COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
BLUE RIDGE REGIONAL OFFICE
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Secretary of Natural Resources

David K. Paylor
Director

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Regional Director

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO KINGERY BROTHERS ASSOCIATES AND RANDY KINGERY AND WAYNE KINGERY

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 Kingery Brothers Associates, Randy Kingery, and Wayne Kingery for the purpose of resolving certain violations of environmental law and 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 Code §§ 10.1-1401 and 10.1-1184.

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.

5. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

6. "Facility" means the parcel identified on the Bedford County Virginia tax maps as Parcel ID: 126 A 61.

7. "Kingery" means Kingery Brothers Associates as well as Randy Kingery and Wayne Kingery. Kingery Brothers Associates is a partnership that includes its affiliates, partners, subsidiaries, and parents. Kingery Brothers Associates is a "person" within the meaning of Va. Code § 62.1-44.3. Randy Kingery; and Wayne Kingery are all persons within the meaning of Va. Code 10.1-1400 and 9 VAC 20-80-10.

8. "Order" means this document, also known as a Consent Order.

9. "Solid waste" means any of those materials defined as 'solid waste' in Part III of 9 VAC 20-80-140 et seq.

10. "Storage" means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

11. "Treatment" means any method, technique or process, including but not limited to incineration, designed to change the physical, chemical or biological character or composition of any waste to render it more stable, safer for transport, or more amenable to use, reuse, reclamation or recovery.

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

SECTION C: Findings of Fact and Conclusions of Law

1. Kingery Brothers Associates owns title to the Facility. Randy & Wayne Kingery constitute Kingery Brothers Associates. Randy & Wayne Kingery as Kingery Brothers Associates own and operate the Facility.

2. On March 12, 2008, DEQ staff conducted a compliance inspection of the Facility located at the end of Bashford Drive in Bedford County (Parcel ID: 126 A 61). Staff observed that land clearing debris consisting of brush and stumps along with some other solid waste had been placed at the site and was being used for fill. DEQ staff has interview

information that solid wasted disposal had been taking place over a period of at least 8 years.

3. On April 4, 2008, a Notice of Violation was issued for operating a facility for the disposal of solid waste without a permit.

4. On May 15, 2008, Kingery entered into a Letter of Agreement (LOA) with DEQ to address the unauthorized disposal of solid waste at the Facility and to take corrective action for the removal and proper disposal of the solid waste. The LOA had a schedule included with it that contained specific project deadlines. On August 25, 2008, Kingery's attorney contacted DEQ and advised that Kingery failed to meet the deadlines and said it would not be possible to do the work in the immediate future because of other business demands.

5. On September 3, 2008, DEQ staff inspected the Facility to assess the amount of work completed under the LOA and the site conditions. Under the LOA Kingery was to:

   1) Unearth and separate, in preparation for grinding, burning, and hauling for proper disposal, all waste material in the fill area. 2) Grind/chip all wood waste that was suitable for grinding/chipping equipment. The "suitability" determination was to be made by DEQ personnel or County personnel if DEQ staff was not available. 3) By August 18, 2008, remove and dispose of all non-wood solid waste including the residues (ashes) of the burning operation and properly dispose of it in a permitted landfill. 4) By August 25, 2008, submit copies of all landfill disposal receipts to DEQ.

   Kingery failed to meet the requirements and conditions agreed to in the LOA as delineated below:

   1) Wastes that were to be removed for off-site disposal and separated for grinding were burned. 2) No waste was ground or chipped. The majority of the waste on this site should have been chipped. During the inspection Wayne Kingery stated that all the wood was burned.3) Ashes and un-burned wood was still present in the burn pit at the time of the inspection. 4) No copies of landfill disposal receipts were ever received by DEQ since no solid waste was removed from the Facility and disposed in an off-site permitted facility. Additionally, the smoldering pile in the burn pit at the time of the inspection provided evidence that Kingery continued to operate the air curtain/burn pit after the August 15, 2008, LOA deadline to cease burning.

6. No permit has been issued by the Director for any type of waste management practices at these sites.

7. The Va. Code 10.1-1408(A), (I) and the Virginia Solid Waste Management Regulations § 9 VAC 20-80-90(A)(1)-(2), provide that "[n]o person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of solid waste without a permit from

the director" and "[n]o person shall allow waste to be disposed of or otherwise managed on his property without a permit from the director."

8. Kingery has disposed, treated and stored solid waste at the Facility. Kingery is in violation of Va. Code 10.1-1408.1 and 9 VAC 20-80-90 for the following reasons: 1. No permit has been issued by the Director for any type of waste management practices at this Facility. 2. The Facility is treating, storing, and disposing of solid waste on-site without a permit.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455(C) and (F), the Board orders Responsible Party, and Responsible Party agrees to:

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

2. Pay a civil charge of $20,000 in settlement of the violations cited in this Order. Payments are due as provided in the following table:

Installment #	Amount Due	Due Date
1	$5000.00	August 15, 2009
2	$750.00	September 1, 2009
3	$750.00	October 1, 2009
4	$750.00	November 1, 2009
5	$750.00	December 1, 2009
6	$750.00	January 1, 2010
7	$750.00	February 1, 2010
8	$750.00	March 1, 2010
9	$750.00	April 1, 2010
10	$750.00	May 1, 2010
11	$750.00	June 1, 2010
12	$750.00	July 1, 2010
13	$750.00	August 1, 2010
14	$750.00	September 1, 2010
15	$750.00	October 1, 2010
16	$750.00	November 1, 2010
17	$750.00	December 1, 2010
18	$750.00	January 1, 2011
19	$750.00	February 1, 2011
20	$750.00	March 1, 2011
21	$750.00	April 1, 2011

3. 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

Kingery shall include its Federal Employer Identification Number (541168666) 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 Kingery for good cause shown by Kingery, or on its own motion pursuant to the Administrative Process Act 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, Kingery admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Kingery consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Kingery declares they have received fair and due process under the Administrative Process Act and the 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 Kingery 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. Kingery 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. Kingery shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on their part. Kingery 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 Kingery 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 Kingery. Nevertheless, Kingery 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) Kingery petitions the Director or his designee to terminate the Order after they have 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 Kingery.

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

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.

By their signature below, Kingery voluntarily agrees to the issuance of this Order.

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

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

Kingery voluntarily agrees to the issuance of this Order.

By: Randy Kingery

Date: 6-29-09

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 29 day of June, 2009, by Randy Kingery
(Kingery)

Robin Barker
Notary Public

My commission expires: 2-28-2010.

#322516

Mr. Randy W. Kingery voluntarily agrees to the issuance of this Order.

Date: 6-29-09 By: Randy Kingery
(Person)
Randy W. Kingery

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 29 day of June, 2009, by Randy Kingery.

Robin Barker
Notary Public

322516
Registration No.

My commission expires: 2-28-2010

Notary seal:

Mr. Wayne A. Kingery voluntarily agrees to the issuance of this Order.

Date: 6-29-09 By: Wayne A. Kingery
(Person)
Wayne A. Kingery

Commonwealth of Virginia
City/County of Roanoke

The foregoing document was signed and acknowledged before me this 29 day of June, 2009, by Wayne A. Kingery.

Robin Barker
Notary Public

322516
Registration No.

My commission expires: 2-28-2010

Notary seal:

APPENDIX A

Kingery shall:

1. By **June 15, 2009**, begin the removal of the remainder of the waste material at the Facility and dispose of it at a permitted facility.

2. By **July 15, 2009**, complete the removal of all waste materials.

3. By **July 30, 2009,** complete grading and seeding at the Facility of the restored surface to prevent any erosion and sedimentation from occurring and submit all receipts or original disposal tickets of all material disposed from the Facility.

4. All submissions and/or reports shall be made to:
   Steven Wright
   VA DEQ Enforcement
   Blue Ridge Regional Office
   3019 Peters Creek Road
   Roanoke, VA 24019