COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
THE CFS GROUP DISPOSAL & RECYCLING SERVICES, LLC
FOR THE
TRI CITY REGIONAL LANDFILL
Solid Waste Permit No. 228

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 The CFS Group Disposal and Recycling Services, LLC, regarding the Tri City Regional 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. "CFS" means The CFS Group Disposal & Recycling Services, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries. CFS is a "person" within the meaning of Va. Code § 10.1-1400.

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. "Landfill" or "Facility" means the Tri City Regional Landfill located at 390 Industrial Drive in Petersburg, Virginia.

6. "MSE berm" means Mechanically Stabilized Earthen berm.

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 No. 228, which was issued under the Virginia Waste Management Act and the Regulations to The CFS Group Disposal and Recycling Services, LLC. The original permit was issued to the City of Petersburg on July 18, 1977, and sold to CFS on September 1, 2009.

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

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

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 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 July 18, 1977, the City of Petersburg was granted a Solid Waste Permit (SWP) number 228 (Permit) to operate a sanitary landfill by the Commissioner of the Virginia Department of Health, predecessor-in-interest to the Director of DEQ. CFS purchased the landfill from the City of Petersburg on September 1, 2009. The Permit allows for the disposal of municipal solid waste.

2. The Landfill has operated as a sanitary landfill since the Permit was issued. Operations at the Landfill are subject to the Virginia Waste Management Act, the Regulations, and the Permit.

3. On December 11, 2014, the Department conducted an inspection of the Landfill, and observed that the working face was not confined to the smallest area practicable and daily cover was not sufficient to cover exposed waste.

4. 9 VAC 20-81-140 (B)(1)(a) states "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."

5. 9 VAC 20-81-140 (B)(1)(c) requires "Daily cover consisting of at least six inches of compacted soil or other approved material shall be placed upon and maintained on all exposed 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."

6. 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."

7. On December 15, 2014, CFS submitted photographic documentation indicating that the large working face had been reduced to the smallest practicable size.

8. On December 23, 2014, based on the inspection observations, the Department issued NOV No. 2014-12-PRO-602 to CFS for the violations described in Sections C(3) through C(6) above.

9. On January 21, 2015, the Department met with CFS to discuss the NOV and the issuance of a Consent Order.

10. On March 3, 2015, the Department conducted an inspection of the Landfill and observed that the working face of Phase II Cell 1A was not as small as practicable (See cited regulations at C4 and C6 above) and that internal and perimeter roads were impassable.

11. 9 VAC 20-81-130(C) States "All landfill access roads shall be provided with a base capable of withstanding anticipated heavy vehicle loads and shall be all-weather roads extending from the entrance of the landfill to the working face."

12. On March 19, 2015, the Department conducted an inspection of the Landfill and observed that the working face was not confined to the smallest area practicable (See cited regulations at C4 and C6 above), the internal and perimeter roads were impassable (See cited regulation at C11), and daily cover was not sufficient to cover exposed waste (See cited regulation at C5).

13. On April 28, 2015, the Department inspected the Landfill and observed that the working face was larger than practicable, and compaction was inadequate (See C4 and C6 above).

14. On May 4, 2015, DEQ was notified by CFS that they discovered a waste slide on the southwestern slope of cells D and E above the MSE berm. DEQ personnel visited the Landfill on May 5th, 7th, and 12th of 2015 to evaluate the Landfill conditions. During the May 5, 2015, site visit, DEQ staff observed waste had slide over the top and to the bottom of the berm, blocking the perimeter road below and entering a portion of the wooded area on the other side of the road. The approximate 4 acre waste slide toppled a ~400 ft section of the MSE berm which resulted in waste hanging over the berm in addition to waste crossing over and blocking the unlined perimeter access road below the MSE berm. The waste blocking the road varied in height but ranged from approximately 15 to 35 feet high. Waste below the berm extended from the vicinity of Monitoring Well 7 to the corner of the berm nearest sediment basin 2. New incoming waste continued to be delivered and deposited above the slide zone and tipped down the 40 ft high wall into the slide area where repair efforts were occurring.

15. During the Landfill evaluations in May of 2015, the Department observed that the Phase 1 area, previously incorrectly noted as Phase II Cell 1A, was constructed beyond the limits of the liner. Based on survey markers waste has been deposited outside the liner limits by as much as 50 feet. Additionally all the slopes of Phase 1 had a slope grade that exceeded 33% and slope stability calculations for greater than 33% had not been provided to and approved by the Department.

16. 9 VAC20-81-100(B) states "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."

17. 9 VAC20-81-130(P) states "All landfills shall be constructed in accordance with approved plans, which shall not be subsequently modified without approval by the department."

18. During the all May evaluations the Department also observed that all internal roads were not passable as a result of the waste slide.

19. 9 VAC 20-81-140(A)(13) states "Internal roads in the landfill shall be maintained to be passable in all weather by ordinary vehicles. All operation areas and units shall be accessible." 9 VAC 20-81-130(C) states "All landfill access roads shall be provided with a base capable of withstanding anticipated heavy vehicle loads and shall be all-weather roads extending from the entrance of the landfill to the working face."

20. Due to the waste slide, an excessive amount of exposed waste was observed on the slopes of Cell D and E, along the MSE berm access road, below the berm on the unlined perimeter road and on the northern slope of Phase 1. Required cover on cells D and E was not adequate, and the active working face was not as small as practicable. (See C4-C6)

21. On May 28, 2015, the Department issued an NOV No. 2015-05-PRO-602 to CFS citing them for the violations described in Sections C(13) through C(20) above.

22. Based on the results of the December 11, 2014, March 3 & 19, April 28, and May 5, 6, & 7, 2015 inspections, and the January 21, 2015, meeting, the Board concludes that CFS has violated 9VAC 20-81-140 (B)(1)(a), 9VAC 20-81-140(B)(1)(c), 9VAC 20-81-140(B)(2), 9VAC20-81-130(C), 9VAC 20-81-140(A)(13), 9VAC20-81-100(B), 9VAC20-81-130(P), as described above.

23. On June 12, 2015, CFS submitted a compliance restoration plan to restore Cells D & E with final elevations and slopes. The plan contained a stability analysis for the MSE berm, a list of remediation activities completed to date, and planned activities to bring the Landfill back into full compliance with the Regulations. The planned activities are scheduled in 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 CFS, and CFS agrees to:

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

2. Pay a civil charge of $45,767 within 30 days of the effective date of the Order in settlement of the violations described 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

CFS 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, CFS 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 CFS for good cause shown by CFS, 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 Landfill; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, CFS 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. CFS 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. CFS 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 CFS 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. CFS 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. CFS shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CFS 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 CFS. Nevertheless, CFS 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 CFS has completed all of the requirements of the Order;

b. CFS 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 CFS.

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

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, CFS voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2015.

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

----------(Remainder of Page Intentionally Blank)----------

The CFS Group Disposal and Recycling Services, LLC voluntarily agrees to the issuance of this Order.

Date: 8/11/15 By: _____, President + CEO
Name Title
The CFS Group Disposal and Recycling Services, LLC

Commonwealth of Virginia
City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 11 day of August, 2015, by Robert W. Guidry who is President CEO of The CFS Group Disposal and Recycling Services, LLC, on behalf of the company.

Cathy Diane Taylor
Notary Public

7389191
Registration No.

My commission expires: 8-31-2015

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Waste Slide Restoration

a.) CFS will continue to remediate the slide in accordance with the corrective action plan (CAP) submitted to the Department on June 12, 2015. CFS will submit weekly updates to the Department with photographic documentation reporting on the progress with the Landfill restoration until this Order is closed. The remediation of the slide must be completed by October 1, 2015.

b.) Safety briefings will be conducted every morning with all equipment operators and personnel involved in the operation;

c.) Exterior waste slopes will be established at a 2.5:1 slope in order to allow settlement to a 3:1 final configuration. The stability analyses calculations indicate that the temporary 2.5:1 slope will provide a stable configuration while the area settles to the permitted grades. The same analyses conducted for Phase I using a 2.5:1 slope also show this to be a stable configuration for Phase I while the area settles to the permitted grades;

d.) Grade stakes will be set to indicate the required cut/fill depths on the current slopes and the top deck area; Waste will be removed from or added as determined by these grade stakes;

e.) Soils, in areas where excessive soil cover has been applied, will be removed. Excess soils will be stockpiled for use as intermediate cover material;

f.) As waste is placed, the depth of the horizontal waste layers will be kept to one or two feet in order to maximize the effectiveness of the compaction operation;

g.) Intermediate cover will be place on areas as soon as grading/disposal operations to the 2.5:1 slope for that area have been completed;

h.) Operations will continue in this manner as waste is placed to grade, compacted, and covered until the permitted elevations are reached;

i.) If at any time during this restoration process, it is determined that the waste being placed into Cells D and E would cause the permitted final slopes and elevations to be out of compliance, then the excess waste will be transported to another permitted solid waste Landfill for disposal and CFS will notify DEQ.

2. Internal Roads

Within 15 days of the issuance of this Order, CFS will clear all internal roads related to the operation of the active disposal cell making them passable and in compliance with 9 VAC 20-81-130(C) & 9 VAC 20-81-140(A)(13).

3. Daily Cover

CFS will immediately implement adequate daily cover and bring the Landfill into compliance with 9 VAC 20-81-140(B)(1)(c) & (B)(2). Beginning on the day following issuance of this Consent Order for a duration of three months, CFS will take a minimum of three daily, date stamped photographs of the entire working face during the following times: at the beginning of each work day immediately prior to first placement of waste, midway through the work day, and at the end of the work day following placement of final daily cover. CFS will retain the daily photographs at the Landfill for Department inspectors to review upon request. CFS will respond to Department adjustments to the photographic method in order to standardize the position and angle of the resulting photographs for comparison purposes.

4. Contact

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

Frank Lupini
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949A Cox Road,
Glen Allen, Virginia 23060
Frank.Lupini@deq.virginia.gov