COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
AUGUSTA COUNTY SERVICE AUTHORITY
FOR
AUGUSTA REGIONAL LANDFILL EXPANSION PROJECT
Permit No. 07-0609

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Augusta County Service Authority, regarding the Augusta Regional Landfill Expansion Project, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and/or regulations.

SECTION B: Definitions

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

1. "ACSA" means Augusta County Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* ACSA is a "person" within the meaning of Va. Code § 62.1-44.3.

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

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. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

6. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

7. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.

8. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.

9. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.

10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

12. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344).

13. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.

14. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an

alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

15. "Property" means the landfill off Route 648 (Christians Creek Road), Augusta County, Virginia, owned by ACSA.

16. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

17. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*

18. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.

19. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.14:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.

20. "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 and 9 VAC 25-210-10.

21. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.

22. "USACE" means the United States Army Corps of Engineers.

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

24. "VAC" means the Virginia Administrative Code.

25. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

26. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. ACSA operates the Augusta Regional Landfill for Augusta County and the Cities of Staunton and Waynesboro. ACSA is expanding the current landfill boundaries in order to increase the landfill's capacity for receiving municipal solid waste. The cells included in the expansion are 4A, 4B, 5, 6, and 7. The planned activity results in impacts to State water associated with an unnamed tributary to Christians Creek.

2. On May 5, 2008, DEQ issued Virginia Water Protection Permit No. 07-0609 to ACSA for the Property with an expiration date of May 4, 2023. The Permit authorized permanent impacts to approximately 0.14 acres of palustrine emergent wetlands, permanent impacts of approximately 0.38 acres of open water and permanent impacts to approximately 1,712 linear feet of stream channel associated with an unnamed tributary to Christians Creek, each of which is considered State waters.

3. On February 20, 2009, and February 23, 2009, DEQ requested ACSA provide the status of the Project following a February 2009 compliance file review which found no record of the monthly preconstruction monitoring reports due beginning June 10, 2008, no record of final plans for the project's construction activities authorized by this permit, and no record of a notification of construction submitted prior to commencement of activities in permitted impact areas.

4. On February 23, 2009, ACSA responded to the inquiry by requesting DEQ provide it a copy of its Permit so that it could get the Project back on track. ACSA, however, did not submit the required plan, the monitoring reports or the status of the Project to DEQ.

5. Va. Code § 62.1-44.15:20 states that except in compliance with a VWP permit, it is unlawful to excavate in a wetland, or conduct the following activities in a wetland: (b) filling or dumping…, or new activities that cause significant alteration or degradation of existing wetland acreage or functions, or (3) Alter the physical, chemical, or biological properties of state waters.

6. The Regulations at 9 VAC 25-210-50 A. states that except in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, otherwise alter the physical, chemical or biological properties of surface waters including wetlands.

7. 9 VAC 25-210-90 requires permittees to comply with all conditions of the VWP permit.

8. ACSA's VWP Permit, Part I.D.1. requires monthly preconstruction progress reports by the 10th of each month, beginning June 10, 2008, until construction begins.

9. ACSA's VWP Permit, Part I.D.3. requires final plans for the project construction activities authorized by the permit be submitted 30 days prior to initiating any land activities or construction in permitted impact areas.

10. ACSA's VWP Permit, Part I.D.5. requires the notification at least ten calendar days prior to initiating land disturbance or construction in permitted areas.

11. ACSA's VWP Permit, Part I.D.11. requires construction monitoring reports by the 10th of each month after the month in which monitoring takes place.

12. On March 26, 2009, DEQ issued Warning Letter No. W2009-03-V-1021 to ACSA for the alleged violations cited in (C5), (C6), (C7), (C8), (C9), (C10) and (C11) above based on the file review for failure to submit preconstruction reports, failure to provide construction monitoring reports, failure to provide final plans for the project's construction activities authorized by this permit prior to beginning construction, and beginning construction prior to final plans approval.

13. By letter dated April 29, 2009, in response to the Warning Letter, ACSA indicated that permitted impacts in Phase 4 had been taken, including 0.38 acres of open water and 0.14 acres of PEM wetlands. ACSA confirmed the DEQ's observations in the Warning Letter as accurate and indicated that construction began November 4, 2008. ACSA also submitted final plans for project construction activities, site photos prior to, during, and after construction in Phase 4, and requested an extension for beginning the compensation site work.

14. On May 11, 2009, DEQ issued NOV No. W2009-05-V-0019 to ACSA for the alleged violation cited in (C5), (C6), (C7), (C8), (C9), (C10) and (C11) above for failure to provide the monthly pre-construction progress reports beginning June 10, 2008, failure to provide monthly Construction Monitoring Reports, late submittal of the final plans for the project construction 30 days prior to beginning construction, and failure to provide written notification 10 days prior to beginning construction.

15. On June 12, 2009, Department staff met with representatives of ACSA to discuss the alleged violations and corrective actions necessary for ACSA to return to compliance. During the June 12, 2009 meeting, ACSA asserted that the problems were due to Authority staff turn-over and the change of their engineering consultant company tasked with submitting the reports. DEQ requested ACSA submit a plan and schedule of corrective actions to address the outstanding non-compliance issues.

16. Based on the June 12, 2009 meeting, the file review and documentation submitted April 29, 2009, the Board concludes that ACSA has violated Va. Code § 62.1-44.15:20, 9 VAC 25-210-50., 9 VAC 25-210-90 and the Permit as described in paragraphs (C5), (C6), (C7), (C8), (C9), (C10) and (C11) above.

17. On July 14, 2009, ACSA submitted a written Corrective Action Plan for incorporation into a proposed Consent Order to address the outstanding violations.

18. In order for ACSA to return to compliance, DEQ staff and representatives of ACSA have agreed to the Schedule of Compliance, which will be incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders ACSA, and ACSA agrees to:

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

2. Pay a civil charge of **$8,685** 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

ACSA shall include its Federal Employer Identification Number (FEIN) **[54-0798640]** 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 this Order with the consent of ACSA for good cause shown by ACSA, 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, ACSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. ACSA 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. ACSA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law 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 ACSA 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. ACSA 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. ACSA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ACSA 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 ACSA 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 ACSA. Nevertheless, ACSA 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. ACSA 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

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to ACSA.

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

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, ACSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20____.

_____

Amy T. Owens, Valley Regional Director
Department of Environmental Quality

Augusta County Service Authority voluntarily agrees to the issuance of this Order.

Date: 12/8/2009 By: [signature], Dep. Exec. Dir.
for Ken Fanfoni Executive Director
Augusta County Service Authority

Commonwealth of Virginia
City/County of Augusta

The foregoing document was signed and acknowledged before me this 8th day of

December, 20 09, by Oscar L. Bewley, III who is

Deputy Executive Director of Augusta County Service Authority on behalf of the Augusta County Service Authority.

[signature]
Notary Public

Registration No.

My commission expires: _____

Notary seal:

SALLIE W. TRIMBLE
Notary Public
Commonwealth of Virginia
313648
My Commission Expires Apr 30, 2010

APPENDIX A
SCHEDULE OF COMPLIANCE

1. ACSA shall immediately cease impacts to state waters and shall not resume such impacts unless authorization from DEQ is granted via a Permit.

2. ACSA shall implement and comply with the approved Corrective Action Plan (CAP). Any changes to the approved CAP or schedule shall not be initiated without advance notice to and approval by DEQ.

3. ACSA shall comply with the requirements of its Permit, except as specified in this Order and the approved Corrective Action Plan.

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

Jason Dameron
Environmental Specialist II
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7824 Phone
(540) 574-7878 Fax
Jason.dameron@deq.virginia.gov

and copy

Steve Hetrick
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P.O. Box 3000
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Steven.hetrick@deq.virginia.gov