COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Preston Bryant
Secretary of Natural Resources

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David K. Paylor
Director

Steven A. Dietrich
Regional Director

COMMONWEALTH OF VIRGINIA
WASTE MANAGEMENT BOARD
CONSENT ORDER
ISSUED TO
Mr. Michael Westmoreland
D.B.A. West Imports Metal Recyclers

Section A: Purpose

This is a consent order issued under the authority of §§ 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455 of the Code of Virginia (1950), as amended, by the Virginia Waste Management Board to Mr. Michael Westmoreland to resolve certain alleged violations of environmental laws and/or regulations at the West Imports Metal Recyclers facility in Henry County, Virginia.

Section B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" or "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 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 Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality.

5. "Mr. Westmoreland" means Mr. Michael Westmoreland.

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

7. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* ("HWMR"). The specific provisions of Title 40 of the Code of Federal Regulations ("CFR") cited herein are incorporated by reference at 9 VAC 20-60-260, 9 VAC 20-60-261, 9 VAC 20-60-262, 9 VAC 20-60-264, 9 VAC 20-60-265, 9 VAC 20-60-268, and 9 VAC 20-60-270.

8. "SWMR" means the Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*

9. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*

10. "Regional Office" means the West Central Regional Office of the Virginia Department of Environmental Quality, which is located at 3019 Peters Creek Road, Roanoke, Virginia 24019.

11. "HWMU" means the hazardous waste management unit consisting of the waste pile containing aluminum smelter ash, slag and debris at the West Imports Metal Recyclers site in Martinsville, Virginia.

12. "WCRO" means the West Central Regional Office of DEQ, located at 3019 Peters Creek Road in Roanoke, Virginia.

Section C: Findings of Fact and Conclusions of Law

1. Mr. Westmoreland owns and operates a scrap metal recycling and auto salvaging operation known as West Imports Metal Recyclers ("West") at 3681 A. L. Philpott Highway in Henry County, Virginia.

2. Managed waste streams at West include used oil, transmission fluid, waste gasoline and diesel fuel, used antifreeze, used batteries, and automotive convenience light switches.

3. On March 8, 2007, a Department inspector observed a plume of smoke originating from the West facility. DEQ staff inspected West on March 8, 2007 and April 3, 2007. Inspection results indicated that the smoke was generated by an aluminum smelter operated by West. West had used the smelter to recover aluminum from auto parts and other scrap materials. For a period of years, West had disposed of ash from the smelter in a pile behind the on-site office building.

4. Characterization by Mr. Westmoreland at the request of the Department of samples from the smelter ash pile indicates that the ash contains lead at levels higher than the maximum concentration for the toxicity characteristic specified for lead at 40 CFR § 261.24. Accordingly, the smelter ash is a hazardous waste as defined in the Regulations.

5. Inspection results showed that in violation of the requirements of 40 CFR § 262.11 and 40 CFR 262.12, West had not made a hazardous waste determination for the aluminum smelter ash and failed to obtain an EPA identification number for management of the aluminum smelter ash.

6. Inspection results showed that in violation of the requirements of 40 CFR 261.5,West did not properly treat or dispose of the aluminum smelter ash stored at the West facility.

7. Inspection results showed that in violation of Va. Code § 10.1-1426.A and RCRA permit and operations requirements at 40 CFR § 264, Subpart I and 40 CFR § 270, West operated a waste pile without a permit and without complying with operating requirements for waste piles.

8. Inspection results showed that in violation of Va. Code § 10.1-1426.B and 9 VAC 20-60-262.B.4, West did not notify DEQ of the location of its hazardous waste accumulation area and did not notify DEQ of the waste pile, which was an unpermitted hazardous waste storage activity.

9. Inspection results showed that in violation of 40 CFR 279.22(d), West did not contain a release of petroleum, as indicated by extensive staining of soils from petroleum releases in the vicinity of an automobile crusher and on an embankment adjacent to the crusher.

10. In Notice of Violation issued to West on November 2, 2007, the Department cited the following violations of the Regulations at the West facility as documented by the inspections on March 8 and April 3, 2007:

- 40 CFR 262.11 – failure to characterize waste streams in order to determine whether hazardous wastes are being generated.

- 40 CFR 261.5 – failure to properly treat or dispose of hazardous waste generated at the facility.

- 40 CFR 262.12 – failure to obtain an EPA identification number for non-exempt generation of hazardous waste.

- Va. Code § 10.1-1426.A – failure to treat, store or dispose of hazardous waste without obtaining a permit from the Department.

- 40 CFR 264 – failure to comply with operating requirements for hazardous waste waste piles.

- 40 CFR 270 – operation of a waste pile without a permit.

11. Based on information in the administrative record, the Department determines that the petroleum contaminated soil at West can be removed and disposed of pursuant to 9 VAC 20-80-205.B.3.

Section D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it pursuant to Code § 10.1-1455, orders Mr. Westmoreland, and Mr. Westmoreland agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Mr. Westmoreland, and Mr. Westmoreland voluntarily agrees, to pay a civil charge of $5,000.00 within thirty (30) days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

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

The payment shall include Mr. Westmoreland's Federal Identification Number or Social Security Number, as appropriate, 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 this Order with the consent of Mr. Westmoreland, for good cause shown by Mr. Westmoreland, or on its own motion after notice and opportunity to be heard.

2. This Order addresses only those violations pertaining to the West facility specifically identified herein, including the violations specified in the Notice of Violation issued by the Department to Mr. Westmoreland on November 2, 2007. 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 terms of 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, Mr. Westmoreland admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Mr. Westmoreland 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. Mr. Westmoreland declares that he has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act, Code § 10.1-1400 *et seq.*, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to 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, or to judicial review of, any action taken by the Board or the Director to enforce this Order.

6. Failure by Mr. Westmoreland 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 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. Mr. Westmoreland 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, or other act of God, war, strike, or other such occurrences. Mr. Westmoreland must show that the circumstances resulting in the noncompliance were beyond his control and were not due to a lack of good faith or diligence on his part. Mr. Westmoreland shall notify the Director and the WCRO 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 this Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of 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 Director and the WCRO Regional Director within 24 hours of the commencement of the condition causing or anticipated to cause the delay or noncompliance shall constitute a waiver of any claim of 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. Any plans, reports, schedules or specifications attached hereto or submitted by Mr. Westmoreland 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.

11. This Order shall become effective upon execution by both the Director or his designee and Mr. Westmoreland. Notwithstanding the foregoing, Mr. Westmoreland agrees to be bound by any compliance date that precedes the effective date of this Order.

12. This Order shall continue in effect until: a) Mr. Westmoreland 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 b) The Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Mr. Westmoreland. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mr. Westmoreland from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. By his signature below, Mr. Westmoreland voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of JAN. 22, 2008

Steven A. Dietrich

Steven A. Dietrich, Regional Director
West Central Regional Office
Department of Environmental Quality

Seen and Agreed to: _____
Mr. Michael Westmoreland

The foregoing instrument was acknowledged before me on December 24, 2007

by Mr. Michael Westmoreland in the County/City of Henry, State/Commonwealth of Virginia.

Lisa Brown
Notary Public
Reg# 340431

My Commission expires: _____

APPENDIX A

1. Mr. Westmoreland shall not treat, store, transport, or dispose of solid or hazardous waste at West, except: (a) in accordance with the SWMR or HWMR, as applicable, and (b) in accordance with a permit or emergency permit issued by the Department for such activity.

2. Mr. Westmoreland shall provide access for Department personnel to the entire West facility, including active and non-active areas, and all records pertaining to operation of West, at any reasonable time, with or without advanced notice.

Remediation of Hazardous Waste Management Unit

3. Within sixty (60) days of the effective date of this Order, Mr. Westmoreland shall submit to the Department:

   a. Closure and post-closure plans meeting the requirements of 40 CFR § 264 Subparts G and L and 40 CFR § 264.258 for the HWMU. The closure and post-closure plans shall include the contingent closure and post-closure plans specified at 40 CFR § 264.258(c)(1). The contingent plan specified at 40 CFR § 264.258(c)(1)(i) shall include plans for a groundwater monitoring program for the HWMU. This groundwater monitoring program shall meet the requirements of 40 CFR § 264 Subpart F, modified as necessary to meet the closure performance standards of 40 CFR § 264.111. Installation of a groundwater monitoring network shall not be required unless and until the contingent closure plan is implemented pursuant to Paragraph 4 below. The Department shall approve, or modify and approve the closure and post-closure plans in accordance with the HWMR. Upon its approval by the Department, the closure plan and post-closure plans shall become a part of and enforceable under the terms of this Order. Mr. Westmoreland shall implement this closure plan in accordance with the schedule in the approved closure plan.

   b. Evidence of financial assurance in accordance with 40 CFR § 264 Subpart H and 40 CFR § 264.258 for the HWMU. Mr. Westmoreland shall modify the amount of such financial assurance as necessary in response to any modifications of the closure plan and/or the contingent closure and post-closure plans approved of by the Department.

4. If Mr. Westmoreland is unable to achieve clean closure under 40 CFR § 264.258 (a) for the HWMU in accordance with the approved closure plan, then Mr. Westmoreland shall immediately notify the Department of this fact and shall begin implementation of the contingent closure plan for closure of the HWMU as a landfill. That notification shall constitute a determination that the HWMU must be closed as a landfill in accordance

with 40 CFR § 264.310.

5. Within one hundred eighty (180) days of any determination that Mr. Westmoreland is unable to close the HWMU under 40 CFR § 264.258, Mr. Westmoreland shall submit to the Department a post-closure care permit application and the applicable permit application fee in accordance with the requirements set forth in 40 CFR § 264 Subpart G, 9 VAC 20-60-970, and 9 VAC 20-60-980. Following completion of closure, and until such time as a permit is issued, Mr. Westmoreland shall follow the approved post-closure plan and approved groundwater monitoring plan referenced above.

Remediation of Petroleum Contaminated Soil

6. Within sixty (60) days of the effective date of this Order, Mr. Westmoreland shall submit to the Department for review and approval a plan and schedule for removal ("Removal Plan") and proper disposal of the petroleum contaminated soil at the West facility in accordance with the requirements at Article 11 of State Water Control Law, Va. Code § 62.1-44.2 *et seq.*; 40 CFR 279.22(d)(4); and Va. Code § 62.1-44.34.18.B. Mr. Westmoreland shall comply with the approved Removal Plan. The Removal Plan shall include confirmatory sampling in accordance with applicable testing requirements to verify complete removal of all contaminated soil.

7. Within one hundred eighty days (180) of the effective date of this Order, Mr. Westmoreland shall complete removal and proper disposal of the petroleum contaminated soil at the West facility.

8. Within fifteen (15) days after completing removal and proper disposal of the petroleum contaminated soil, Mr. Westmoreland shall submit to DEQ a written report describing the quantity and location of materials removed, all test results, and disposal receipts.

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