COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

L. Preston Bryant, Jr.
Secretary of Natural Resources

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VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Crown Orchard Company L.P., L.L.P.
FOR
Crown Orchard 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 Crown Orchard Company, L.P., L.L.P., regarding the Crown Orchard unpermitted facility, 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. "Crown Orchard" means Crown Orchard Company L.P, L.L.P., a limited liability partnership authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Crown Orchard 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 property denoted as tax map parcel #97-1, located in Albemarle County, Virginia, which is owned and operated by Crown Orchard.

6. "FAR" means the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, 9 VAC 20-70-10 *et seq.*

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

10. ."Solid waste" means any material meeting the criteria provided in 9 VAC 20-80-140 and not subject to the exclusions or exemptions found in 9 VAC 20-80-150 or 9 VAC 20-80-160.

11. "Unit" means a discrete area of land used for the management of solid waste (9 VAC 20-80-10)

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 -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

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

SECTION C: Findings of Fact and Conclusions of Law

1. On April 13, 2009, the VRO received a complaint (IR #2009-V-0390) alleging that improper waste disposal practices were occurring at the Facility.

2. On April 14, 2009, Department staff inspected the Facility for conformity with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection information, Department staff made the following observations:

   a) Waste piles containing, but not limited to, household garbage, glass, plastics, diapers, metals, fluorescent light bulbs, batteries, tires, appliances and miscellaneous solid waste was observed covering the ground and partially in the ground.
   b) There is evidence that open burning of solid waste occurred at the facility, but there was no visible evidence of burning at the time of the inspection.
   c) Crown Orchard does not have a permit to operate a solid waste landfill.

3. Va. Code § 10.1-1408.1(H) states, "[n]o person shall own, operate or allow to be operated on his property an open dump"
and the Regulations at Section 9 VAC 20-80-80(A)(1) state, "No person shall own, operate or allow to be operated on his property any sanitary landfill or other facility for the disposal, treatment or storage of solid waste in a manner that constitutes open dumping as provided for in Part IV (9 VAC 20-80-170 et seq.) of this chapter."

4. Va. Code 10.1-1408.1(A) states, "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."
and the Regulations at Section 9 VAC 20-80-90(A)(1) state, "No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of solid waste without a permit from the Director."

5. 9 VAC 20-80-180(B) of the VSWMR states that "any site, other than a municipal solid waste landfill as defined in subsection A of this section, that meets any of the following criteria shall be classified as an open dump: 7. Open burning. a. The site or practice that engages in open burning of residential, commercial, institutional or industrial waste."

6. 9 VAC 20-80-190 of the Virginia Solid Waste Management Regulations (VSWMR) states that "except as provided for in 9 VAC 20-80-170(B) and 9 VAC 20-80-180(A), sites or practices which violate criteria specified in 9 VAC 20-80-180, whether currently active or inactive, shall be classified as open dumps. Practices which violate the criteria shall be classified as open-dumping. B. The owner or operator of an active open dump shall immediately cease treatment, storage or disposal of any additional waste. C. The owner or operator or both or other responsible party shall initiate removal, cleanup or alternate remedial action in accordance with 9 VAC 20-80-210."

7. On April 29, 2009, Department staff performed a follow-up inspection of the Facility for conformity with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations: All of the solid waste appeared to have been removed and the area had been graded, reseeded and covered with straw. DEQ staff received copies of scale weigh tickets and checks made out to a waste hauling contractor and to the local landfill for the waste removed.

8. On April 30, 2009, based on the inspection and follow-up information, the Department issued Notice of Violation No. WS-09-04-VRO-003 to Crown Orchard for the alleged violations described in paragraphs 2 through 5 above.

9. Based on the results of April 14, 2009 inspection, the Board concludes that Crown Orchard has violated Va. Code § 10.1-1408.1(A),(H); 9 VAC 20-80-80(A)(1), and 9 VAC 20-90-90(A)(1) as described in paragraphs 2 through 6, above.

10. On May 5, 2009, DEQ staff held a conference call with representatives of Crown Orchard to discuss the alleged violations, including possible corrective actions Crown Orchard may pursue or be required to pursue in order to properly close the unpermitted landfill. Crown Orchard was willing to perform the requested sampling. DEQ staff reviewed acceptable sampling methods with Crown Orchard.

11. On May 12, 2009, Crown Orchard collected water samples from the stream leaving the dump site and had these samples analyzed for RCRA Metals and volatile organics.

12. On June 4, 2009, DEQ received copies of the laboratory analysis of May 12, 2009 water samples collected by Crown Orchard. DEQ had concerns regarding the sampling techniques used for the May 12, 2009 water samples and requested that additional water samples be collected to ensure that proper sampling protocols were followed.

13. On October 28, 2009, DEQ received a diagram indicating the sampling location and a written description of the method used to collect the initial water samples on May 12, 2009. A statement was subsequently provided by a testing laboratory indicating that the samples were received in appropriate containers and had been correctly preserved for shipment. DEQ staff also received the sampling plan for a second sampling event performed on September 21, 2009. This plan included water sampling locations and a written description of the methods used to collect the water samples. Laboratory testing performed for the second sampling event was more comprehensive and included analyses of RCRA metals, semi-volatile organics, and pesticides. No exceedences of the regulatory standards for surface water were detected during either sampling event. This documentation verifies that the violations described in paragraphs C(2) through C(6), 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 Crown Orchard, and Crown Orchard agrees to:

1. Pay a civil charge of $9,551.00 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

Crown Orchard 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Crown Orchard for good cause shown by Crown Orchard, 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, Crown Orchard admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Crown Orchard 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. Crown Orchard 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 Crown Orchard 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. Crown Orchard 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. Crown Orchard shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Crown Orchard 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 Crown Orchard 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 Crown Orchard. Nevertheless, Crown Orchard 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) Crown Orchard 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 Crown Orchard.

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

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, Crown Orchard voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17th day of November, 2009.

Amy Thatcher Owens, Regional Director
Department of Environmental Quality

Crown Orchard's Federal Employer Identification Number is: 54-0527059

Date: Nov 17 09 By: Henry Chiles, Partner
Crown Orchard Company L.P., L.L.P.

Commonwealth of Virginia
~~City~~/County of Albemarle

The foregoing document was signed and acknowledged before me this 17th day of November, 2009, by Henry Chiles, Partner, on behalf of Crown Orchard Company L.P., L.L.P., a partnership.

Sandra W. Shumaker
Notary Public

253457
Registration No.

My commission expires: 12/31/09

Notary seal: