L. Preston Bryant, Jr.
Secretary of Natural Resources

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO HAILE LANDSCAPING DESIGN, INC. FOR THE SITE LOCATED AT 4612 RIVERSIDE DRIVE, MONTGOMERY COUNTY, 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 Haile Landscaping Design, Inc. regarding the site located at 4612 Riverside Drive, Montgomery County, 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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, 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, as described in Va. Code § 10.1-1185.

5. "Facility" or "Site" means the unpermitted facility, located 4612 Riverside Drive in Montgomery County, Virginia, which is owned by Mr. Nathaniel Haile and operated by Haile Landscaping Design.

6. "Haile" means Haile Landscaping Design, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Haile is a "person" within the meaning of Va. Code § 10.1-1400.

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

8. "Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped or spilled so as to present a threat of a release of harmful substances into the environment or present a hazard to human health. A site or practice that engages in open burning of residential, commercial, institutional or industrial solid waste is considered an open dump.

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

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

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

12. "VAC" means the Virginia Administrative Code.

13. "Vegetative waste" means decomposable materials generated by yard and lawn care or land clearing activities and includes, but is not limited to, leaves, grass trimmings, woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps.

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. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

SECTION C: Findings of Fact and Conclusions of Law

1. On March 16, 2009 Department staff inspected the Site for compliance 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:

    a. Staff observed a pile of vegetative waste, which was generated off site during land clearing activities. The vegetative waste consisted of shrub and tree prunings,

bark, limbs, roots, and stumps. The pile was approximately ten feet wide by fourteen feet long by four feet high.

b. The vegetative waste was discarded at the Site. The vegetative waste is a solid waste.
c. Staff observed the pile of vegetative waste burning.
d. Staff observed a large accumulation of ash under the current burning pile of vegetative waste which indicated open burning had occurred in the past.

2. Va. Code § 10.1-1408(1)(A) and 9 VAC 20-80-90 requires that 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) and 9 VAC 20-80-80(A)(2) requires that no person shall dispose of solid waste in open dumps. The open burning for the purpose of disposal of the solid waste at the Site classifies the Site as an open dump.

4. Va. Code § 10.1-1408(1)(H) and 9 VAC 20-80-80(A)(1) requires that no person shall own, operate or allow to be operated on his property an open dump.

5. Va. Code § 10.1-1408(1)(I) and 9 VAC 20-80-80(A)(1) requires that no person shall allow waste to be disposed of on his property without a permit.

6. On June 1, 2009, based on the inspection and follow-up information, the Department issued a Notice of Violation to Haile for the violations described in paragraphs C1 through C5, above.

7. On June 11, 2009, Department staff met with Mr. Nathaniel Haile, owner of the property and the President of Haile to discuss the violations. Mr. Haile agreed to initiate a clean-up of the vegetative waste pile and the residual ash. Mr. Haile agreed to provide the Department with documentation of the proper disposal.

8. A review of Department files indicates that the Department responded to a similar complaint at the Site in 2008. As a result of that complaint, the Department issued a Warning Letter on June 4, 2008 and followed-up with an on-site meeting to discuss the solid waste management requirements for land clearing debris and vegetative wastes. The Department sent an additional letter, dated August 27, 2008, to Mr. Haile and again reiterated the requirements of the solid waste management regulations.

9. Based on the results of March 16, 2009 inspection and the June 11, 2009 meeting at the Site, the Board concludes that Haile has violated Va. Code § 10.1-1408(1)(A) and 9 VAC 20-80-90, Va. Code § 10.1-1408(1)(G) and 9 VAC 20-80-80(A)(2), Va. Code § 10.1-1408(1)(H) and 9 VAC 20-80-80(A)(1), and Va. Code § 10.1-1408(1)(I) and 9 VAC 20-80-80(A)(1), as described in paragraphs C1 through C5, above.

10. In order for Haile to return to compliance, DEQ staff and a representative of Haile have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

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

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

2. Pay a civil charge of $13,164 in settlement of the violations cited in this Order. The civil charge shall be paid in four quarterly payments of $3,291. The first payment is due no later then 30 days after the effective date of the Order. The second payment is due no later then 120 days after the effective date of the Order. The third payment is due no later then 210 days after the effective date of the Order. The fourth payment is due no later then 300 days after the effective date of the 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

Haile shall include its Federal Employer Identification Number (FEIN) [54-1886953] 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 Haile for good cause shown by Haile, 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, Haile admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

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

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, Haile voluntarily agrees to the issuance of this Order.

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

_____
Steven A. Dietrich, Regional Director
Department of Environmental Quality

Haile Landscaping Design voluntarily agrees to the issuance of this Order.

Date: _____ By: _____, President
Nathaniel Haile
Haile Landscaping Design, Inc.

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of _____, 2009, by Nathaniel Haile who is President of Haile Landscaping Design, Inc. on behalf of the corporation.

_____
Notary Public

_____
Registration No.

My commission expires: _____

Notary seal:

JESSICA H. ROOP
NOTARY PUBLIC
REG. #7084336
MY COMMISSION EXPIRES 3/31/2011
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

Haile Landscaping Design, Inc. shall:

1. Not conduct improper disposal of solid waste at the Site.

2. Not conduct open burning of solid waste at the Site.

3. No later than January 15, 2010, complete the removal and proper disposal of the vegetative waste currently located at the Site. The disposal of the vegetative waste shall occur at a permitted landfill.

4. No later than January 29, 2010, complete the removal and proper disposal of the residual ash from the open burning previously conducted at the Site. The disposal of the residual ash from the open burning shall occur at a permitted landfill.

5. No later than February 12, 2010 submit to the DEQ appropriate documentation of the proper removal and disposal of the vegetative waste pile and the residual ash from the open burning conducted at the Site.

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

   Jerry Ford, Jr.
   Enforcement Specialist - Senior
   VA DEQ – Blue Ridge Regional Office
   3019 Peters Creek Road
   Roanoke, VA 24019
   540/562-6817
   540/562-6825
   Jerry.Ford@deq.virginia.gov