COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO C & M INDUSTRIES, INC. FOR 4544 BAINBRIDGE AVENUE, CHESAPEAKE 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 C & M Industries, Inc., regarding the Facility at 4544 Bainbridge Avenue, Chesapeake, 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 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. "C & M Industries" means C & M Industries, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. C & M Industries 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. "Facility" means the used-oil processing and transfer facility at 4544 Bainbridge Boulevard in Chesapeake, Virginia, which is owned and operated by C & M Industries.

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

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

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

9. "Solid waste management facility" or "SWMF" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units. 9 VAC 20-80-10.

10. "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any waste to render it more stable, safer to transport, or more amenable to use, reuse, reclamation, or recovery. 9 VAC 20-80-10.

11. "Treatment unit" means a discrete area of land used for the treatment of solid waste.

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

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

14. "VAC" means the Virginia Administrative Code.

15. "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. C & M Industries owns and operates the Facility for the purposes of dewatering used oil and the temporary storage of used and new fuels and petroleum-contaminated wastewater prior to transfer by tanker truck to other C & M Industries facilities for oil recovery or disposal.

2. On January 30, 2009, DEQ compliance staff ("staff") inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the

Regulations. Staff observed in a corner of the Facility a rectangular area (approximately 40 feet by 50 feet) underlain by concrete and confined on three sides by concrete ("jersey") barriers. The confined area contained soils, sediments and/or solidified sludge apparently contaminated with oil. A representative of C & M Industries stated that the confined area was being used to solidify oil-contaminated sludge and soil, by mixing with wood chips, and to gravity separate oily water from the solids. The oily water was collected in a sump pump, removed and sent to another C & M Industries facility for oil recovery and/or wastewater disposal. The C & M Industries representative stated further that the remaining mixture of wood chips and other solids were sent to a permitted solid waste management facility for further treatment or disposal.

3. The process of extracting oily water from solids by mixing oil-contaminated sludge and solids with wood chips is "treatment" as defined by 9 VAC 20-80-10. Consequently, the confined rectangular area, including the three concrete barriers on its perimeter, was an SWMF consisting of a single treatment unit. C & M Industries did not have authorization from DEQ to operate a SWMF.

4. Va. Code §10.1-1408.1 and 9 VAC 20-8-90(A)(1) require any person who treats, stores, or disposes of non-hazardous solid waste to obtain a permit from the Director. C & M Industries violated the Virginia Waste Management Act and the Regulations by failing to obtain a permit to treat non-hazardous solid waste at the Facility.

5. 9 VAC 20-80-90(B) requires any person who violates 9 VAC 20-80-90.A to immediately cease treatment, storage, or disposal of any additional wastes and to initiate such removal, cleanup, closure in place, or alternative remedial actions as are required by Part IV of the Regulations.

6. On March 23, 2009, based on the inspection and follow-up information, the Department issued a Notice of Violation to C & M Industries for the violations described in paragraphs C.2 through C.4, above.

7. On April 22, 2009, C & M Industries submitted a written response to the NOV in which it stated that the activity observed by staff in the confined area during the January 30, 2009, inspection was "for the specific purpose of recovering used oil and water from tank-bottom, by-product solids mixtures." The process was further described as "[o]nce reclaimable oil and water were extracted, wood chips were mixed with the solids to facilitate unloading and burning by permitted facilities for energy recovery operations." C & M Industries asserted that it had performed this activity in good faith. It stated further that solid-waste treatment activities ceased immediately after the January 30, 2009, inspection

8. Based on the results of the January 30, 2009, inspection and the documentation submitted on April 22, 2009, the Board concludes that C & M Industries has violated Va. Code § 10.1-1408.1 and 9 VAC 20-80-90, as described in paragraphs C.2 through C.4, above.

9. On July 28, 2009, C & M Industries provided documentation that it had properly disposed of the contaminated soil and wood chips remaining at the Facility and the concrete barriers that had enclosed the unpermitted SWMF by transporting them to a permitted non-hazardous soil treatment and disposal facility.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders C & M Industries, and C & M Industries agrees to:

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

2. Pay a civil charge of $4,200.00 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

C & M Industries shall include its Federal Employer Identification Number (FEIN) (54-0887698) 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 C & M Industries for good cause shown by C & M Industries, 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, C & M Industries admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. C & M Industries 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. C & M Industries 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 C & M Industries 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. C & M Industries 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. C & M Industries shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. C & M Industries 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 C & M Industries 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 C & M Industries. Nevertheless, 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. C & M Industries 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 C & M Industries.

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

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, C & M Industries voluntarily agrees to the issuance of this Order.

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

_____
Francis L. Daniel, Regional Director
Department of Environmental Quality

C & M Industries, Inc., voluntarily agrees to the issuance of this Order.

Date: 07.29.2009 By: _____, SR. V.P.
(Person) (Title)
C & M Industries, Inc.

Commonwealth of Virginia

City/County of CHESAPEAKE

The foregoing document was signed and acknowledged before me this 29th day of JULY, 2009, by ANTHONY MITCHELL who is SR. V.P. of C & M Industries, Inc., on behalf of the corporation.

_____
Notary Public

7089339
Registration No.

JAMES E. NEWMAN, JR.
Notary Public
Commonwealth of Virginia
My Commission Expires December 31, 2011

My commission expires: 12.31.2011

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

C & M Industries shall:

1. Immediately cease and desist from using the Facility to treat solid waste.

2. Complete remedial action of the area within the Facility that had been used to treat solid waste in accordance with 9 VAC 20-80-210(A) of the Regulations by removing the solid waste and any constituents of solid waste from the treatment unit. All wastes removed shall be characterized in accordance with the Regulations prior to disposal at an appropriate off-site facility. The remedial action will include at a minimum the following components:

    - mitigating the levels of all constituents of solid waste remaining on the surface of the concrete pad that underlies the treatment unit to below the following thresholds: 50 mg/kg of total petroleum hydrocarbons; 10 mg/kg of total BTEX (benzene, toluene, ethyl benzene, and xylene); and 100 mg/kg of total organic halogens
    - submission of proper evidence of proper management of the removed waste and evidence, including confirmatory sampling, of the removal of solid waste and any constituents of solid waste.

3. By September 1, 2009, provide DEQ with an approvable remedial action plan and schedule that includes at a minimum the requirements of 9 VAC 20-80-210(A)(2).

4. Within 30 days of DEQ approval of the remedial action plan required by Item 3 of this Appendix A, implement the DEQ-approved remedial action plan in accordance with the approved schedule. All actions under the approved remedial action plan shall be completed by March 1, 2010.

5. If the foregoing remedial action will not fully address the threat to public health or welfare or the environment, submit to DEQ by no later than January 1, 2010, a letter of intent to pursue an alternate remedial action and a site evaluation in accordance with 9 VAC 20-80-210(C) and, by February 1, 2010, establish a schedule for initiating and completing the alternate remedial action. Before the alternate remedial action may proceed, DEQ shall review the site evaluation and make a determination as provided in 9 VAC 20-80-210(C)(2). All actions under the alternate remedial action shall be completed by August 1, 2010.

6. Mail all submittals and reports required by this Appendix A to:

    Mr. Francis L. Daniel, Regional Director
    DEQ, Tidewater Regional Office
    5636 Southern Boulevard
    Virginia Beach, VA 23462