

**COMMONWEALTH OF VIRGINIA  
STATE AIR POLLUTION CONTROL BOARD  
WASTE MANAGEMENT BOARD  
CONSENT ORDER ISSUED TO  
Ralph Smith, Inc.**

**Section A: Purpose**

This is a Consent Order issued under the authority of § 10.1-1182, 10.1-1184, and 10.1-1455(F) of the Code of Virginia (1950), as amended, by the Virginia Waste Management Board and under § 10.1-1182, 10.1-1184, and § 10.1-1316(C) of the Code of Virginia (1950), as amended, by the State Air Pollution Control Board to Ralph Smith, Inc. to resolve certain violations of environmental laws and/or regulations.

**Section B: Definitions**

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

1. “Code” means the Code of Virginia (1950), as amended.
2. “Waste 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. “Air Board” means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
4. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code §10.1-1183.
5. “Director” means the Director of the Department of Environmental Quality.

6. “Order” means this document, also known as a consent order.
7. “VSWMR” means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*
8. “Ralph Smith, Inc.” or “RSI” means the company certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
9. “Facility” means the structure located at 2141 Patterson Ave. in Roanoke, Virginia.
10. “WCRO” means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
11. “O&M” means operations and maintenance.

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

1. Ralph Smith, Inc. owns and operates the Facility.
2. DEQ has noted violations of the State Air Pollution Control Laws and regulations at the Facility. These violations are listed below in the Compliance History. The violations are listed by the inspection date, along with the associated equipment and the enforcement action taken:
  - August 8, 2001 - Fugitive Dust - Sandblasting Booth - August 13, 2002 - Warning Letter
  - September 26, 2001 - Fugitive Dust - Sandblasting Booth - October 17, 2001 - Notice Of Violation
  - November 8, 2001 - Site Inspection - Sandblasting Booth - Informal Resolution of October 17, 2001 Notice Of Violation
3. DEQ has noted an alleged violation of the State Air Pollution Control Laws and regulations. The alleged violation, noted in a Notice of Violation issued by DEQ on July 10, 2002, includes:

On June 20, 2002, DEQ staff observed excessive emissions stemming from the sandblast booth at the Facility. Upon inspection of the facility, DEQ staff observed fugitive emissions stemming from holes in the tarpaulin covers associated with the sandblast booth. DEQ staff requested a written response for this incident.

Listed below are the applicable laws and regulations for the aforementioned observation.

- Section 9 VAC 5-40-20 E of the State Air Pollution Control Board regulations states that an owner or operator, shall at all times, to the extent practical, maintain and operate any affected facility, including associated air pollution control equipment or monitoring equipment, in a manner consistent with good air pollution control practice of minimizing emissions.

- Section 9 VAC 5-40-90 of the State Air Pollution Control Board regulations states that no owner or other person shall cause or permit any materials or property to be handled, transported, stored, used, constructed, altered, repaired, or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne at this facility.
4. On June 25, 2002, the Facility provided DEQ with a written response to the site inspection. This response stated that repairs were made to the covers and that employees would make a more conscientious effort to maintain the covers.
  5. On July 17, 2002, DEQ staff observed excessive emissions originating from the sandblast booth at the Facility. Upon inspection of the Facility, DEQ staff observed fugitive emissions. DEQ staff toured the adjacent road bank and observed dust particles, resembling those used at the Facility, on the vegetation. Staff stated that the particles, pending wind direction, were from the Facility.
  6. On November 9, 2001, a Warning Letter was issued to RSI for the improper management of spent sand blast waste. The letter requested that the waste be managed in accordance with the Virginia Solid Waste Management Regulations (“VSWMR”). It was requested that the waste be removed from the site and properly disposed of within 90 days.
  7. A response letter from RSI was received by the Department on November 20, 2001. The letter stated that a management plan would be submitted within two weeks. The plan has not been submitted.
  8. RSI was notified on December 3, 2002 and January 9, 2002 that the waste must be managed in accordance with the VSWMR. It was further stated that if a method for re-use could be determined that RSI could apply for a beneficial use determination.
  9. On March 7, 2002, DEQ staff performed a visual inspection of the waste pile. It did not appear that any steps had been taken to remove or containerize the waste.
  10. On July 23, 2002, a Warning Letter was issued to RSI for continued failure to properly manage the solid waste. The Warning Letter requested that a waste management plan be submitted within 30 days and that the solid waste be properly disposed of within 90 days.
  11. On August 6, 2002, DEQ staff met with Mr. Smith. Mr. Smith was again informed that the Department requested a waste management plan on or before August 22, 2002 and disposal of the waste on or before October 22, 2002.
  12. On August 28, 2002, a visual inspection of the property was conducted. The waste sand pile had not been containerized, nor did it appear that any of the sandblast waste had been removed for proper disposal.

13. On September 19, 2002, a Notice of Violation (“NOV”) was issued for improper management of spent sand blast material.

**Section D: Agreement and Order**

By virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316 (Air), and §10.1-1455 (waste), and upon consideration of Va. Code § 10.1-1186.2, the Board orders RSI, and RSI agrees, to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders RSI, and RSI voluntarily agrees, to pay a civil charge of Three Thousand Dollars (\$3,000.00) in settlement of the violations cited in this Order without admission of culpability.

1. RSI shall pay Seven Hundred Fifty Dollars (\$750.00) of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the “Treasurer of Virginia,” delivered to:

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

The payment shall include RSI's Federal ID number.

2. RSI shall satisfy Two Thousand Two Hundred and Fifty (\$2,250.00) of the civil charge upon completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.
3. By signing this Order RSI certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.
4. RSI acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by RSI to a third party, shall not relieve RSI of its responsibility to complete the SEP as contained in this Order.
5. In the event it publicizes the SEP or the SEP results, RSI shall state in a prominent manner that the project is part of a settlement for an enforcement action.
6. The Department has the sole discretion to:
  - a. Authorize any alternate SEP proposed by the Facility; and
  - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

7. Should the Department determine that RSI has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify RSI in writing. Within 30 days of being notified, RSI shall pay the amount specified in Paragraph 2 above as provided in Paragraph 1 above.
8. To remedy the violations described above and bring RSI into compliance with the air and waste regulations, RSI shall 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 RSI for good cause shown by RSI, or after a proceeding as required by the Administrative Process Act for a case decision.
2. This Order addresses only those violations specifically identified herein. 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; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. Solely for the purposes of the execution of this Order, for compliance with this Order, and for and subsequent actions with respect to this Order, RSI consents to the jurisdictional allegations and conclusions of law contained herein, without consenting or admitting to the factual findings. RSI specifically denies any and all criminal or civil liability with regard to the jurisdictional allegations, factual findings and conclusions of law contained herein with respect to any matter arising outside of the scope of this Order, and both the Board and RSI agree that RSI has engaged in the preparation and execution of this Order in an effort to compromise and settle any and all disputes with the Board without recourse to litigation.
4. RSI declares that it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, the Virginia Waste Management Act, Code §§ 10.1-1400 *et seq.*, and the Air Pollution Control Law 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.
5. Failure by RSI 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.

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. RSI 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. RSI must show that the circumstances resulting in the noncompliance were beyond its control and were not due to a lack of good faith or diligence on its part. RSI shall notify the Director and the Director of the Department's West Central Regional Office ("WCRO") 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 Director of the Department's West Central Regional Office as soon as reasonable practicable under the circumstances then existing 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.

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 both the Director of the Department of Environmental Quality or his designee and RSI. Notwithstanding the foregoing, RSI agrees to be bound by any compliance date that precedes the effective date of this Order.
10. This Order shall continue in effect until:
  - a. RSI petitions the Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that RSI has satisfied all the requirements of the Order is a "case decision" within the meaning of the Administrative Process Act.

- b. The Director may terminate this Order in his sole discretion upon 30 days written notice to RSI.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve RSI from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

By the signature of Mr. Ralph Smith, RSI voluntarily agrees to the issuance of this Order.

\_\_\_\_\_ Date: \_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

Seen and Agreed to: \_\_\_\_\_  
Ralph Smith, Inc. by Mr. Ralph K. Smith, President

The foregoing instrument was acknowledged before me on \_\_\_\_\_

By President of Ralph Smith Inc., in the City of Roanoke, Commonwealth of Virginia.

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

My Commission expires: \_\_\_\_\_

**APPENDIX A –SCHEDULE OF COMPLIANCE**

RSI shall:

1. Within **30 days** of the effective date of the Order, properly dispose of the waste sand blast sand. RSI shall provide, in writing, proper documentation (tipping receipts) of the disposal.
2. Within **30 days** of the effective date of the Order, submit to the DEQ for approval a waste management plan. The plan should address the proper management, storage, and disposal of the waste sand blast sand.
3. Within **45 days** of the effective date of the Order, submit to the DEQ for approval a Comprehensive Environmental Management System (“EMS”) for the Facility. The purpose of developing the Comprehensive EMS is to assist RSI in its efforts to comply with federal, state, and local environmental requirements. Details for the EMS are included in Appendix C.
4. Within **30 days**, implement the following measures in order to minimize the duration and frequency of excess emissions, with respect to air pollution control equipment and process equipment which affect such emissions:
  - a. Develop a maintenance schedule and maintain records of all scheduled and non-scheduled maintenance.
  - b. Maintain an inventory of spare parts.
  - c. Have available written operating procedures for equipment. These procedures shall be based on the manufacturer’s recommendations, if applicable.
  - d. Train operators in the proper operation of all such equipment and familiarize the operators with the written operating procedures. RSI shall maintain records of the training provided including the names of trainees, the date of training and the nature of the training.
5. Within **30 days** from the effective date of the Order, submit to the DEQ accurate, up to date documentation demonstrating that all maintenance employees have been trained in Operation and Maintenance procedures for all associated air pollution control equipment.

**APPENDIX B – SUPPLEMENTAL ENVIRONMENTAL PROJECT**

RSI shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by RSI is to provide funds in the amount of Two Thousand Two Hundred and Fifty (\$2,250.00) to the Roanoke Valley Greenways. The funds will be used solely for the purpose of creating a ‘rain garden’ on the Murray Run Greenway, in Roanoke, VA. The ‘rain garden’ will be located near the James Madison Middle School baseball field, at the corner of McNeil Drive and the service road to the school. The rain garden will provide a bio-retention area that will prevent excessive runoff into a feeder channel to Murray Run and the plants used in the garden will provide phyto-remediation and improve the quality of the water. The rain garden will also serve as an educational project for the middle school located nearby.
2. The SEP shall be completed within 30 days of the effective date of this Order. RSI shall submit funds totaling not less than \$2,250.00 to the Roanoke Valley Greenways with the express provisions that:
  - a) The funds shall be used only for the rain garden project specified in the Roanoke Valley Greenways April 10, 2003 submittal.
  - b) The Roanoke Valley Greenways shall provide a letter to RSI that the funds shall be used only for the rain garden project.
  - c) The Roanoke Valley Greenways shall provide a letter to RSI that the project has been completed.
3. RSI shall verify its completion of the SEP in writing by providing the Department with required documentation. The required documentation shall include:
  - a) A copy of the funds transmittal letter to the Roanoke Valley Greenways.
  - b) A copy of the Roanoke Valley Greenways letter confirming the sole use of the funds for the rain garden.
  - c) A copy of the Roanoke Valley Greenways letter confirming completion of the project.

The funds transmittal letter must be submitted to the Department within forty-five (45) days from the effective date of the Order.

4. RSI shall submit to the Department written verification of the final overall and net cost of the SEP in the form of proof of payment, or similar documentation within forty-five (45) days of the effective date of the permit.

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5. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Jerry R. Ford, Jr., Enforcement Specialist - Senior  
DEQ – West Central Regional Office  
3019 Peters Creek Road  
Roanoke, VA 24019

## **APPENDIX C – ENVIRONMENTAL MANAGEMENT SYSTEMS (“EMS”)**

A comprehensive compliance-focused EMS shall be developed, implemented, and maintained by the organization. The EMS shall address, at a minimum, the eight elements listed below, and shall be described in an “Environmental Management System Manual”.

The EMS Manual shall be organized to clearly address the following key elements.

### **Environmental Policy**

This policy, upon which the EMS is based, must clearly communicate management commitment to achieving compliance with applicable federal, state, and local environmental statutes, regulations, enforceable agreements, and permits (hereafter, “environmental requirements”).

### **Organization, Personnel, and Oversight of EMS**

- Identifies management and other individuals having environmental performance and regulatory compliance responsibilities.
- Defines specific duties, roles, and responsibilities, and authorities of key environmental program personnel in implementing and sustaining the EMS.

### **Accountability and Responsibility**

- Specifies accountability and environmental responsibilities of RSI managers.
- Describes potential consequences for departure from specified operating procedures.

### **Assessment, Prevention, and Control**

- Identifies a process for assessing operations for the purpose of preventing and controlling releases, ensuring environmental protections, and maintaining compliance with statutory and regulatory requirements. This section shall describe monitoring and measurements, as appropriate, to ensure sustained compliance. It shall also include identifying operations and waste streams where equipment malfunctions and deterioration, operator errors, and discharges or emissions may be causing, or may lead to: (1) releases of hazardous waste or other pollutants to the environment, (2) a threat to human health or the environment, or (3) violations of environmental requirements.
- Describes operations and activities where documented standard operating practices (SOPs) are needed to prevent potential violations or pollutant releases.
- Describes a system for conducting and documenting routine, objective, self inspections by department supervisors and trained staff to check for malfunctions, deterioration, worker adherence to SOPs, and unauthorized releases.

### **Environmental Incident and Noncompliance Investigations**

- Describes standard procedures and requirements for internal reporting of potential violations and release incidents.
- Establishes procedures for investigation, and prompt and appropriate correction of potential violations.
- Describes a system for development, tracking, and effective verification of corrective and preventative actions.

### **Environmental Training, Awareness, and Competence**

- Identifies specific education and training required for organization personnel, as well as the process for documenting the training provided.
- Describes the program to ensure that employees are aware of RSI's environmental policies and procedures, environmental requirements, and their roles and responsibilities within the environmental management system.
- Describes the program for ensuring that personnel responsible for meeting and maintaining compliance with environmental requirements are competent on the basis of appropriate education, training, and/or experience.

### **Maintenance of Records and Documentation**

- Identifies the types of records developed in support of the EMS, who maintains them and where, and protocols for responding to inquiries.
- Specifies the data management systems for any internal waste tracking, environmental data, and hazardous waste determinations.
- Specifies document control procedures

### **Continuing Program Evaluation and Improvement**

- Describes a program for periodic evaluation of the EMS.
- Describes a program for periodic audits of facility compliance.