COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Secretary of Natural Resources

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Director

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

American Transportation Systems LLC f/k/a American Environmental Group AEG LLC

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455 between the Virginia Waste Management Board and American Transportation Systems LLC and for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "American Environmental Group AEG LLC" or "AEG" means American Transportation Systems LLC, a limited liability company certified to do business in Virginia.

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

2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1401 and 10.1-1184.

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.

8. "Facility" means the former AEG Regulated Medical Waste facility located at 5474 Nansemond River Parkway in Suffolk, Virginia.

7. "Order" means this document, also known as a consent order.

8. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

9. "Regulations" means the Regulated Medical Waste Management Regulations; 9 VAC 20-120-10 *et seq.*

10. "RMW" means Regulated Medical Waste as defined in 9 VAC 20-120-10.

SECTION C: Findings of Fact and Conclusions of Law

1. American Environmental Group AEG LLC ("AEG") is a Virginia limited liability company (LLC), formerly known as American Transportation Systems LLC. On April 4, 2009, AEG was changed back to American Transportation Systems LLC. Mr. Todd E. Schaubach ("Mr. Schaubach") is reported to be the president of AEG. On April 14, 2004, DEQ issued RMW transport registration #IWT0000010173 to AEG with the listed registration address of 508 E. Indian River Road, Norfolk, Virginia.

2. On January 23, 2008, DEQ received an anonymous Pollution Response Program ("PREP") complaint #IR 2008-T-0685 that alleged AEG was operating an unpermitted RMW facility at 5474 Nansemond Parkway in Suffolk, Virginia ("Facility"). AEG does not have a permit from the Department to transfer, treat, store, or dispose of RMW at the Facility.

3. In response to the PREP complaint, on January 24, 2008, DEQ inspected the Facility and observed AEG staff unloading red bags labeled as RMW, with the biological hazard symbol, from re-useable carts into a 40-yard roll-off used as Bulk Outer Package container ("BOP"), that does not conform to 49 CFR 173.197, outside a Facility warehouse building. The transfer of the RMW from the re-useable carts to the roll-off was being conducted in the open, without a cover, on an unpaved lot.

4. Inside the Facility warehouse building, DEQ staff observed a large pile of RMW approximately forty (40) feet by sixty (60) feet and eight (8) feet high, broken RMW bags, bloody rags and sharps spilled from sharps containers that were broken due to mechanical stress from loading with a 'bobcat' in order to move the RMW from the warehouse floor into a 40-yard BOP container located outdoors. The warehouse did not have a door to control access, was not refrigerated, and did not have an approved RMW sanitary sewer system. The majority of the RMW in

the warehouse was not labeled with the date of generation, although several bags indicated a generation date of November 30, 2007 and January 19, 2008.

5. On January 25, 2008, DEQ staff met with Mr. Schaubach at TRO. During the meeting, DEQ staff advised Mr. Schaubach of the apparent AEG unpermitted RMW management activity at the Facility, including loading, repackaging and storage of RMW.

6. On January 28, 2008 and February 1, 2008, DEQ staff conducted additional site visits at the Facility. During those site visits, DEQ staff observed approximately the same amount of RMW located inside the warehouse that was noted during the January 24, 2008 inspection. DEQ staff again observed the transfer of RMW bags from reusable carts into a 40-yard BOP container outside the warehouse (in the open), the warehouse floor was not impermeable and had cracks and gaps, there was no spill containment and cleanup kit available in the vicinity of the RMW management activities, and no apparent cleaning and sanitizing of reused RMW carts. AEG maintains that required spill containment and cleanup kit were on-site; however, AEG personnel could not locate during the inspections.

7. On February 4, 2008, AEG was contacted and advised of the January 28, 2008 and February 1, 2008 inspections that indicated the apparent continuing operation of unpermitted RMW management activities at the Facility. Mr. Schaubach was advised to cease operations and to properly remove the on-site RMW. A site inspection conducted that day February 4, 2008 indicated the same amount of RMW inside the warehouse as the February 1, 2008 inspection, the majority of the RMW in the warehouse was not labeled with the date of generation, although several bags indicated the date of generation was February 2, 2008, and AEG staff continued to unload RMW from reusable carts into a 40-yard BOP container.

8. During subsequent inspections conducted on February 11, February 12 and February 13, 2008, DEQ staff observed RMW stored in BOP containers at the Facility and approximately the same amount of RMW stored inside the warehouse.

9. 9 VAC 20-120-160 of the Regulations requires a person who treats, stores or disposes of RMW to obtain a permit from the Department. Va. Code § 10.1-1408.1A states that "No person shall operate any ... facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director." RMW is a type of nonhazardous solid waste as defined in 9 VAC 20-120-10. DEQ alleges that AEG violated the Va. Code and Regulations by failing to obtain a RMW management permit from the Department for RMW activities at the Facility.

10. 9 VAC 20-120-190 requires the owner or operator of a RMW management facility to obtain financial assurance. DEQ alleges that AEG violated the

Regulations by failing to obtain financial assurance for its RMW management activities at the Facility.

11. 9 VAC 20-120-200 allows the packaging or re-packaging of RMW if the packaging re-packaging is performed on-site where the RMW was generated. AEG is not reported as a generator of RMW. DEQ alleges that AEG violated the Regulations by repackaging RMW from re-useable carts into 40-yard BOP containers at the Facility.

12. 9 VAC 20-120-260 requires re-usable containers used to manage RMW to be thoroughly cleaned with detergent or general purpose disinfectant prior to being reused. DEQ alleges that AEG violated the Regulations by failing to thoroughly clean re-usable carts used for RMW management.

13. 9 VAC 20-120-270 requires a RMW management facility to keep a spill containment and cleanup kit within the vicinity of any area where RMW is managed. DEQ alleges that AEG violated the Regulations by failing to have a spill containment and cleanup kit at the Facility.

14. 9 VAC 20-120-300 does not allow RMW in closed bags or containers to be compacted or subjected to violent mechanical stress. DEQ alleges that AEG violated the Regulations by loading RWM bags and sharps containers with a 'bobcat' while moving the RMW bags and sharps containers from the warehouse floor to an outdoor 40-yard roll-off container.

15. 9 VAC 20-120-340 requires all areas used to store RMW to be clean and impermeable to liquids, without cracks or gaps and closed from vectors. DEQ alleges that AEG violated the Regulations by storing RMW on a concrete floor with expansion joints and cracks inside a warehouse that was open to vectors as the building did not have a door.

16. 9 VAC 20-120-350 requires access to all areas used to store RMW to have access control that limits access to those persons specifically designated to manage RMW. DEQ alleges that AEG violated the Regulations by failing to limit access to the property during the January 24, 2008 and February 4, 2008 inspections as the front gate was unlocked and open, and by failing to limit access to the warehouse, which did not have a door.

17. 9 VAC 20-120-360 requires any RMW stored for greater than seven (7) days to be refrigerated, stored in an ambient temperature between 35° and 45° F. DEQ alleges that AEG violated the Regulations by failing to refrigerate RMW that was stored greater than seven (7) days.

18. 9 VAC 20-120-440 requires RMW storage, transport or transfer to, from, and between vehicles to be under a cover or in a container that protects the waste from the elements and over a floor or bermed pavement that will contain leaks and

spills of liquid from the waste. DEQ alleges that AEG violated the Regulations by transferring RMW from the warehouse to an outdoor, 40-yard BOP container that was located in an unpaved lot.

19. 9 VAC 20-120-450 requires that no person shall transport or receive for transport any RMW that is not packaged and labeled in accordance with 9 VAC 20-120-160 et seq. DEQ alleges that AEG violated the Regulations by receiving unlabeled RMW and failing to properly label RMW that was prepared for transport in 40-yard BOP containers with tarps covering the top of the BOPs.

20. DEQ issued Mr. Schaubach and AEG Notices of Violation on February 6, 2008 and March 7, 2008 advising of the above facts and applicable regulatory and statutory citations.

21. On February 22, 2008, DEQ staff conducted a site inspection at the Facility and found that RMW management activities had stopped, the warehouse floor had been cleaned and pressure washed, and there were no remaining signs of blood or blood products on the warehouse floor.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1455, the Board orders American Transportation Systems LLC, and American Transportation Systems LLC agrees to pay a civil charge of $75,000.00, in settlement of the violations cited in this Order according to the following schedule:

a. By December 31, 2009, American Transportation Systems LLC shall submit a check to the Department in the amount of $3,750.00.

b. Following the initial payment of $3,750.00 as described in the above paragraph D.a., American Transportation Systems LLC shall submit a minimum of $3,750.00 to the Department on or before the end of the calendar quarter for the following 19 calendar quarters (5 year total payment schedule).

c. If the Department fails to receive a payment pursuant to the schedule, described in the above paragraphs D.a. and D.b., the payment shall be deemed late. If any payment is late, the Department reserves the right to demand in writing full payment of the balance owed by American Transportation Systems LLC, under this Order. American Transportation Systems LLC shall pay such balance within 15 days of receipt of a demand letter from the Department. Any allowance by the Department of a late payment by American Transportation Systems LLC shall not serve as a waiver of the Department's reserved right to accelerate payment of the balance.

d. American Transportation Systems LLC shall request in writing any adjustment to the payment schedule described in the above paragraphs D.a and D.b.

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

American Transportation Systems LLC shall include its Federal Employer Identification Number 54-1898007 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of American Transportation Systems LLC for good cause shown by American Transportation Systems LLC or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notices of Violation issued to American Transportation Systems LLC by DEQ on February 6, 2008 and March 7, 2008. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For the purposes of this Order and subsequent actions with respect to this Order, American Transportation Systems LLC admits the jurisdictional allegations but does not admit to the factual findings and conclusions of law contained herein.

4. American Transportation Systems LLC 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. American Transportation Systems LLC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 enforce this Order.

6. Failure by American Transportation Systems LLC 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. American Transportation Systems LLC 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 occurrence. American Transportation Systems LLC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. American Transportation Systems LLC shall notify the TRO Regional Director in writing 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 TRO Regional Director within 24 hours 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, 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 American Transportation Systems LLC. Notwithstanding the foregoing, American Transportation Systems LLC agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to American Transportation Systems LLC. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve American Transportation Systems LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, American Transportation Systems LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2009.

_____
Francis L. Daniel

American Transportation Systems LLC voluntarily agrees to the issuance of this Order.

By: [illegible] pres.

Date: 8/21/09

Commonwealth of Virginia
City/County of Norfolk

The foregoing document was signed and acknowledged before me this 21st day of August (month), 2009, by Todd Schaubach (name), who is President of American Transportation Systems LLC, on behalf of American Transportation Systems LLC.

Cristina Pearson
Notary Public

My commission expires: 10/31/10

Cristina Pearson
Commonwealth of Virginia
Notary Public
Commission No. 7009819
My Commission Expires 10/31/2010