COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

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Robert G. Burnley
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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION

ORDER BY CONSENT

ISSUED TO

RAINWATER CONCRETE COMPANY, INC.

FOR THE

RAINWATER CDD LANDFILL
(Solid Waste Permit No. 327)

SECTION A: Purpose

This is a Consent Order issued under the authority of Section 10.1-1455 of the Code of Virginia between the Virginia Waste Management Board and the Rainwater Concrete Company, Inc. to resolve certain alleged 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 citizens' board of the Commonwealth of Virginia and 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 § 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. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.

7. "Rainwater" or "Facility" means the Rainwater Landfill which operate as a construction/demolition/debris landfill under Solid Waste Permit Number 327.

SECTION C: Findings of Fact and Conclusions of Law

1. Rainwater Concrete Company, Inc. ("'Rainwater Concrete") owns and operates a "solid waste management facility" as that term is currently defined by Va. Code §1O.1-1400 ("Facility"), at 9917 Richmond Highway, Lorton, Virginia (the "Location"). The Facility is located in Fairfax County, Virginia.

2. Rainwater Concrete is the "owner and operator" of the Facility.

3. On June 23, 1981, the Commonwealth of Virginia Department of Health, predecessor of the Department of Environmental Quality, issued a permit to Rainwater Concrete to dispose solid waste, and operate a Demolition Landfill to accept demolition debris waste. The permit is identified as No. 327.

4. Since at least July 10, 1970, the date the County of Fairfax, Virginia issued a Certificate of Occupancy to Rainwater Concrete to operate a landfill as a non-conforming use at the location, Rainwater Concrete has accepted construction demolition, debris waste for disposal at the Facility. Accordingly, it is considered a "CDD Landfill" as that term is used in the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations. Rainwater Concrete represents that it and previous site owners accepted CDD waste at the location prior to July 10, 1970.

5. Pursuant to 9 VAC 20-80-300.C.[1] owners and operators of CDD landfills are required to establish background levels for chemical constituents that may be present in the groundwater beneath the landfill under 9VAC 20-80-300. C. 3 and 4.

6. Specifically, pursuant to 9 VAC 20-80-300. C. 4.d, owners and operators of CDD landfills are required to propose groundwater protection standards for certain chemical constituents identified in Table 5.1, as appended to 9 VAC 20-38-30, to the Department for its approval.

[1] This citation to the Virginia Solid Waste Management Regulation, and all subsequent citations, contained herein, refer to the version of the regulation effective September 24, 2003.

7. Pursuant to 9 VAC 20-80-300 C.4.d., after the Department approves the groundwater protection standards for a CDD landfill, owners and operators of CDD landfills are required to sample and analyze the groundwater to measure the levels of constituents present in the groundwater on a semiannual basis. If the analytical test results show that one or more of the Table 5.1 constituents statistically exceed the groundwater protection standards, the owner or operator is required to notify the Department within 14 days after this finding.

8. Pursuant to 9 VAC 20- 70-113 .A, within 120 days after an owner or operator of a CDD landfill finds that a groundwater protection standard has been statistically exceeded, an additional $1,000,000 in financial assurance is required. Further, pursuant to 9 VAC 20-70-170.G. an owner or operator of a landfill demonstrating financial assurance with a letter of credit is also required to establish a standby trust fund.

9. Pursuant to 9 VAC 20-80-310, within 180 days from the date the constituents have been exceeded at statistically significant levels, owners and operators of CDD landfills are required to complete an assessment of corrective measures or a proposal for presumptive remedies.

10. Rainwater Concrete asserts that it has had an active groundwater monitoring program since 1985 and it had notified DEQ and its predecessors since that time that the substances were present in the groundwater at levels above those that subsequently became the established groundwater protection standards.

11. On October 30, 2001, the Department established maximum levels of contaminants for 26 constituents that had been detected in the groundwater beneath the Facility.

12. Subsequent to October 30, 2001, Rainwater Concrete sampled and analyzed the groundwater on the following dates: a) November 14, 2001; b) April 29, 2002; c) November 6, 2002; d) August 28, 2003; and e) November 25, 2003, in accordance with 9 VAC 20-80-300.C.4.d. The analytical test results show that levels of chloroform, tetrachloroethene, tlichloroethene, vinyl chloride, and beryllium, as measured in the groundwater exceeded the groundwater protection standards. Rainwater Concrete will continue to sample and analyze groundwater as required by 9 VAC 20-80-300.C.4.d.

13. On March 1, 2002, Rainwater Concrete notified the Department that the levels of constituents exceeded the groundwater protection standard. By submitting the notification required by 9 VAC 20-80-300. C. on March 1, 2002, the Department asserts that Rainwater Concrete apparently exceeded the 14 day notification period that began on November 14, 2001.

14. On October 15, 2004, Rainwater Concrete submitted a letter of credit in the amount of $1,000,000 as required by 9 VAC 20-70-113.A. The Department asserts that submitting the letter of credit on October 15, 2004, Rainwater Concrete apparently exceeded the 120 day submission period to demonstrate additional financial assurance that began on November 14, 2001. Further, the Department asserts that Rainwater has not established a standby trust as required by 9 VAC 20-70-170.G.

15. On February 13, 2004, Rainwater Concrete submitted a study reflecting the nature and extent of the contamination ("Nature and Extent Study") and a proposal for presumptive remedies to the Department. By submitting the proposal for presumptive remedies as required by 9 VAC 20-80-310 on February 13, 2004, the Department asserts that Rainwater Concrete apparently exceeded the 180 day submission period to complete an assessment of corrective measures or submit a proposal for presumptive remedies that began on November 14, 2001.

16. By letter dated March 11, 2004, the Department notified Rainwater Concrete that the proposal for presumptive remedies was incomplete because Rainwater did not include, among other things, the following items: a) a map showing the plume and identifying the location of each constituent that exceeded groundwater protection standards; b) documents demonstrating that Rainwater Concrete published a notice as required by 9 VAC 20-80-310.A.4.e. to discuss the proposed presumptive remedy; c) a proposal for an appropriate containment of the landfill mass; and d) a risk assessment that evaluated all 26 constituents of detected in the groundwater beneath the Facility.

17. By letter dated May 7, 2004, Rainwater submitted the items requested by the Department in its letter dated March 11, 2004. Further, on July 22, 2004, Rainwater Concrete held a public meeting to discuss the proposal for presumptive remedies.

18. By letter dated November 23, 2004 ("November Letter"), the Department informed Rainwater Concrete that the Nature and Extent and Study did not adequately demonstrate the levels and types of contaminants in the groundwater and sufficient information regarding the radial flow of the groundwater.

19. In a letter dated January 7, 2005, Rainwater Concrete asserted that the Nature and Extent Study was sufficient. Rainwater Concrete also submitted a revised proposal for presumptive remedies.

20. During a meeting between the Department and Rainwater Concrete on March 3, 2005 ("March 2005"), the Department explained to Rainwater Concrete what items it sought from Rainwater Concrete to complete its review of the Nature and Extent Study and the proposal for presumptive remedies. Rainwater Concrete agreed to submit those items.

21. By letter dated April 25, 2005, Rainwater Concrete submitted the items that the Department requested in its November Letter and at the March 2005 meeting.

22. By letter dated August 9, 2005, the Department informed Rainwater Concrete that the Nature and Extent Study is adequate and requested that Rainwater Concrete submit a Corrective Action Plan and a Corrective Action Monitoring Plan that meets the requirements contained in 9 VAC 20-80-310 A.3. and B. to the Department. Both Plans were submitted to the Department on October 30, 2005, along with an application for a major permit modification to implement the Plans.

23. To implement the corrective action measures undertaken pursuant to 9 VAC 20-80-310, owners and operators of CDD landfills are required to amend their permits in accordance with 9 VAC 20-80-620.

24. Rainwater Concrete's "Unauthorized Waste Control Plan," which is part of the Rainwater Landfill Operating Plan, requires Rainwater Concrete to conduct monthly training meetings to evaluate the program with all responsible personnel. In the Department's inspection report dated March 17, 2003, the Department requested Rainwater Concrete to conduct refresher Unauthorized Waste Training to the Facility's staff. The Department inspected the Facility on June 2, 2003 and observed that Rainwater Concrete had no records available to demonstrate that it had conducted refresher training or monthly meetings since the previous inspection. The Department asserts that during the inspection held on June 2, 2003, Rainwater Concrete staff admitted to DEQ that Rainwater Concrete did not conduct the refresher training or hold monthly meetings as provided in the Rainwater Landfill Operating Plan.

25. Pursuant to 9 VAC 20-80-260.B.9 landfills are required to either be equipped with a decomposition gas venting system or have implemented a gas monitoring program unless the owner or operator can demonstrate that gas formation is not a problem at the facility. Based on an inspection by the Department on June 6, 2003 and a review of DEQ records, the Department asserts that Rainwater Concrete had failed to demonstrate it had been equipped with a gas venting system, had implemented a gas monitoring plan, or otherwise demonstrate that gas formation is not a problem at the Facility. On October 29, 2004, Rainwater Concrete submitted a landfill gas monitoring program to DEQ pursuant to a commitment made by Rainwater Concrete to the Department to resolve Department concerns.

26. DEQ inspection reports indicate that the Facility laterally expanded solid waste landfilling operations into an area known as Phase E-1 some time between the Department's October 28, 2002 and February 25, 2003 inspections. 9 VAC 2080-60 requires facilities to notify DEQ at least 60 days prior to expanding beyond the waste boundaries existing on October 9, 1993. Rainwater Concrete contends that the entire Rainwater Landfill, including Phases E-1 and E-2 were within the waste boundaries existing on October 9, 1993. Rainwater Concrete also asserts that it acted consistent with the requirements of House Bill 1205, including the professional engineer's certification required, dated October 7, 1993, and DEQ's acknowledgement, dated October 14, 1993 of the statements required by House Bill1205. DEQ asserts that Phase E-2 must contain liners and leachate collection systems in accordance with current regulations because Rainwater Concrete exceeded the waste disposal area at Rainwater Landfill.

27. Pursuant to 9 VAC 20-80-260.C.11.b, a minimum one-foot thick progressive cover must be maintained weekly so that that the top of the lift is covered at the end of the work week. During an inspection of the Facility on Monday, May 2, 2005, DEQ staff asserts that they observed that waste deposited the previous week had not been covered as required by9 VAC 20-80-260.C-11.b. Rainwater Concrete staff reported that because of heavy rain the previous Saturday, and because the exposed area was being prepared for final cover, it had been neither practical nor safe to cover the entire week's waste that day. Further, 9 VAC 20-80-520.C.2.c, in pertinent part, provides that a facility's "Operations Manual shall consist of at least the following information ... Daily

operations including a discussion of ... wet and cold weather operations..." The Department asserts that the Facility's Operating Plan does not adequately address cover operations during wet weather or when wet weather is anticipated.

28. The Department has reviewed Rainwater Concrete's Operations Manual and Closure Plan and asserts that they are deficient in the following areas (Rainwater Concrete asserts these documents are sufficient):

A. Evidence of communication to Fairfax County emergency response agencies regarding Facility access and emergency response planning *(e.g.* police, fire and rescue) in accordance with 9 VAC 20-80-520.C.2.k(2).

B. A method in the Operations Manual for compaction and cover requirements during precipitation events as required by 9 VAC 20-80-520.C.2.c., particularly those that occur at the end of week when weekly cover must be applied.

C. Disclosure in the Operations Manual of the municipalities, industries and collection and transportation agencies served by the Facility as required by 9 VAC 20-80-520.C.1.

D. A Closure Plan updated to comply with 9 VAC 20-80-260.E and 9 VAC 20-80-520.A.2. , including a description of how the Facility intends to address the removal of other material that is currently stored on the closed landfill areas including concrete, railroad ties, brush, and other clearing debris.

E. A Post-closure Plan updated to comply with the 9 VAC 20-80-260.F and 9 VAC 20 80-520.A.2.

29. Pursuant to Va. Code 10.l-1409.B.3. and 9 VAC 20-80-620.E the Director may amend or attach conditions when an investigation has shown the need for additional equipment, construction, procedures and testing to ensure the protection of public health and the environment from significant adverse affects; and/or when the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations.

30. The Department issued a Warning Letter to Rainwater Landfill on March 17, 2003 and issued Notices of Violation on October 29, 2003 and June 15, 2005. Rainwater Concrete has denied the allegations of those letters by, inter alia, letters of November 19, 2003, April 14, 2004, April 26, 2004, May 12, 2004, May 28, 2004, July 19, 2004, September 2, 2004, September 30, 2004, October 22, 2004, January 27, 2005, March 2, 2005 and June 27, 2005.

31. Rainwater Concrete asserts that the Rainwater landfill has always operated and continues to operate in accordance with its permits and applicable law.

SECTION D: Agreement and Order

Accordingly the Virginia Waste Management Board, by virtue of the authority granted it in Va. Code §§ 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455, orders that Rainwater Concrete voluntarily agrees that:

1. Rainwater Concrete shall perform the actions described in Appendix A to this Consent Order to remedy the asserted violations described above.

2. Rainwater Concrete shall pay a civil charge of $35,000 within 30 days after the effective date of the Consent Order in settlement of the asserted violations cited in this Consent Order. Payment shall be made by check payable to the "Treasurer of Virginia," delivered to:

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

Either on a transmittal letter or as a notation on the check, Rainwater Concrete shall indicate that this payment is submitted pursuant to this Consent Order and shall include the Federal Identification Number for the Rainwater Concrete Company.

SECTION E: Administrative Provisions

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

2. This Consent Order only addresses and resolves those asserted violations specifically identified herein, including those matters addressed in the Warning Letter issued March 17, 2003 and the Notices of Violation issued October 29, 2003 and June 15, 2005, as listed above in Section C. This Consent 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 Consent Order. This Consent 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 Consent Order and subsequent actions with respect to this Consent Order, Rainwater Concrete admits the jurisdictional allegations, but does not admit the factual findings and conclusions of law contained herein. Neither this Consent Order nor any statement herein shall be construed as an admission by Rainwater Concrete, or any shareholder, director, or officer thereof.

4. Rainwater Concrete consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Consent Order.

5. Rainwater Concrete declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2-4000 *et seq.*, 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; except that it reserves its right to a hearing or other administrative proceeding authorized or required by law, or to judicial review or any issue of fact or law contained in any subsequent amendments to this Order issued without the consent of Rainwater Concrete. 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 Consent Order.

6. Failure by Rainwater Concrete to comply with any of the terms of this Consent 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 Consent Order is found to be unenforceable for any reason, the remainder of the Consent Order shall remain in full force and effect.

8. Rainwater Concrete shall be responsible for failure to comply with any of the terms and conditions of this Consent Order unless compliance is made impossible by earthquake, flood, other acts of God. war, strike, or such other occurrence. Rainwater Concrete shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rainwater Concrete 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 this Consent 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 three business days of learning of any condition above, which Rainwater Concrete 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 Consent Order.

9. This Consent Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Consent Order shall become effective upon execution by both the Director or his designee and Rainwater Concrete. Notwithstanding the foregoing, Rainwater Concrete agrees to be bound by any compliance date, which precedes the effective date of this Consent Order.

11. This Consent Order shall continue in effect until (a) the Director or Board terminates the Consent Order in his or its sole discretion upon 30 days written notice to Rainwater Concrete, or (b) until the Regional Director has determined that the requirements of the Order have been met in a. timely fashion, whichever occurs first. Termination of this Consent Order, or any obligation imposed in this Consent Order, shall not operate to relieve Rainwater Concrete 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, Rainwater Concrete voluntarily agrees to the issuance of this Consent Order.

And it is so ORDERED this 26th day of JANUARY, 2006.

Robert G. Burnley, Director
Department of Environmental Quality

Rainwater Concrete Company, Inc. voluntarily agrees to the issuance of this Consent Order.

By:

Ray Rainwater, President
Rainwater Concrete Company, Inc.

Date: 11-29-05

Commonwealth of Virginia
City/~~County~~ of Richmond

The foregoing document was signed and acknowledged before me this 29th day of November, 2005, by Ray Rainwater, who is President of Rainwater Concrete Company, Inc. on behalf of said company.

Notary Public Judith B. Conner

My commission expires: 1/31/08

APPENDIX A
SCHEDULE OF COMPLIANCE

1. By February 1, 2006, submit a signed copy of a financial instrument establishing a standby trust fund at a financial institution in accordance with 9 VAC 20-70-150.G.

2. By February 1, 2006, submit a revised Operations Manual, Closure Plan and Post-closure Plan to address the concerns of the Department as identified in Section C.28 of this Consent Order.

3. Prior to disposal of or placement of the waste in Phase E-2, Rainwater Concrete shall construct Phase E-2 in accordance with the Virginia Solid Waste Management Regulations, including but not limited to, installation of a leachate collection system in accordance with 9 VAC 20-80-260.B.8; a liner in accordance with 9 VAC 20-80260.B.14; and a construction quality assurance program in accordance with 9 VAC 2080-260.B.17.