COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

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Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO GREEN EARTH, LLC FOR Solid Waste Permit No. PBR 549

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 Green Earth, LLC, for the purpose of resolving violations of the Virginia Waste Management Act.

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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means the Green Earth, LLC materials recovery facility, located at 3330 Kratzer Road in Rockingham County, Virginia, which is owned and operated by Green

Earth, LLC.

5. "FAR" means the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, 9 VAC 20-70-10 *et seq.*

6. "Green Earth" means Green Earth, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Green Earth is a "person" within the meaning of Va. Code [§ 10.1-1300/§ 10.1-1400/§ 62.1-44.3].

7. "MRF" means a materials recovery facility.

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

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

10. "Permit" means Permit by Rule (PBR) No. 549, which was issued under the Virginia Waste Management Act and the Regulations to Green Earth on November 5, 2008.

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

12. "VAC" means the Virginia Administrative Code.

13. "Virginia Waste Management 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.

14. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. On November 5, 2008, Green Earth was granted a permit to operate a MRF by DEQ. The Permit allows Green Earth to recover recyclable materials.

2. The Facility has been operated as a MRF since the permit was issued. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit.

3. On March 22, 2012, DEQ staff conducted an inspection of the Green Earth, LLC. The purpose of the inspection was to observe the progress the Facility has made in processing the materials in the glass, plastics and wood piles. Staff made the following observations:

    a. A pile of broken glass bottles mixed with crushed aluminum cans and plastic containers has been at the Facility since 2006. It is estimated to be 1.93 acres in area and averages approximately 25 feet in height throughout, equating to

approximately 84,000 tons of material.

b. Green Earth has neither submitted an application, nor has it been issued a permit to operate any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste by the DEQ.

c. Green Earth represented to DEQ staff that it had removed less than 75% of the glass in the pile annually.

4. On May 10, 2012, DEQ issued Notice of Violation No. WS-12-05-VRO-2 to Green Earth for violations listed in C(3) above.

5. On July 6, 2012, Green Earth, LLC signed a Letter of Agreement (LOA) with DEQ, in which Green Earth agreed to "by May 9, 2013, have eliminated the comingled glass stockpile located at the Facility."

6. On April 18, 2013, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act, the Regulations, the Permit and the July 6, 2012, LOA. Based on the inspection and follow-up information, Department staff made the following observations:

   a. Green Earth, LLC signed a DEQ Letter of Agreement (LOA) on July 6, 2012. Accordingly, Green Earth, LLC and DEQ, Valley Regional Office, agreed that Green Earth, LLC should have, by May 9, 2013, eliminated the comingled glass stockpile located at the facility. The comingled glass stockpile remained at the facility and facility representatives stated that the pile would not be removed by May 9, 2013.

   b. During the inspection, DEQ staff observed wood waste onsite which had not been ground or mulched. A recent facility survey documented that 6,039 cubic yards of wood waste remains onsite to be processed. The facility was not operating a grinder during the inspection. According to facility records provided to DEQ, at least 75% of the materials accumulated were not removed from the facility during the past year. Green Earth has neither submitted an application to operate a landfill nor has it been issued a permit to operate a Solid Waste Management Facility by the DEQ.

7. 9 VAC 20-81-95(F) requires that "the following solid wastes are exempt from this chapter provided that they are reclaimed or temporarily stored incidentally to reclamation, are not accumulated speculatively, and are managed without creating an open dump, hazard, or a public nuisance: 2. Clean wood that is to undergo size reduction in order to produce a saleable product, such as mulch… 4. Glass 5. Plastics… 7. Mixtures of above materials. Such mixtures may include scrap metals excluded from regulation in accordance with the provisions of subsection C of this section."

8. 9 VAC 20-81-10 defines speculatively accumulated material as "any material that is accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Materials are not being accumulated speculatively when they can be used, reused, or reclaimed, have a feasible means of use, reuse, or reclamation available and 75% of the materials accumulated are being removed from the facility annually."

9. 9 VAC 20-81-40(A) and (B) require 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," and "no person shall allow waste to be disposed of or otherwise managed on his property except in accordance with this chapter."

10. On May 10, 2013, based on the inspection and follow-up information, the Department issued Notice of Violation No. WS-13-05-VRO-001 to Green Earth for the violations described in paragraphs C(6) through C(9), above.

11. On May 30, 2013, DEQ staff met with Green Earth staff to discuss the violations noted in the NOV and potential remedies and/or corrective actions. Failure to meet the LOA deadline for glass waste removal was attributed to underestimating the time required to process the comingled glass waste and numerous breakdowns of the glass processing equipment. New equipment has been leased and has been onsite since May 7, 2013 and appears to be processing the waste more efficiently. All of the Facility's efforts during the past year have been aimed at removing the comingled glass pile; this resulted in lack of oversight of the wood waste pile, allowing it to accumulate.

12. On May 31, 2013, DEQ staff reviewed financial assurance documentation submitted by Suntrust on behalf of Green Earth and observed the following:

    a. The current financial assurance for the facility is $15,131.44 and the closure cost estimate for 2013 is $15,229.

    b. No financial assurance has been provided for the stockpile areas and the stockpile closure estimate for 2013 is $820,734.

13. 9 VAC 20-70-81(A) requires that "In order to assure that the costs associated with protecting the public health and safety from the consequences of an abandonment or a failure to properly execute closure, post-closure care or corrective action at a facility are to be recovered from the owner or operator, the owner or operator of such facility shall obtain one, or a combination of the financial responsibility mechanisms described in this part. Financial responsibility mechanisms shall be in the amount equal to the cost estimate approved by the department using the procedures set forth in Article 3 (9VAC20-70-111 et seq.) of this part."

14. Based on the results of April 18, 2013 inspection, the May 30, 2013 meeting, and the documentation submitted on May 31, 2013, the Board concludes that Green Earth has violated 9 VAC 20-81-10, 9 VAC 20-81-40(A) and (B), 9 VAC 20-81-95(F) and 9 VAC

20-70-81(A) as described in paragraphs C(6) through C(9) and C(11) through C(13), above.

15. In order for Green Earth to complete its return to compliance, DEQ staff and representatives of Green Earth 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 Green Earth, and Green Earth agrees to:

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

2. Pay a civil charge of $1,300.00 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

Green Earth shall include its Federal Employer Identification Number (FEIN) [54-1979681] with the civil charge payment and 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Green Earth shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Green Earth for good cause shown by Green Earth, 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 and in NOV No.WS-13-05-VRO-001 dated May 10, 2013. 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, Green Earth admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Green Earth 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. Green Earth declares it has received fair and due process under the Administrative Process Act 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 action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Green Earth 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. Green Earth 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 its control and not due to a lack of good faith or diligence on its part. Green Earth shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Green Earth 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 Green Earth. Nevertheless, Green Earth 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 Green Earth has completed all of the requirements of the Order;

    b. Green Earth petitions the Director or his designee to terminate the Order after it 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 Green Earth.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Green Earth from its 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 Green Earth 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. The undersigned representative of Green Earth certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Green Earth to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Green Earth.

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 its signature below, Green Earth, LLC voluntarily agrees to the issuance of this Order.

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

_____
Amy T. Owens, Regional Director
Department of Environmental Quality

Green Earth, LLC voluntarily agrees to the issuance of this Order.

Date: 8-22-13 By: Victoria R. Simmons Executive Vice President
(Person) (Title)
Green Earth, LLC

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 22nd day of August, 2013, by Victoria R. Simmons who is Exec. Vice President of Green Earth, LLC, on behalf of the corporation.

Connie H Newman
Notary Public

7341740
Registration No.

My commission expires: 11-30-2014

Notary seal:

CONNIE H. NEWMAN
NOTARY PUBLIC
REG. #7341740
MY COMMISSION EXPIRES
11-30-2014
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Financial Assurance**

Green Earth shall demonstrate financial assurance for the costs of post-closure care associated with solid waste Permit No. 549, as required by Va. Code § 10.1-1410 and the FAR.

a. By July 1, 2015, Green Earth shall provide an appropriate financial assurance mechanism or combination of mechanisms for all remaining material onsite in addition to the facility under 9 VAC 20-70-140 through 250 and shall submit a complete and approvable financial assurance demonstration packet to:

Virginia Department of Environmental Quality
Office of Financial Assurance
Attention: Leslie Beckwith
Post Office Box 1105
Richmond, VA 23218

b. Green Earth shall respond to any notices of deficiency with respect to its financial assurance cost estimates or mechanisms in accordance with the notice.

2. **Removal of Speculatively Accumulated Waste**

a. Starting with January 30, 2014, Green Earth shall submit quarterly reports for the wood waste pile. These reports shall include current volume on site, amount received and amount shipped during the reporting period. Reports shall be submitted within 30 days of each calendar quarter and will continue for the duration of the time that this Order is in effect.

b. Starting with January 30, 2014, Green Earth shall submit quarterly reports for the comingled glass waste pile. These reports shall include current volume on site and amount shipped during the reporting period. Reports shall be submitted within 30 days of each calendar quarter and will continue for the duration of the time that this Order is in effect.

c. By July 1, 2015, Green Earth shall have reduced the size of the wood waste pile such that no more than a total of 1/3 acre of waste material is stored onsite, and the waste pile does not exceed 15 feet in height above base grade.

d. By July 1, 2015, Green Earth shall have eliminated the comingled glass stockpile located at the Facility. Elimination of the stockpile shall include the separation of the comingled

aluminum and plastics from the glass.

3. **Contact**

Unless otherwise specified in this Order, Green Earth shall submit all requirements of Appendix A of this Order to:

Karen Hensley, Enforcement Specialist Senior
VA DEQ - Valley Regional Office
4411 Early Road
PO Box 3000
Harrisonburg, VA 22801
Office: 540-574-7821 Fax: 540-574-7878
Email: karen.hensley@deq.virginia.gov