COMMONWEALTH of VIRGINIA

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MR. WILLIAM R. FRYE FOR THE PARCEL IDENTIFIED AS TAX MAP 525-2 1-7, 36-3, PARCEL ID 011595 (1135 RADFORD STREET, CHRISTIANSBURG, VIRGINIA) Unpermitted Facility

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and Mr. William R. Frye, regarding the parcel identified as Tax Map 525-2 1-7, 36-3, Parcel ID 011595 (1135 Radford Street, Christiansburg, Virginia), for the purpose of resolving violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

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

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.

2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

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, as described in Va. Code § 10.1-1185.

5. "Facility" or "Site" means the parcel identified as Tax Map 525-2 1-7, 36-3, Parcel ID 011595, located at 1135 Radford Street, Christiansburg, Montgomery County, Virginia, which is owned by Mr. William R. Frye and Mrs. Susan S. Frye.

6. "Mr. Frye" means Mr. William R. Frye, currently a resident of Montgomery County, Virginia. Mr. Frye is a "person" within the meaning of Va. Code § 10.1-1400.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

8. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

9. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*

10. "Va. Code" means the Code of Virginia (1950), as amended.

11. "VAC" means the Virginia Administrative Code.

12. "Virginia Waste Management Act" or "Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

13. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

SECTION C: Findings of Fact and Conclusions of Law

1. On November 5, 2009, June 24, 2009, and November 16, 2010, Department staff inspected the Site for compliance with the requirements of the Virginia Waste Management Act and the Regulations. During each site inspection, the Department compliance staff observed solid waste accumulated on site, including construction and demolition debris ("CDD"), land clearing debris ("LCD") and vegetative waste. A review of Department files indicates that Mr. Frye has not been issued a permit to operate a sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste.

2. VA Code § 10.1-1408.1 requires 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 20-81-40(A) requires that no person shall operate any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste without a permit from the director.

4. 9 VAC 20-81-40(B) requires that no person shall allow waste to be disposed of or otherwise managed on his property except in compliance with this chapter.

5. 9 VAC 20-81-40(D) requires that any person who violates subsection A, B, or C of this section shall immediately cease the activity of improper management and the treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place.

6. On November 10, 2009 and June 28, 2010, based on the inspections and follow-up information, the Department issued two separate Warning Letters to Mr. Frye for the violations described in paragraphs C(2) through C(5), above.

7. In addition to the warning letters, Department compliance staff left phone messages for the owner on November 5, 2010 and November 9, 2010 requesting a response to the WLs sent by the Department. The Department did not receive a response from the owner.

8. On March 1, 2011, Department staff inspected the Site for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Department compliance staff observed piles of CDD and LCD at the site. It appeared that the CDD and LCD had been used for fill material at the site.

9. On April 20, 2011, the Department issued NOV No. NOV-11-04-BRRO-R-001 to Mr. Frye for the violations described in paragraphs C(2) through C(5), above. Mr. Frye failed to file a response to the NOV.

10. On May 9, 2011, Department enforcement staff initiated contact with Mr. Frye as a follow-up to the NOV. Mr Frye asserted that the solid waste at the Site is being dumped by unknown third parties. Mr. Frye agreed to erect a fence to limit access to the property.

11. On June 17, 2011, Department enforcement staff contacted Mr. Frye to ascertain the status of the fence. Mr. Frye stated he had confirmed from the Town that he could erect the fence. Mr. Frye stated he would begin the fence the week of June 20, 2011.

12. On June 28, 2011, Department enforcement staff contacted Mr. Frye to ascertain the status of the fence. Mr. Frye had not installed the fence as stated previous. Mr. Frye stated that the fence will be installed by July 8, 2011.

13. On July 12, 2011, Department enforcement staff conducted an inspection of the Site. The fence had not been installed and the solid waste was still present at the Site. Department enforcement staff spoke with a neighbor and confirmed that various third parties appear to be dumping solid waste at the Site.

14. On July 26, 2011, Department enforcement staff conducted an inspection of the Site. The fence had not been installed and the solid waste was still present at the Site.

15. Department compliance staff conducted an inspection of the Site on August 26, 2011. The fence had not been installed and the solid waste was still present.

16. Based on the results of the November 5, 2009, June 24, 2009, November 16, 2010, March 1, 2011, July 12, 2011, July 26, 2011 and August 26, 2011 inspections, the Board concludes that Mr. Frye has violated Va. Code § 10.1-1408.1 and 9 VAC 20-81-40, as described in paragraphs C(2) through C(5), above.

17. In order for Mr. Frye to return to compliance, DEQ staff and Mr. Frye have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Mr. Frye, and Mr. Frye agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $7,000 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, 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 1104
Richmond, Virginia 23218

Mr. Frye shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Mr. Frye for good cause shown by Mr. Frye, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Mr. Frye admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

5. Mr. Frye declares he has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and he 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 modify, rewrite, amend, or enforce this Order.

6. Failure by Mr. Frye 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.

7. 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.

8. Mr. Frye 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 unforeseeable circumstances beyond his control and not due to a lack of good faith or diligence on his part. Mr. Frye shall demonstrate that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Frye shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days 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 verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend 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.

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

10. This Order shall become effective upon execution by both the Director or his designee and Mr. Frye. Nevertheless, Mr. Frye agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after Mr. Frye has completed all of the requirements of the Order;

    b. Mr. Frye petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Mr. Frye.

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

12. Any plans, reports, schedules or specifications attached hereto or submitted by Mr. Frye and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. Any documents to be submitted pursuant to this Order shall be submitted by Mr. Frye or an authorized representative of Mr. Frye.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By his signature below, Mr. Frye voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2013.

_____
Robert J. Weld, Regional Director
Department of Environmental Quality

Mr. William R. Frye voluntarily agrees to the issuance of this Order.

Date: 8-20-2013 By: William R. Frye
William R. Frye

Commonwealth of Virginia
City/~~County~~ of Roanoke

The foregoing document was signed and acknowledged before me this 20th day of August, 2013, by **William R. Frye**.

Wanda L. Bowman
Notary Public

166229
Registration No.

My commission expires: 12/31/2013

Notary seal:

WANDA L. BOWMAN
NOTARY PUBLIC
REG. #166229
MY COMMISSION EXPIRES 12/31/2013
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

Mr. Frye shall:

1. Not allow other persons to dispose of solid waste or to treat, store, transport, or dispose of solid waste at the Site, except: (a) in accordance with the Act and the VSWMR, as applicable, and (b) in accordance with a permit or emergency permit issued by the DEQ for such activity.

2. Immediately take steps to ensure there is no additional improper disposal of solid waste at the Site.

3. Provide immediate access for DEQ staff to the Site at any reasonable time, with or without advanced notice.

4. No later than 60 days from the effective date of the Order, complete installation of a barrier sufficient to prevent the unauthorized dumping of solid waste at the Site.

5. No later than 90 days from the effective date of the Order, submit an approvable plan of action to the DEQ for the removal and proper disposal of the solid waste currently located at the Site. Upon approval by the DEQ, immediately begin the removal and proper disposal of the solid waste at the Site in compliance with the approved plan.

6. No later than 150 days from the effective date of the Order, complete the removal and proper disposal of fifty percent (50%) of the solid waste at the Site and submit to the DEQ appropriate documentation of the proper removal and disposal of the solid waste at the Site.

7. No later than 270 days from the effective date of the Order, complete the removal and proper disposal of the solid waste at the Site.

8. No later than 300 days from the effective date of the Order, submit to the DEQ appropriate documentation of the proper removal and disposal of the solid waste at the Site.

9. Submit all requirements of Appendix A of this Order to:

   Jerry Ford, Jr.
   Enforcement Specialist - Senior
   VA DEQ – Blue Ridge Regional Office
   3019 Peters Creek Road
   Roanoke, VA 24019
   540/562-6817
   540/562-6825
   Jerry.Ford@deq.virginia.gov