor to Lynchburg Foundry Company, placed the permitted cap on Phase 1 of the Landfill in 1995. Phases 2 and 3 of the Landfill have been inactive since 2000.

3. On March 5, 2010, prior to VCI purchasing the Facility, Department staff inspected the Landfill and observed that the permitted cap has not been placed on Phases 2 and 3 of the landfill (approximately 5.22 acres), some intermediate cover on Phases 2 and 3 had eroded, areas where intermediate cover had eroded lacked vegetative cover, trees were growing in the final cover on Phase 1, concrete pads of two groundwater monitoring wells were undermined, two leachate clean-out pipes were damaged, a fence controlling facility access was damaged, and an access road was not maintained.

4. On September 23, 2010, DEQ staff and representatives of VCI met to discuss the inspection results.

5. In a letter dated October 5, 2010, the Department notified VCI that it needed to increase its financial assurance mechanism for the Landfill.

6. In a letter dated October 27, 2010, the Department described the results of the March 5, 2010 inspection. That letter requested a written response detailing actions VCI intends to perform to comply with regulatory requirements.

7. In a letter dated November 24, 2010, ProChem Incorporated, a consultant for VCI, submitted a response on behalf of VCI to the October 27, 2010 DEQ letter. ProChem's letter included a statement that erosion damage to existing cover on the Landfill will be addressed when final cover is placed. The letter also indicated that monitoring well pads, leachate clean-out pipes, and the chain link fence had been repaired.

8. On March 1, 2011, DEQ staff inspected the Landfill and observed that a financial assurance update had not been made, the permitted cap had not been repaired on Phase 1, some intermediate cover on Phases 2 and 3 had eroded, areas where intermediate cover on Phases 2 and 3 had eroded lacked vegetative cover, trees were growing in the permitted cap on Phase 1, and the fence controlling facility access was damaged.

9. On March 11, 2011, DEQ issued a Warning Letter to VCI listing the observations made during the March 1, 2011 inspection.

10. In a letter dated March 31, 2011, Channing Martin, an attorney representing VCI, responded to the Warning Letter. Mr. Martin stated that VCI is planning closure of the Landfill and does not believe that additional financial assurance is needed because of potential cost savings from anticipated changes in the cap required by the closure plan.

11. On August 26, 2011, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act, the Regulations and the Permit. Based on the inspection and follow-up information, Department staff made the following observations:

    a. VCI had not provided a cost estimate updated for inflation. The amount in the Facility's trust fund was less than the most recent cost estimate adjusted for inflation.

b. Inspection of the cover revealed that intermediate cover in Phases 2 and 3 of the Landfill had eroded in places and foundry waste was exposed.
c. Construction of a permitted cap had not been initiated in Phases 2 and 3 of the Landfill. The Landfill has been inactive since 2000.
d. Inspection of the cover revealed that there had been damage to the permitted cap in Phase 1 of the Landfill.
e. VCI had not submitted a revised closure plan for the Landfill.

12. 9 VAC 20-70-111 and 9 VAC 20-70-112 requires that owners or operators of each solid waste management system establish financial assurance in current dollars and provide continuous coverage until released from financial assurance requirements by the Department. These regulations also require that the owner or operator adjust the cost estimate annually for inflation and submit a revised financial assurance mechanism in the new amount.

13. Permit Condition I.B.11 states that a proper financial responsibility mechanism for facility closure activities, post-closure care and corrective action activities, as necessary, must be provided. These costs shall be based on a detailed written estimate and must be for closure by a third party who is not a parent or subsidiary or the owner or operator.

14. 9 VAC 20-81-140(D)(1)(d) requires that intermediate cover of at least a foot of compacted soil shall be applied whenever an additional lift of refuse is not to be applied within 30 days . . . Further, all areas with intermediate cover shall be inspected as needed but not less than weekly and additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.

15. 9 VAC 20-81-140(D)(1)(f) requires that vegetation shall be established and maintained on all exposed final cover material within four months after placement, or as otherwise specified by the department when seasonal conditions do not otherwise permit. Mowing will be conducted a minimum of once a year or at a frequency suitable for the vegetation and climate.

16. 9 VAC 20-81-160(B)(2) requires the owner or operator to amend the closure plan any time changes in operating plans or landfill design affect the closure plan.

17. 9 VAC 20-81-160(B)(3) requires the owner or operator to submit a closure plan or amended closure plan not previously approved by the director to the department at least 180 days before the date the owner or operator expects to begin construction activities related to closure.

18. 9 VAC 20-81-160(B)(4) requires that if the owner or operator intends to use an alternative final cover design, he shall submit a proposed design meeting the requirements of subdivision D(2)(f) of this section to the department at least 180 days before the date he expects to begin closure.

19. 9 VAC 20-81-160(C)(1) requires that the owner or operator begin closure activities of each unit no later than 30 days after the date on which the unit receives the known final receipt of wastes.

20. 9 VAC 20-81-160(C)(2) requires the owner or operator to complete closure activities of each unit in accordance with the closure plan and within six months after receiving the final volume of wastes.

21. 9 VAC 20-81-160(D)(2) requires that the owner or operator install a final cover system that is designed to achieve the performance standards of this section.

22. 9 VAC 20-81-170(A)(1)(a) requires that the owner or operator to maintain the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover.

23. On November 21, 2011, based on the inspection and follow-up information, the Department issued Notice of Violation No. 11-11-BRRO-R-002 to VCI for the violations described in paragraph C(11), above.

24. On November 30, 2011, an attorney representing VCI submitted a written response to the NOV. The response indicated that VCI is evaluating final cover systems through engineering consultants.

25. On January 27, 2012, Department staff met with representatives of VCI and its engineering consultants to discuss the violations, including VCI's written response, and to discuss engineering issues relating to a final cover system.

26. In June, 2012, a contractor for VCI performed maintenance and repairs to the Radford Landfill, including removing exposed waste, tree stumps, and vegetation debris; repairing eroded rills and ruts with soil, seed and/or mulch; and filling animal dens.

27. On July 25, 2012, Department staff met with representatives of VCI and its engineering consultants to discuss VCI's progress in designing the final cover system and other engineering issues.

28. Based on the results of the August 26, 2011 inspection and the January 27, 2012 meeting, the Board concludes that VCI has violated Permit condition I(B)(11), 9 VAC 20-70-111, 9 VAC 20-70-112, 9 VAC 20-81-140(D)(1)(d), 9 VAC 20-81-160, 9 VAC 20-81-170(A)(1)(a), 9 VAC 20-81-140(D)(1)(f), 9 VAC 20-81-160(B)(3), as described in paragraph C(11), above.

29. In order for VCI to return to compliance, DEQ staff and representatives of VCI 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 § 10.1-1455, the Board orders VCI, and VCI agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of VCI for good cause shown by VCI, 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.

2. 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, VCI 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. VCI 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. VCI declares it has received fair and due process under the Administrative Process Act 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 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 VCI 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. VCI 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. VCI shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. VCI 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 VCI.

11. This Order shall continue in effect until:

a. The Director or his designee terminates the Order after VCI has completed all of the requirements of the Order;

b. VCI 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 VCI.

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

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, VCI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5th day of February, ~~2012~~ 2013

Robert J. Weld, Regional Director
Department of Environmental Quality

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Virginia Casting Industries, LLC voluntarily agrees to the issuance of this Order.

Date: 7-DEC 12 By: _____, _____
(Person) (Title)
Virginia Casting Industries, LLC

State of Michigan
City/County of Cadillac, Wexford

The foregoing document was signed and acknowledged before me this 6th day of December, 2012, by Daniel D. Minor who is Manager of Virginia Casting Industries, LLC, on behalf of the company.

_____
Notary Public

_____
Registration No.

My commission expires: May, 13, 2018

Notary seal:

PENNY L MACEACHERN
Notary Public - Michigan
Wexford County
My Commission Expires May 13, 2018
Acting in the County of Wexford

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Financial Assurance
   VCI shall demonstrate financial assurance for the costs of closure, post-closure care and the costs of groundwater corrective action (if applicable) associated with solid waste Permit No. 355, as required by Va. Code § 10.1-1410 and the FAR.

   a. On November 7, 2012, VCI submitted revised cost estimates for closure and post closure care in accordance with 9 VAC 20-70-111, and -112. VCI shall provide updates of these cost estimates as required by the regulations. The Post-closure care cost estimate shall be based on the total cost of post-closure care over the entire post-closure period and shall be based on third party costs.

   b. By 30 days after the Department approves VCI's revised closure and post-closure plans, VCI shall provide an appropriate update, if the Department has made changes which increase or decrease the costs, to its financial assurance mechanism or combination of mechanisms under 9 VAC 20-70-140 through 250 and shall submit a complete and approvable financial assurance demonstration packet. The financial assurance demonstration packet shall to be sent to:

      Virginia Department of Environmental Quality
      Office of Financial Assurance
      Attention: Leslie Beckwith
      Post Office Box 1105
      Richmond, VA 23218

   c. VCI shall respond to any notices of deficiency with respect to its financial assurance cost estimates or mechanisms in accordance with the notice.

2. Disclosure Statement Update
   By 30 days after the effective date of this Order, VCI shall update its disclosure statement for the Landfill to reflect the presence of this Order pursuant to Va. Code § 10.1-1408.1(C)(3).

3. Closure
   a. On November 7, 2012, VCI submitted a revised closure and postclosure care plan for the Landfill in accordance with the requirements of 9 VAC 20-81-160(B) and 9 VAC 20-82-170(A).

   b. Provided the Department approves the revised closure plan by February 1, 2013, VCI shall commence construction of the permitted cap at the Landfill in accordance with the approved revised closure plan by May 1, 2013. If the Department approves the revised closure plan after February 1, 2013, VCI and the Department shall discuss and agree upon a date by which construction shall commence.

c. Within six (6) months of the date on which construction is commenced and subject to Section E.8 of this Order, VCI shall achieve substantial completion of closure of the Landfill in accordance with the approved revised closure plan, and shall thereafter continue its efforts to ensure vegetation is established and final stabilization is achieved

d. VCI shall respond to any notices of deficiency with respect to its revised closure and postclosure care plan in accordance with the notice.

4. Contact
Unless otherwise specified in this Order, VCI shall submit all requirements of Appendix A of this Order to:

Robert Steele
Enforcement Specialist Sr.
VA DEQ – Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019
(540) 562-6777 (phone)
(540) 562-6725 (fax)
Robert.Steele@deq.virginia.gov (email)