

**WASTE MANAGEMENT BOARD ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
TOWN OF COEBURN**

SECTION A: Purpose

This is an Enforcement Order issued by the Virginia Waste Management Board to the Town of Coeburn. This order is issued by the Board, through the Director of the Department of Environmental Quality pursuant to the authority granted to the Board and the Director under sections  10.1-1402 and  10.1-1185 to resolve certain violations of environmental law and regulations.

SECTION B: Definitions

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

1. ACode \equiv means the Code of Virginia (1950), as amended.
2. ABoard \equiv 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. ADepartment \equiv or ADEQ \equiv means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code  10.1-1183.
4. ADirector \equiv means the Director of the Department of Environmental Quality.
5. ASWRO \equiv means the Southwest Regional Office of the Department.
6. AOrder \equiv means this document, also known as a consent order.
7. "Regulations" means the Virginia Hazardous Waste Management Regulations are set

forth at 9 VAC 20-60-12 *et seq.* The Regulations at 9 VAC 20-60-124, 260-266, -268, -270, -273 and -279 adopt by reference certain provisions of Title 40 of the Code of Federal Regulations (CFR). Citations made herein will be to the relevant sections of the CFR which are incorporated by reference into the Regulations.

8. "Town" means the Town of Coeburn.

SECTION C: Findings of Facts and Conclusions of Law

1. The Town is in the midst of a downtown revitalization project that resulted in the transport of approximately five truckloads of contaminated soil to a fill area just outside the Town limits in a residential area.
2. On October 3, 2002 DEQ inspected the fill area in response to a complaint. The inspector visually observed several areas that contained old battery parts and pieces of battery casings.
3. Four soil samples were taken and analytical results showed that levels of lead exceeded the 5 ppm TCLP level and would be considered a hazardous waste.
4. A Notice of Violation was issued to the Town on November 18, 2002 which indicated apparent hazardous waste (HW) violations for failure to transport HW material to a permitted facility, failure to determine if waste was hazardous and failure to obtain an EPA identification number.
5. Code 10.1-1426 states that no person shall transport, store, provide treatment for or dispose of HW without a permit from the Director.
6. Board regulation 9 VAC 20-60-480 H requires a HW shipment that terminates within the Commonwealth of Virginia to be delivered to a permitted facility.
7. 40 CFR 262.11 states that a person who generates a solid waste must determine if the waste is a HW and if so determined must manage it according to the regulations.
8. 40 CFR 262.12 requires that a generator must not dispose of HW without having received an EPA identification number from the Administrator.
9. The SWRO and the Town met on November 6, 2002 and February 4, 2003 to resolve the HW issues.

SECTION D: Agreement and Order

Accordingly the Virginia Waste Management Board, by virtue of the authority granted it pursuant to Va. Code §10.1-1455 (F), orders the Town, and the Town agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders the Town, and the Town voluntarily agrees to pay a civil charge of **\$5,600** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

**Receipts Control
Department of Environmental Quality
P. O. Box 10150
Richmond, Virginia 23240**

Either on a transmittal letter or as a notation on the check or money order, the Town shall indicate that this payment is submitted pursuant to this Order and shall include the Town's Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Town, for good cause shown by the Town or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or 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. 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, the Town admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Town declares it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Waste Management Law, and it 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 for, or to judicial review of, any action taken by the Board to enforce this Order.

5. Failure by the Town 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.
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. The Town 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 act of God, war, strike, or such other occurrence. The Town must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Town shall notify the Director and the Director of the SWRO 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 notify by phone the Director and the Director of the SWRO within 24 hours of learning of any condition listed above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute 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 or his designee and the Town. Notwithstanding the foregoing, the Town 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 Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Town. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. The Town consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
12. By its signature below, the Town voluntarily agrees to the issuance of this Order.

Date: _____

Robert G. Burnley, Director
Department of Environmental Quality

Town of Coeburn

Name: _____

Title: _____

State of Virginia
City/County of _____

The foregoing instrument was acknowledged before me this _____ by
(date)

_____, _____ of the Town of Coeburn.
(name) (title)

Date

Notary Public

My commission expires:

APPENDIX A

In order to comply with the provisions of the State Hazardous Waste Management Law and Regulations, the Town agrees to implement the following actions:

1. The Town shall not treat, store, or dispose of hazardous waste at any facility except in accordance with the Regulations or a permit issued by DEQ for such activity.
2. Within 60 days of the effective date of this Order, the Town shall submit to the DEQ a HW clean-up plan for the fill area as described in section C.2 of this Order. The clean-up plan must identify the steps necessary to perform a HW assessment and clean-up and must include at least the following items:
 - a. Description, location and background of HW landfill material and area.
 - May include maps, figures, and photographs.
 - b. Overview of closure procedures.
 - c. HW analytical test method.
 - d. QA/QC plan and procedures.
 - e. Closure sampling and analyses plan.
 - Sampling of impacted area.
 - Background sampling.
 - f. Clean closure decontamination standards. ('clean closure' is demonstrated by removal of the hazardous waste and the comparison of the hazardous constituent of concern [lead] in the sample compliance data to one of the three decontamination standards in the following list.)
 - Analytical Non-Detection
 - Comparison to background
 - Risk Assessment
 - g. Schedule for closure.
 - h. Certification of closure by owner/operator and P.E.
 - i. Closure report

3. DEQ shall approve, or modify and approve the clean-up plan. Within 90 days of DEQ's notice of plan approval, the Town shall complete the clean-up procedures and submit a final report with the sampling results and disposal information to DEQ. A letter shall accompany the report signed by a Town official and an independent registered professional engineer as provided for in 2.h above.

4. All reports to be submitted to the DEQ shall be mailed to the attention of Ruby Scott, Compliance Auditor, P.O. Box 1688, Abingdon, VA 24212.