COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO PHILLIP P. JACKSON FOR UNPERMITTED LANDFILL at 941 NEWMAN'S NECK ROAD

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 Mr. Phillip J. Jackson, regarding the landfill on his property at 941 Newman's Neck Road, in Northumberland 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Mr. Jackson" means Phillip P. Jackson, the owner of the property at 941 Newman's Neck Rd. currently a resident of Northumberland County, Virginia. Mr. Jackson is a "person" within the meaning of Va. Code § 10.1-1400

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

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

7. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

8. "Property" refers to the land owned by Mr. Jackson, defined by Tax Map # 18-(1)-25, located at 941 Newman's Neck Rd. in Northumberland County, Virginia.

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

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

11. "VAC" means the Virginia Administrative Code.

12. "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.

13. "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 November 6, 2009, and March 30, 2010, DEQ PRO staff inspected the Property. Based on the inspection and follow-up information, Department staff made the following observations:

    a. On November 6, 2009, DEQ inspector observed household trash, vegetative waste, garbage, crab picking waste, and construction debris and demolition debris waste disposed of on the property referenced above. DEQ has not issued a permit for the treatment, storage or disposal of solid waste at this site.

2. 9 VAC 20-80-90(A) of the Regulations and §10.1-1408.1 of the Virginia Waste Management Act prohibit a person from operating a facility for the disposal, treatment of solid waste or allowing waste to be disposed of on his property without a permit from the Director.

3. On February 3, 2010, the DEQ Office of Financial Assurance found that Mr. Jackson could afford to pay up to $8,310 in clean up and enforcement costs.

4. On May 10, 2010, based on the inspection and follow-up information, the Department issued Notice of Violation No. 2010-05-PRO-601 to Mr. Jackson for the violations described above.

5. On June 24, 2010, Department staff met with Mr. Jackson to discuss the violations.

6. Based on the results of the November 6, 2009 and March 30, 2010 inspections, and the June 24, 2010 meeting, the Board concludes that Mr. Jackson has violated 9 VAC 20-80-90, as described in paragraphs 1 and 2 above.

7. In order for Mr. Jackson to return to compliance, DEQ staff and Mr. Jackson 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 Mr. Jackson, and Mr. Jackson agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

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

4. Mr. Jackson 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. Mr. Jackson declares he has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and he 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 Mr. Jackson 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. Mr. Jackson 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. Mr. Jackson shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Jackson 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 Mr. Jackson 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 Mr. Jackson. Nevertheless, Mr. Jackson 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. Mr. Jackson 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 Mr. Jackson.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Jackson from his 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 Mr. Jackson 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. 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.

14. By his signature below, Mr. Jackson voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

Phillip P. Jackson voluntarily agrees to the issuance of this Order.

Date: 7 28 10 By: Phillip P Jackson, Owner.
Phillip P. Jackson

Commonwealth of Virginia
City/County of Northumberland

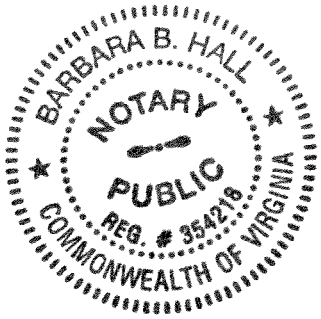
The foregoing document was signed and acknowledged before me this 28 day of July, 20 10, by Mr. Phillip Jackson, who is owner of the property.

Barbara B Hall
Notary Public

354218
Registration No.

My commission expires: 5/31/2012

Notary seal:



APPENDIX A
SCHEDULE OF COMPLIANCE

1. Mr. Jackson shall not store, treat, or dispose of solid waste on the Property without a permit from the Director and shall comply with the VSWMR. Regarding vegetative waste, Mr. Jackson shall comply with 9 VAC 20-80 *et. seq.* and 9 VAC 20-101 *et. seq.*

2. **Cleanup**

   a. Mr. Jackson shall begin removing solid waste from his property no later than **August 1, 2010**, and shall continue removing waste until it has been entirely cleared from his property, or he has accumulated $8,310 in cleanup costs.

   b. Mr. Jackson shall remit to DEQ all receipts stemming from his disposal of waste at a properly permitted landfill or recycling facility. Until the waste is completely removed, or $8,310 in costs has been accrued, Mr. Jackson must submit these receipts to DEQ on a quarterly basis, with the first being submitted no later than December 1, 2010.

   c. Mr. Jackson may elect to manage the vegetative waste on the Property as product for re-use or reclamation (i.e., mulch), provided more than 75% of the mulch product is removed from the Property annually as a useable product (*see* 9 VAC 20-80 *et. seq.*). Alternatively, Mr. Jackson may manage the vegetative waste on the Property in accordance with the Vegetative Waste Management and Yard Waste Composing Regulations (9 VAC 20-101 *et. seq.*). If the vegetative waste is not managed in accordance with either of these options, Mr. Jackson must dispose of all the vegetative waste at a permitted landfill or recycling facility in accordance with paragraph 2(a) above.

   d. If by **August 1, 2012**, all unpermitted waste has not been removed from Mr. Jackson's property, Mr. Jackson will file a notice on the property deed. Prior to filing the notice, Mr. Jackson shall submit the notice to DEQ for approval. Upon approval and no later than August 1, 2012, Mr. Jackson shall file the notice with proper jurisdiction where the property is located.

3. **Contact**

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

   Allison Dunaway
   VA DEQ –Piedmont Enforcement Manager
   4949A Cox Rd.
   Glen Allen, VA, 23060
   (804) 527-5156
   Allison.Dunaway@deq.virginia.gov