COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO OMNISOURCE SOUTHEAST, LLC FOR THE SHREDDED PRODUCTS CORPORATION LANDFILL Solid Waste Permit No. SWP552

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 OmniSource Southeast, LLC, regarding the Shredded Products Corporation Landfill, for the purpose of resolving violations of the Virginia Waste Management Act and the applicable permit and 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 Offices of DEQ, located in Roanoke and Lynchburg, 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 "Landfill" means the Shredded Products Corporation Landfill, located at 700 Commerce Road (off Route 220) in Franklin County, Virginia, which is owned and operated by the OmniSource Southeast, LLC.

6. "OmniSource" means OmniSource Southeast, LLC, a limited liability company authorized to do business in Virginia. OmniSource 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. "Permit" means Solid Waste Permit (SWP) No. SWP552, which was issued under the Virginia Waste Management Act and the Regulations to OmniSource.

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

11. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

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

13. "VAC" means the Virginia Administrative Code.

14. "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.

SECTION C: Findings of Fact and Conclusions of Law

1. On April 15, 1993, Shredded Products Corporation was granted a permit to operate an industrial solid waste landfill by the Director of DEQ or his designee. The Permit allows receipt of non-hazardous solid waste generated by the adjacent automotive reduction plant.

2. The Facility has been operated as an industrial solid waste landfill since the Permit was issued. OmniSource became the owner and operator of the Facility on or about 2007. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit.

3. On August 20, 2013, the Department received the 1st 2013 Semi-Annual ("SA") Groundwater Monitoring Report from OmniSource for the Facility. The report detailed

detections of three organic compounds ("Compounds") in the surface water at Surface Monitoring Point location ("SMP-2") during the May 20 – 21, 2013 sampling event. A verification sampling event was performed at SMP-2 on June 18, 2013 and the presence of the Compounds was confirmed. The concentrations were below any applicable drinking water, groundwater protection, and water quality standard levels.

4. On November 20, 2013, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act, the Regulations and the Permit. Based on the inspection and follow-up information, Department staff made the following observations:

    a. The leachate holding pond ("the Pond") had approximately one (1) foot of freeboard and the two sub grade concrete tanks ("the Tanks") were overflowing.
    b. Staining and washouts around the Pond and the Tanks indicated that overflows had occurred.
    c. The leachate header pipe ("the Pipe") that runs between the landfill and the Tanks was leaking directly into the storm water ditch that runs between the landfill and the Pond and the Tanks.
    d. All storm water from these areas is conveyed to sediment basin #2 ("SB-2") that discharges to an un-named tributary ("UT") of Little Chestnut Creek.
    e. SMP-2 is located below the Pond, the Tanks and SB-2.

5. 9 VAC 20-81-100(B) requires that all solid waste disposal facilities shall be maintained and operated in accordance with the permit issued pursuant to this regulation and in accordance with the approved design and intended use of the facility. The landfill design report and drawings depict 4 feet of freeboard (the distance from the leachate level to the top edge of the pond) in the leachate pond.

6. 9 VAC 20-81-140(A)6)(a) requires that Landfills shall not allow leachate from the landfill to drain or discharge into surface waters except when treated onsite and discharged into a surface water as authorized under a VPDES permit.

7. Department staff requested that OmniSource staff collect a sample of leachate directly from the leak in the Pipe, the storm water ditch, the Pond, and SB-2. OmniSource staff was requested to analyze all samples for Table 3.1 Column A constituents which are what the groundwater and surface water is currently being analyzed for under its groundwater monitoring program. OmniSource agreed to collect and analyze samples.

8. On November 25, 2013, Department staff conducted an inspection of the Facility and observed that the Pond had approximately two (2) feet of freeboard. The inspection occurred after a significant rain event.

9. On December 13, 2013, Department staff conducted an inspection of the Facility and observed that the Pond had approximately one and a half (1.5) feet of freeboard. Department staff also observed that the Tanks had overflowed again. The inspection occurred after a significant rain event.

10. On December 16, 2013, the Department received the analytical results of the samples collected on November 20, 2013. The Compounds, some below their quantitation limits, were detected in one or more of the samples from the storm water ditch, the Pipe, the Pond, and SB-2. The Compounds' concentrations were below any applicable drinking water, groundwater protection, and water quality standard levels.

11. On December 18, 2013, based on the inspection and follow-up information the Department issued Notice of Violation ("NOV") No. NOV-13-12-BRRO-004 to OmniSource, for the violations described in paragraphs C(4), C(5), C(6), C(8) and C(9), above.

12. On January 14, 2014, Department staff conducted an inspection of the Facility and observed that the Pond, after a significant rain event, had approximately (1) foot of freeboard and the Tanks had overflowed again. Leachate was observed discharging into the storm water ditch feeding SB-2. Department staff observed staining and standing water, observed that the pump line running from the leachate pump to the tankers used for hauling the leachate appeared to have a split in it and observed that SB-2 was discharging into the UT of Little Chestnut Creek.

13. Little Chestnut Creek and its tributaries is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

14. On January 16, 2014, based on the inspection and follow-up information, the Department issued Notice of Violation No. NOV-14-01-BRRO-002 to OmniSource for the violations described in paragraphs C(4), C(5), C(6), C(8), C(9) and C(12), above.

15. On December 20, 2013, OmniSource submitted a written response to the first NOV which provided information on the actions taken by OmniSource to address the areas of non-compliance as well as future actions that would address the areas of non-compliance.

16. On January 30, 2014 and May 20, 2014, Department staff met with representatives of OmniSource to discuss the violations, including OmniSource's written response. OmniSource explained that it had been hauling away for off-site disposal large volumes of leachate from the leachate collection pond during the months at issue but that additional heavy rainfall and runoff from a newly opened landfill cell were complicating those efforts.

17. Based on the results of the November 20, 2013, November 25, 2013, December 13, 2013, and January 14, 2014 inspections, and the January 30, 2014 and May 20, 2014 meetings, the Board concludes that Omnisource has violated 9 VAC 20-81-100(B), 9 VAC 20-81-140(A)(6)(a), as described in paragraphs C(4), C(5), C(6), C(8), C(9) and C(12), above.

18. OmniSource has submitted documentation that the violations described in paragraphs C(4), C(5), C(6), C(8), C(9) and C(12), above, have been corrected and DEQ staff and

representatives of OmniSource 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 OmniSource, and OmniSource agrees to:

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

2. Pay a civil charge of **$13,000** 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

OmniSource shall include its Federal Employer Identification Number (FEIN) 56-2256626 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, OmniSource 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 OmniSource for good cause shown by OmniSource, 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 NOV-13-12-BRRO-004, NOV-14-01-BRRO-002, and 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, OmniSource admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.

4. OmniSource 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. OmniSource declares it has received fair and due process under the Administrative Process 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, except that OmniSource reserves its right to a hearing or other administrative proceeding authorized or required by law or to judicial review of any issue of fact or law contained in any subsequent amendments of this Order issued by the Board without the consent of OmniSource. 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 OmniSource 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. OmniSource does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.

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. OmniSource 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. OmniSource shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. OmniSource 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 OmniSource.

11. This Order shall continue in effect until:

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

    b. OmniSource 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 OmniSource.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve OmniSource 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 OmniSource 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 OmniSource 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 OmniSource to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of OmniSource.

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, OmniSource Southeast, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2014

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

OmniSource Southeast, LLC voluntarily agrees to the issuance of this Order.

Date: 7·14·14 By: _____, Regional Manager Virginia
Graham J. Bennett
OmniSource Southeast, LLC

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 14th day of July, 2014, by Graham J. Bennett who is Regional Manager Virginia of OmniSource Southeast, LLC, on behalf of the company.

Carolyn J. Walker
Notary Public

227120
Registration No.

My commission expires: 10/31/14

Notary seal:

CAROLYN J. WALKER
NOTARY
PUBLIC
REG. # 227120
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

OmniSource shall:

1. No later than thirty (30) days from the effective date of the Order, submit to the Department an updated operations manual that includes applicable procedures for properly managing leachate at the landfill. This may include, but is not limited to, conditions to be maintained to prevent the overflow and release of leachate to the environment.

2. Respond to any Department notices of deficiency with respect to the updated operational manual in accordance with the notice.

3. Unless otherwise specified in this Order, OmniSource shall submit all requirements of Appendix A of this Amendment to:

Jerry Ford, Jr.
VA DEQ - Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019
Phone: (540) 562-6817
e-mail: Jerry.Ford@deq.virginia.gov