



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

R. Bradley Chewning
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION

ORDER BY CONSENT ISSUED TO

The Town of Shenandoah

SECTION A: Purpose

This is a Consent Order issued under the authority of Sections 10.1-1455 of the Code of Virginia between the Virginia Waste Management Board and the Town of Shenandoah, Virginia, 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 meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Order" means this document, termed a Consent Order under the authority of the Virginia Waste Management Act.
3. "Waste Board" means the Virginia Waste Management Board, a permanent Citizens' Board of the Commonwealth of Virginia described in Va. Code § 10.1-1401 and § 10.1-1184.
4. "Town" or "Shenandoah" means the Town of Shenandoah, Virginia.
5. "Site" means the parcel of real property owned by the Town of Shenandoah located near the Town of Shenandoah's Public Works Building along Long Avenue.
6. "DEQ" means the Virginia Department of Environmental Quality, an independent

administrative agency within the executive branch of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

7. "VRO" means DEQ's Valley Regional Office.
8. "Director" means the Director of DEQ, whose powers and duties are described in Va. Code § 10.1-1185.
9. "VSWMR" means the Waste Board's Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*
10. "Regulations" means Va. Code §10.1-1408.1.A of the Virginia Waste Management Act (VWMA) and Virginia Administrative Code (VAC) section 9 VAC 20-80-90.A.1 of the Virginia Solid Waste Management Regulations.

SECTION C: Findings of Facts and Conclusions of Law

1. On April 22, 2004, DEQ inspectors responded to a citizen's complaint regarding emissions of smoke from the Town of Shenandoah. DEQ inspectors observed an open burning event at the site. The burn site was located near the Public Works Building on Long Avenue in Shenandoah, Virginia. The burn area measured approximately 30 feet by 60 feet. At the site, the Town of Shenandoah had burned waste, including but not limited to brush, yard waste, air conditioners, paint cans, furniture, and car seats in apparent violation of Va. Code §10.1-1408.1.A and 9 VAC 20-80-90.A.1. DEQ inspectors requested the Town's fire department to extinguish the fire.
2. Va. Code §10.1-1408.1.A provides that: "No person shall operate any sanitary landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste without a permit from the Director."
3. 9 VAC 20-80-80.A.1 provides that: "No person shall own, operate, or allow to be operated on his property any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste in a manner that constitutes open dumping as provided for in Part IV of this Chapter." DEQ had not issued a permit to the Town of Shenandoah to dispose waste at the Site.
4. The brush, yard waste, air conditioners, paint cans, furniture, and car seats constitute "solid waste" as that term is defined by Va. Code §10.1-1400.
5. On May 12, 2004, DEQ issued a Notice of Violation (NOV) to the Town. The NOV described the apparent violations relating to Shenandoah's failure to obtain a permit to dispose waste and allowing its property to be used to dispose waste contrary to Va. Code §10.1-1408.1.A and 9 VAC 20-80-80.A.1.
6. On May 25, 2004, DEQ representatives met with Shenandoah Town Manager Larry Dovel to discuss the circumstances involving the unlawful disposal and burning of waste at the Site.

Mr. Dovel stated that the Town held a public, open burning of brush and yard wastes annually. Mr. Dovel was informed by DEQ that state regulations prohibited persons, including municipal governments, from disposing, treating, or storing solid waste without a permit and that air regulations prohibited the off-site open burning of any type of waste, including brush and yard waste. Mr. Dovel was also informed that any violations of air regulations would be addressed in a separate Order.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders Shenandoah, and Shenandoah voluntarily agrees, to pay a civil charge of \$3,000.00 within 30 days of the effective date of the Order in settlement of the apparent violations cited in this Order. The effective date of this Order shall be the date the Order is signed by the Director, after required notice and approval by the Board. 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

The payment shall include Shenandoah's Federal ID number and shall state that it is being tendered in payment of the civil charge assessed under this Order.

SECTION E: Administrative Provisions

1. This Order only addresses and resolves those apparent 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; 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.
2. For purposes of this Order and subsequent actions with respect to this Order, Shenandoah admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
3. Shenandoah 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. Nothing herein shall be construed as a waiver of the right to any

administrative proceeding for, or to judicial review of, any and all other facts and conclusions of law, including any action taken by the Board to enforce this Order.

4. Failure by Shenandoah 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.
5. 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.
6. Shenandoah 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. Shenandoah shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Shenandoah 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 72 hours of learning of any condition above, which Shenandoah 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.

7. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
8. This Order shall become effective upon execution by both the Director or his designee and Shenandoah. Notwithstanding the foregoing, Shenandoah agrees to be bound by any compliance date which precedes the effective date of this Order.
9. This Order shall continue in effect until:

- a. Shenandoah petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order. The Director's determination that Shenandoah has satisfied all the Requirements of the Order is a case decision within the meaning of the Virginia Administrative Process Act; or
 - b. The Director or the Board terminates this Order in his or its own discretion upon 30 days' written notice to Shenandoah.
10. By its signature below, Shenandoah voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 6th day of July, 2004.

Robert G. Burnley
Robert G. Burnley, Director
Department of Environmental Quality

R. Bradley Channing 8/15

Shenandoah voluntarily agrees to the issuance of this Order.

By: Larry E. Dovel

Date: June 28, 2004

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City/County of Page

The foregoing document was signed and acknowledged before me this 28th day of June, 2004, by Larry E. Dovel, who is
(name)

Town Manager of Shenandoah on behalf of Shenandoah.
(title)

Juanita F. Boudabush
Notary Public

My commission expires: October 31, 2006