

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION

ORDER BY CONSENT ISSUED TO Town of Chase City Sanitary Landfill Permit Number 25

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 Virginia Waste Management Board and the Town of Chase City, Virginia for the purpose of resolving certain violations of environmental law and 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 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. “Chase City” or “Town” means the Town of Chase City located in Mecklenburg County, Virginia.

7. “Facility” or “Landfill” means the Town of Chase City Sanitary Landfill, Permit Number 25, located in Chase City, Virginia.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “SCRO” means the South Central Regional Office of DEQ, located in Lynchburg, Virginia.
10. “Permit” means Solid Waste Facility Permit Number 25 issued on October 1, 1971.
11. “VSWMR” means the Virginia Solid Waste Management Regulations at 9 VAC 20-80-12 *et seq.*
12. “NOV” means Notice of Violation.

SECTION C: Findings of Fact and Conclusions of Law

1. On October 1, 1971, Chase City was granted a Permit to operate a Sanitary Landfill by the Department of Health.
2. Chase City asserts that the Facility last received wastes on or about April 30, 1992.
3. On or about April 6, 1993, Chase City submitted a closure plan for the Facility to the DEQ.
4. On February 9, 1999, the PRO conducted a site inspection and found that the Facility had not completed closure in accordance with 9 VAC 20-80-250.E.4, and noted the Landfill appears to be in use as a construction/demolition/debris (“CDD”) wastes storage and/or disposal facility.
5. On February 26, 1999, the PRO issued NOV number 99-02-PRO-603 to the Town for failure to close the Facility within 6 months of beginning closure pursuant to 9 VAC 20-80-250.E.4.b, and disposal of CDD wastes without a permit pursuant to 9 VAC 20-80-90.
6. Chase City asserts that the CDD wastes noted in the 1999 inspection and NOV were trees and brush, and were related to the Town’s emergency response to storm debris and removal. Chase City further asserts that the wastes were deposited adjacent to the Landfill disposal areas, and that such disposal does not

constitute continued operation of the Facility. The DEQ believes resolution of this issue is not critical to protection of human health and the environment.

7. On September 17, 2001, the SCRO conducted an inspection and found that the Facility had not closed in accordance with 9 VAC 20-80-250.E, and thus was not conducting post-closure care in accordance with 9 VAC 20-80-250.F.
8. On October 18, 2001, the SCRO issued a Warning Letter to Chase City for, *inter alia*, failure to close the Facility. Chase City responded by letter dated November 8, 2001, disputing some of the alleged violations and outlining a plan of corrective action.
9. On March 14, 2002, the SCRO issued NOV number NOV-02-03-SCRO-008 for failure to demonstrate financial assurance pursuant to 9 VAC 20-70-30.A; failure to record a survey plat meeting the requirements of 9 VAC 20-80-250.E.5.d; failure to monitor groundwater in accordance with 9 VAC 20-80-250.D.2; failure to design and maintain a final cover in accordance with 9 VAC 20-80-250.E.1.a and b (an erosion ditch was observed during the September 2001 inspection that exposed wastes to include an improperly disposed barrel).
10. Chase City has corrected all the violations cited in the NOV except for closure of the Facility in accordance with the VSWMR, which includes a final cover design, and demonstrating financial assurance.
11. On December 23, 2002, Chase City submitted a gas management plan, and updated closure and post-closure care plans to the DEQ. By letter dated February 26, 2003, the DEQ returned comments to Chase City outlining deficiencies of the closure and post-closure plans.
12. On June 30, 2003, the DEQ received a construction quality assurance plan, and closure and post-closure care plans from Chase City. By letter dated September 11, 2003, the DEQ returned comments to Chase City on the plans, including the gas management plan.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted in Va. Code §10.1-1455.C and F orders Chase City, and Chase City consents, to perform the actions contained in Appendix A and

Appendix B of this Order. Further, the Board orders, and Chase City consents, to pay a civil charge of \$9,800.00 in settlement of the violations cited herein.

1. \$2,450.00 of the civil charge shall be paid within 30 days of the effective date of this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification number for Chase City. The 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 10150
Richmond, Virginia 23240

2. \$7,350.00 of the civil charge shall be satisfied upon completion of a Supplemental Environmental Project ("SEP") pursuant to Va. Code § 10.1-1186.2 and as described in Appendix B of this Order.
3. The Department has the sole discretion to:
 - a. authorize any alternate SEP proposed by Chase City; and
 - b. determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
4. If Chase City fails to complete the SEP, or alternate SEP as approved by the Department, the Department shall notify Chase City in writing. Within 30 days of notification, Chase City shall pay the amount specified in Paragraph 2, Section D, and in accordance with the procedures specified in Paragraph 1, Section D.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Chase City, for good cause shown by Chase City, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified in NOV numbers 99-02-PRO-603 and NOV-02-03-SCRO-008. 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 affect appropriate enforcement actions by other federal, state, or local regulatory authorities whether or not arising out of the same or similar facts.

3. For purposes of this Order and subsequent actions with respect to this Order, Chase City admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Chase City 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.
5. Failure by Chase City 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.
6. 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.
7. Chase City 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 other similar occurrence. Chase City shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Chase City shall notify the DEQ South Central Regional Director verbally and 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 written 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.

Failure to notify the Regional Director verbally within one business day and in writing within five business days of learning of any condition above, which Chase City 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.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by the Director, or his designee, and Chase City. Notwithstanding the foregoing, Chase City agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until the Board, the Director, or his designee, terminates the Order in its or his sole discretion upon 30 days written notice to Chase City. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Chase City from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By its signature below, Chase City consents to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

Chase City consents 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

Richard G. Reese, Town Manager

Town Manager of the Town of Chase City, Virginia.

Notary Public

My commission expires: _____

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APPENDIX A

Chase City Shall:

1. Upon receipt of the closure plan submitted pursuant to 9 VAC 20-80-250.E.3.f, the DEQ shall approve and/or provide comments to the closure plan within 90 days. Chase City shall respond in writing within 30 working days of receiving comments and/or notice of deficiencies in the closure plan until such time the Department approves the plan.
2. Upon receipt of Department approval of the closure plan, Chase City shall perform closure in accordance with 9 VAC 20-80-250.E and the approved closure plan, and complete closure in accordance with 9 VAC 20-80-250.E.4.b.
3. Within 90 days of the issuance of this Order Chase City shall submit to the Department evidence of financial assurance in accordance with 9 VAC 20-70-10 *et seq.*
4. Upon receipt of the post-closure care plan submitted pursuant to 9 VAC 20-80-250.F, the DEQ shall approve and/or provide comments within 90 days. Chase City shall respond in writing within 30 working days of receiving comments and/or notice of deficiencies in the post-closure care plan until such time the Department approves the plan.
5. The post closure care period shall begin in accordance with 9 VAC 20-80-250.E.7.
6. Chase City shall perform post-closure care for 10 years in accordance with 9 VAC 20-80-250.F. If necessary to protect human health and the environment, the post-closure care period may be extended following a determination by the Director pursuant to 9 VAC 20-80-250.F.3.b.
7. Chase City shall, pursuant to 9 VAC 20-80-250.F.1.c, monitor the groundwater in accordance with 9 VAC 20-80-300, maintain the groundwater monitoring system and if applicable, implement a corrective action program consistent with 9 VAC 20-80-310.
8. Upon receipt of a gas management plan submitted pursuant to 9 VAC 20-80-280, the DEQ shall approve and/or provide comments within 90 days. Chase City shall respond in writing within 30 working days of receiving comments and/or notice of deficiencies in the gas management plan until such time the Department approves the plan. Upon receipt of Department approval, Chase City shall implement the plan as part of closure.
9. If leachate is detected during the post-closure care period Chase City shall notify the South Central Regional Office of the DEQ in writing within 5 business days of detection

to include the immediate measures taken to contain and prevent discharge to State waters. In addition, a leachate control and monitoring plan that meets the requirements of 9 VAC 20-80-290 shall be submitted for Department approval within 120 days of detection. The plan shall state the nature and extent of the problem and the proposed remedy. Chase City shall respond in writing within 30 working days of receiving notice of deficiencies in the leachate control and monitoring plan until such time the Department approves the plan. Chase City shall implement the plan upon receipt of Department approval.

10. All correspondence related to this Order, unless otherwise specified by the Permit or regulation, shall be sent to:

Harry F. Waggoner
DEQ - South Central Regional Office
7705 Timberlake Road
Lynchburg, Virginia 24502

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Appendix B

1. The SEP to be performed by Chase City is construction and operation of a Solid Waste Collection and Recycling Convenience Center. The SEP is beneficial to the environment and the public by providing a pollution reduction opportunity to a low income and minority subdivision.
2. The SEP shall be completed within 12 months of the issuance of this Order.
3. Chase City certifies that they have not commenced performance of the SEP prior to the identification of the violations cited in this Consent Order and the approval of the SEP by the Department.
4. The net cost of the SEP to Chase City shall not be less than \$7,350.00. In the event that the final net cost of the SEP is less than this amount, Chase City shall pay the remainder of the amount in accordance with Section D, Paragraph 1 of this Order to the Commonwealth of Virginia. The phrase “net cost” shall mean the cost of the project minus any federal or grant funds used toward payment of the SEP project, and minus first-year cost reductions or other efficiencies.
5. Chase City acknowledges that it is solely responsible for completion of the SEP project. Any transfer of funds, tasks, or otherwise by Chase City to a third party, shall not relieve Chase City of its responsibility to complete the SEP as contained in this Order.
6. Chase City shall provide the Department with written verification of completion of the SEP by providing a letter from the Chase City Administrator. The project completion verification must be submitted to the Department within 90 days from the SEP completion date in item number 2 of Appendix B of this Order.
7. Chase City shall submit written verification to the Department in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation of the final overall and net cost of the SEP within 90 days of the SEP completion date in item number 2 of Appendix B of this Order. For the purposes of this submittal, net costs can be either the actual final net costs or the projected net costs if such projected net costs statement is accompanied by a CPA certification or certification from Chase City’s Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions.

8. In the event that Chase City publicizes the SEP or the results of the SEP, Chase City shall state in a prominent manner that the project is part of a settlement for an enforcement action. This requirement shall not apply to any signs constructed at the solid waste convenience center to denote the location or name of the center, the hours of operation, or the ownership thereof.
9. All correspondence related to the SEP, other than the civil charge payment delineated in Section D of this Order, shall be sent to:

Harry F. Waggoner
DEQ – South Central Regional Office
7705 Timberlake Road
Lynchburg, Virginia 24502

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