

**WASTE MANAGEMENT BOARD  
ENFORCEMENT ACTION**

**AN AMENDMENT TO A CONSENT ORDER**

**ISSUED TO  
BEAR ISLAND PAPER COMPANY, L.L.C.  
HANOVER COUNTY, VIRGINIA**

**SECTION A: Purpose**

This is an amendment to the Consent Order issued on June 17, 1998, by the Waste Management Board under the authority of Va. Code § 10.1-1455, between the Waste Management Board and Bear Island Paper Company, L.L.C. This Order supersedes the Consent Order issued on June 17, 1998, by the Board to Bear Island Paper Company, L.L.C.

**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 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. “Order” means this document, also known as a Consent Order.
6. “Bear Island” means Bear Island Paper Company, L.L.C. located in Hanover County, Virginia.
7. “Facility” means the Bear Island’s Industrial Waste Landfill, in Hanover County, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “VSWMR” means the Virginia Industrial waste Management Regulations 9 VAC 20-80-12 *et seq.*

### **SECTION C: Findings of Fact and Conclusions of Law**

1. On January 27, 1984, the State Health Commissioner issued Permit NO. 426 to North Anna to operate an Industrial Waste Landfill (“Landfill”) , in Hanover County, Virginia, for the disposal of fly ash and bottom ash generated by Bear Island. North Anna operated the Landfill through 1988.
2. On August 3, 1990, North Anna entered into an Enforcement Order with the Department of Waste Management, predecessor to DEQ. The order provided that North Anna would operate the Landfill in accordance with the 1988 VSWMR. The order also provided that upon closure of the Landfill, a groundwater monitoring system meeting the requirements of § 5.3.D. of the 1988 VSWMR would be installed, and monitoring would be performed throughout the post-closure care period. In addition, a closure plan with provisions for post-closure care, monitoring, and corrective active, if any, would be provided in accordance with § 5.3.E. of the 1988 VSWMR.
3. In 1997, Bear Island purchased the Landfill from North Anna.
4. On June 17, 1998, a Consent Order was issued to Bear Island which revoked Permit No. 426. The Order also required closure and post-closure care of the Landfill, in accordance with the requirements of the applicable provisions of the 1988 VSWMR.
5. Department records indicate that closure of the Landfill has been completed and the Landfill is now in the post-closure phase.
6. Condition 2. G. in Appendix A of the June 17, 1998 Order requires the following:

“Bear Island shall install a groundwater monitoring system meeting the requirements of § 5.3 of the 1988 VSWMR and shall monitor groundwater

throughout the stipulated five (5) year post-closure period, starting in 1998.

7. The review of the 2000 Annual Report indicated that the requirements of Condition 2, Paragraph G, in the June 17, 1998 Order were not being followed.
8. On January 16, 2002, a meeting was held to discuss the groundwater issues that were different from those required by the Order. The Department agreed in the meeting to amend the Order to require post-closure activities including groundwater monitoring in accordance with the most current amendment to the VSWMR instead of Section 5.3.D of the 1988 VSWMR. It was also decided in the meeting that Bear Island would do the following:
  - Install two shallow piezometers for the purpose of gaining additional groundwater elevation data. If the data showed there is a riverward component of the groundwater flow, then an additional permanent monitoring well may be installed.
  - The facility would conduct background sampling for mercury and cyanide within six months of the meeting.
  - Collect inorganic data from an additional upgradient well. This data would be pooled with that from the existing well.
  - The 2001 First Determination report will be amended to include mercury and cyanide and resubmitted to the Department for review.
9. Department records indicate that all of the requirements required by Bear Island in Paragraph 8 above have been completed.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455 orders Bear Island, and Bear Island agrees, to perform the actions described in Appendix A of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Bear Island, for good cause shown by Bear Island, or on its own motion after notice and opportunity to be heard.
2. 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 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, Bear Island admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Bear Island 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. Bear Island 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 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 enforce this Order.
6. Failure by Bear Island 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. Bear Island 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. Bear Island shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Bear Island 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 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, 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 Bear Island. Notwithstanding the foregoing, Bear Island 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 Bear Island. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Bear Island 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, Bear Island voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2003.

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Robert G. Burnley, Director  
Department of Environmental Quality

Bear Island voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2003, by \_\_\_\_\_, who is the  
(name)

\_\_\_\_\_ of Bear Island.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

## APPENDIX A

### SCHEDULE OF COMPLIANCE

Bear Island shall:

1. Bear Island shall not own, operate, construct, or modify any solid waste facility within the Commonwealth except in accordance with the Waste Management Act, the VSWMR, a permit issued by the Director, or an Order of the Board.
2. Bear Island shall conduct the following closure activities:
  - a. Maintain a minimum of eighteen inches of earthen material as cover for the landfill. Also, Bear Island shall maintain the existing vegetation so it is capable of sustaining plant growth and preventing erosion. Bear Island shall take appropriate measures to control erosion and runoff at the site during the closure and post-closure periods.
  - b. Bear Island shall install and monitor a groundwater monitoring system meeting the requirements of the applicable sections of the current amendment of the VSWMR and shall monitor groundwater throughout the stipulated five (5) year post-closure period, starting from October 28, 1999.
3. Within ninety (90) days of the effective date of this Order, Bear Island shall submit, to the PRO, an amended post-closure plan for the landfill in accordance with the applicable sections of the current VSWMR.
4. Following completion of closure activities, Bear Island shall conduct post-closure care for five (5) years from October 28, 1999, unless the period of post-closure care is modified by variance pursuant to the VSWMR, or unless the period of post-closure care is extended to meet the requirements of corrective action.
5. Bear Island shall perform any corrective action required under Part V of the VSWMR should the results of the groundwater monitoring performed during the post-closure care period warrant such action.
6. Following completion of the post-closure care period, Bear Island shall submit to the PRO a certification, signed by an independent registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure plan.
7. Within ninety (90) days of the effective date of this Order, Bear Island shall submit to the PRO evidence of financial assurance for the Landfill. The financial assurance shall be prepared in accordance with the Financial Assurance Regulations of Solid Waste Facilities 9 VAC 20-70-10 *et seq.* And consist of evidence of a financial mechanism in the amount of the post-closure cost estimate.