COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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VIRGINIA WASTE MANAGEMENT BOARD

ENFORCEMENT ACTION - ORDER BY CONSENT

ISSUED TO

ROBERT E. BRYANT
FOR
190 SHADE TREE ROAD, NEW CANTON, 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 Robert E. Bryant, regarding the property located at 190 Shade Tree Road, New Canton, 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 meanings 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 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.
5. "Notice of Violation" or "NOV" means a type of Notice of Violation under Va. Code § 62.1-44.15.
6. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
7. "Property" means the parcel located at 190 Shade Tree Road, New Canton, VA 23123, and described in Deed Book 40, page 598, in Buckingham County, Virginia, which is owned by Robert E. Bryant.
8. Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*
9. "Robert E. Bryant" or "Mr. Bryant" means the owner of the parcel located at 190 Shade Tree Road, New Canton, VA 23123, and described in Deed Book 40, page 598, in Buckingham County, Virginia.
10. "Va. Code" means the Code of Virginia (1950), as amended.
11. "VAC" means the Virginia Administrative Code.
12. "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. Mr. Robert Bryant owns the property, located at 190 Shade Tree Road, New Canton, Virginia. On December 27, 2012, DEQ BRRO staff conducted a compliance inspection of the Property. The inspection was performed in response to a request by Mr. Kevin Flippen, Buckingham County 911 Coordinator. Department staff made the following observations:

a. DEQ staff observed and photographed in excess of 100 waste tires having been stacked against the up-gradient side of a pile of vegetative and wood waste measuring approximately 125 feet x 75 feet and burned as an accelerant.

b. Staff observed more than 100 additional unburned tires in the immediate vicinity of the burn pile.

c. The Department has not issued a permit for the disposal, treatment or storage of nonhazardous solid waste for the Property.

2. Va. Code § 10.1-1408.1(A) 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. Va. Code § 10.1-1408.1(G) provides that no person shall dispose of solid waste in open dumps.

4. Va. Code § 10.1-1408.1(H) provides that no person shall own, operate or allow to be operated on their property an open dump.

5. 9 VAC 20-81-45(A.)(1) No person shall dispose of solid waste in open dumps, nor own, operate or allow to be operated on his property an open dump as defined in subsection B of this section or § 10.1-1400 of the Code of Virginia. Both permitted and unpermitted sites or facilities may be classified as open dumps.

6. 9 VAC 20-81-45(B.) Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR 257.1 through 257.3-8 are adopted herein and incorporated by reference as part of the Virginia Solid Waste Management Regulations.

7. 40 CFR 257.3-7(a.) provides that the facility or practice shall not engage in open burning of residential, commercial, institutional or industrial solid waste.

8. Va. Code § 10.1-1418.2(B) It shall be unlawful for any person to store, dispose of, speculatively accumulate or otherwise place more than 100 waste tires on public or private property, without first having obtained a permit as required by § 10.1-1408.1 or in a manner inconsistent with any local ordinance. No person shall allow others to store, dispose of, speculatively accumulate or otherwise place on his property more than 100 waste tires, without first having obtained a permit as required by § 10.1-1408.1.

9. On January 24, 2013, DEQ issued Notice of Violation ("NOV") number NOV-13-01-BRRO-001 to Mr. Bryant to address the alleged violations.

10. A meeting was held at DEQ's BRRO with Mr. Bryant and DEQ staff on February 6, 2013 to discuss the noncompliance and the corrective action required. Mr. Bryant explained that he purchased the property in 2008, which the site of a former automobile repair facility, and the tires were present on the property prior to his purchase. Mr. Bryant produced invoices from Emanuel Tire in Appomattox, Virginia for the disposal of 3.73 tons of waste tires hauled from his property, dating back to August, 2012. He explained that he pushed a portion of the waste tires remaining on the property against a debris pile in order to burn the remaining material.

11. Based on the results of the December 27, 2012 inspection and the February 6, 2013 enforcement meeting, the Board concludes that Mr. Robert Bryant has violated Va. Code § 10.1-1408.1(A), (G) and (H); § 10.1-1418.2(B); 9 VAC 20-81-45(A); 9 VAC 20-81-45(B), 40 CFR 257.1(A) and 40 CFR 257.3-7(a), as described in paragraph C.1., above.

12. Mr. Bryant has submitted documentation that verifies that the violations described in paragraph C.1., above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Mr. Robert E. Bryant, and Mr. Bryant agrees to pay a civil charge of $4,270 within

30 days of the effective date of this 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. Bryant 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, Mr. Bryant shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Robert E. Bryant for good cause shown by Mr. Bryant, or on his 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 property; 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. Robert E. Bryant admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Mr. Robert E. Bryant 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. Robert E. Bryant 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. Robert E. Bryant 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. Robert E. Bryant 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 other such occurrence. Mr. Bryant shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Bryant 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 listed above, which Mr. Bryant intends 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, their 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. Robert E. Bryant.

11. This Order shall continue in effect until:

a. the Director or his designee terminates the Order after Mr. Robert E. Bryant has completed all of the requirements of the Order;

b. Mr. Robert E. Bryant 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. Bryant.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mr. Bryant 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. Bryant and approved by the Department pursuant to this Order are incorporated into this Order. Any noncompliance 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. Robert E. Bryant or an authorized representative of Mr. Bryant.

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. Robert E. Bryant voluntarily agrees to the issuance of this Order.

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

_____

Robert J. Weld, Regional Director
Blue Ridge Regional Office
Department of Environmental Quality

(Remainder of this page intentionally blank)

Mr. Robert Bryant voluntarily agrees to the issuance of this Order.

Date: 10/18/13 By: Robert E. Bryant
Robert E. Bryant

Commonwealth of Virginia

~~City~~/County of Buckingham

The foregoing document was signed and acknowledged before me this 18th day

of October, 2013, by Robert E. Bryant.

William Mark Waldrop
Notary Public

262507
Registration No.

My commission expires: 12-31-14.

Notary seal:

William Mark Waldrop
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #262507
My Commission Expires
December 31, 2014

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