COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
SHOOSMITH BROTHERS, INC.
FOR THE
SHOOSMITH SANITARY LANDFILL
Solid Waste Permit No. 587

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 Shoosmith Brothers, Inc., regarding the Shoosmith Sanitary Landfill Waste Landfill, for the purpose of resolving certain 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. "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" or "Landfill" means the Shoosmith Sanitary Landfill Waste Landfill located at 11800 Lewis Road in Chesterfield County, Virginia.

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

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

7. "Permit" means Solid Waste Permit No. 587, which was issued under the Virginia Waste Management Act and the Regulations to Shoosmith Brothers, Inc. on December 6, 1995.

8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

9. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*

10. "Shoosmith" means Shoosmith Brothers, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries. Shoosmith is a "person" within the meaning of Va. Code § 10.1-1400.

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

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 10.1-1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. On September 29, 1976, Shoosmith was granted a permit SWP 211 to operate a sanitary Landfill by the Commissioner of the Virginia Department of Health, predecessor-in-interest to the Director of DEQ. Permit SWP 211 was subsequently replaced with Permit SWP 587 by the Board in 1995. The Permit allows for the disposal of municipal solid waste.

2. The Facility has been operated as a sanitary landfill since the Permit was issued. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit. The Facility operates 24 hours per day, 7 days per week.

3. On June 25, 2013, the Department conducted an inspection of the Facility, and observed a leachate seep on the lower slope of the previously closed portions of Cell 6. Additionally, dark stained areas indicative of previous leachate seep were observed in the vicinity of the active seep. Leachate from the seep was observed entering the storm water conveyance channel which discharges to Sediment Basin 10 (SB-10). Leachate and blown litter were observed in SB-10. Ponded leachate was observed outside of SB-10 below the basin outfall. DEQ staff did not observe that immediate actions had been taken to minimize, control, or eliminate the seep, and to contain and properly manage the leachate at the source of the seep at the time of inspection.

4. A review of the Shoosmith file on June 25, 2013, indicates that the Department did not receive verbal or written notification from the Facility of leachate entering and discharging from SB-10.

5. 9 VAC 20-81-530 (C)(3) states "The permittee shall report to the Department any noncompliance or unusual condition that may endanger health or environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the circumstances and its cause; the period of occurrence, including exact dates and times, and, if the circumstance has not been corrected, the anticipated time it is expected to continue. It shall also contain steps taken or planned to reduce, eliminate, and prevent occurrence of the circumstances resulting in an unusual condition or noncompliance."

6. 9 VAC 20-81-210 (F)(2) states "Leachate seeps. If a leachate seep occurs, the owner or operator shall repair the seep and do the following: Take immediate action to minimize, control, or eliminate the seep, and to contain and properly manage the leachate at the source of the seep."

7. During the June 25, 2013, inspection, Department staff observed that sanitary wastes were being disposed of in two areas: Cells 9/22 and Cell 26A. The working faces of Cells 9/22 and Cell 26 were observed to be larger than practicable for the amount of uncovered waste. The daily cover on these areas from the previous day(s) was insufficient at the time of the inspection because it was not placed upon and maintained on all exposed solid waste as necessary. Waste disposed in Cell 9 was being bulldozed over the edge of the top deck of the landfill and down along the slope of a bowl-shaped area below. A large area of uncovered exposed waste without daily cover was observed and the working area was larger than practicable. Additionally, areas in Cells 9/22, 14 and 26 that had previously received some daily cover contained excessive exposed waste.

8. 9 VAC 20-81-140 (B)(1)(a) states "Compaction and Cover requirements. Unless provided otherwise in the permit, solid waste shall be spread into two-foot layers or less and compacted at the working face, which shall be confined to the smallest area practicable."

9. 9 VAC 20-81-140 (B)(1)(c) states "Daily cover consisting of at least six inches of compacted soil or other approved material shall be placed upon and maintained on all exposed solid waste prior to the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter and scavenging."

10. 9 VAC 20-81-140 (B)(2) states "The active working face of a sanitary landfill shall be kept as small as practicable, determined by the tipping demand for unloading."

11. On July 10, 2013, based on the inspection observations, the Department issued NOV No. 2013-06-PRO-603 to Shoosmith for the violations described in Sections C(3) through C(10) above.

12. On August 16, 2013, the Department met with Shoosmith to discuss the NOV. Shoosmith stated that the channelization and runoff on the slope of cell 6 was discovered at the same time DEQ conducted an inspection and the seep was addressed the same day.

13. Shoosmith took immediate action and vacuumed out the liquid from storm water basin #10 and managed the liquid as if it was leachate.

14. Based on the results of the June 25, 2013 inspection, and the August 16, 2013 meeting, the Board concludes that Shoosmith has violated 9 VAC 20-81-530 (C)(3), 9 VAC 20-81-210 (F)(2), 9 VAC 20-81-140 (B)(1)(a), 9 VAC 20-81-140 (B)(1)(c), and 9 VAC 20-81-140 (B)(2), as described in paragraphs C(3) through C(12) above.

15. On August 27 & 29, 2013, the Department conducted follow-up inspections of the Landfill. Although Shoosmith reduced the size of the working face, the Department informed Shoosmith that the working face was still too large.

16. On September 9, 2013, Shoosmith submitted a letter to the Department explaining that the reason for the large working face was the complexity of operating 24 hours-a-day given the current Landfill space constraints. Shoosmith stated it would reduce the active working face by half.

17. On September 11, 2013, Shoosmith submitted photographic documentation (photos taken 8/28 & 9/5) indicating that the large working face had been reduced to an acceptable size and that cover was currently being provided.

18. A site visit conducted on September 19, 2013 confirmed the working face had been reduced to a more manageable size.

19. Based on the August 27, August 29 inspections, the September 9 and September 11 submittals, and the September 19 site visit, DEQ staff and representatives of Shoosmith have agreed that Shoosmith has returned to compliance.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Shoosmith, and Shoosmith agrees to pay a civil charge of $16,000 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

Shoosmith shall include its Federal Employer Identification Number (FEIN) 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, Shoosmith 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 Shoosmith for good cause shown by Shoosmith, 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, Shoosmith admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

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

    b. Shoosmith 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 Shoosmith.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Shoosmith 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 Shoosmith 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 Shoosmith certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Shoosmith to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Shoosmith.

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, Shoosmith voluntarily agrees to the issuance of this Order.

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

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

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Shoosmith Brothers, Inc. voluntarily agrees to the issuance of this Order.

Date: 12-10-13 By: _____, VICE PRESIDENT
Name Title
Shoosmith Brothers, Inc.

Commonwealth of Virginia
City/County of HENRICO

The foregoing document was signed and acknowledged before me this 10 day of Dec, 2013, by J. FLETCHER KELLY on behalf of the corporation.

_____
Notary Public

7039385
Registration No.

My commission expires: 1/31/14

Notary seal: