COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE
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L. Preston Bryant, Jr.
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Regional Director

VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
LEE COUNTY
FOR THE
LEE COUNTY SANITARY LANDFILL
(Solid Waste Permit No. 027)

SECTION A: Purpose

This is a Consent Order issued by the Virginia Waste Management Board to Lee County. This Consent Order is issued under the authority of Va. Code § 10.1-1455, through the Director of the Department of Environmental Quality pursuant to the authority granted to the Board and the Director under Va. Code §§ 10.1-1402, -1405 and-1185, to resolve certain violations of the Virginia Waste Management Act, the Virginia Solid Waste Management Regulations, and the Virginia Solid Waste Planning and Recycling Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

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

2. "VAC" means Virginia Administrative Code.

3. "Board" means the Virginia Waste Management Board, a permanent body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality.

6. "Facility" means the Lee County Sanitary Landfill, located on the old Lee County Poor Farm, approximately 0.5 mile off State Route 70, approximately 1.0 mile east of the Town of Jonesville.

7. "SWRO" means the Department's Southwest Regional Office, located in Abingdon, Virginia.

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

9. "County" means Lee County, a political subdivision of the Commonwealth of Virginia.

10. "Permit" or "SWP 027" means Solid Waste Permit No. 027, issued to Lee County by the Commissioner of the Virginia Department of Health on October 14, 1971.

11. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.* All violations occurred prior to November 1, 2008, and as such were subject to Amendment 4a of the VSWMR; waste regulations cited are from Amendment 4a.

12. "NOV" means Notice of Violation.

13. "WL" means Warning Letter.

SECTION C: Findings of Facts and Conclusions of Law

1. The County owns the Facility, which operated under Solid Waste Permit 027 from 1971 until it officially closed in April, 1994. The Facility is subject to closure and post closure requirements of the Virginia Waste Management Act and the Regulations.

2. On October 23, 2008, DEQ SWRO Solid Waste staff conducted an unannounced annual formal compliance inspection of the Facility. Staff also reviewed Facility files. Gas monitoring records for January through September, 2008 indicated that gas monitoring probes G-16, G-18, G-28 and G-29 exceeded the Lower Explosive Limit ("LEL") for methane. These exceedences were cited in NOV-023-1108-SW, issued November 10, 2008. Previous LEL exceedences for methane had occurred at gas probes G-16, G-18, G-28, and G-29 as cited by NOV-003-0108-SW, issued January 31, 2008, and NOV-021-1007-SW, issued October 22, 2007. Gas monitoring results from these probes recorded some exceedence values greater than 50% by volume methane, i.e. higher than 1,000% of the LEL for methane at or near the facility boundary.

3. Regulation 9 VAC 20-80-280(A)(1) states, "To provide for the protection of public health and safety, and the environment, the operator shall ensure that decomposition gases generated at a facility are controlled during periods of operation, closure and post-closure care, in accordance with the following requirements: (b) [t]he concentration of methane gas

migrating from the landfill shall not exceed the lower explosive limit for methane at the facility boundary". The lower explosive limit for methane, 5% by volume, is considered to be the 100% LEL value.

4. Per letter dated September 14, 2007, the County's consultant informed DEQ of the results of subsurface investigation at the Facility. This investigation was conducted in an effort to locate the extent of waste deposition and aid in development of an amendment to the Facility's Gas Remediation Plan ("GRP"). These results revealed that gas probes G-16, G-28 and G-29 are located in waste and will require installation of new gas monitoring probes. The County was to submit a Phase III addendum to the GRP, as cited in NOV-003-0108-SW, issued January 31, 2008, that would address continuing exceedences of the LEL for methane at the facility boundary. This item was previously cited in NOV-021-1007-SW, dated October 22, 2007. A review of files indicates that DEQ received submittal of the Phase III addendum to the facility's GRP on April 17, 2008. The 2008 annual formal compliance inspection, conducted October 23, 2008, confirmed that gas monitoring well G-16R had been installed as a replacement for G-16. Per the County Administrator, gas monitoring wells G-18R and G-28R were installed March 31, 2009.

5. Regulation 9 VAC 20-80-280(E) states, 1. When the results of gas monitoring indicate concentrations of methane in excess of the compliance levels required by subdivision A 1 of this subsection, the operator shall: a. Take all immediate steps necessary to protect public health and safety including those required by the contingency plan; b. Notify the department in writing within five working days of learning that compliance levels have been exceeded, and indicate what has been done or is planned to be done to resolve the problem; and c. Within 60 days of detection, implement a remediation plan for the methane gas releases and submit it to the department for approval and amendment of the facility permit. The plan shall describe the nature and extent of the problem and the proposed remedy.

6. During the November 13, 2007 annual formal compliance inspection of the Facility, DEQ Solid Waste staff observed that the final cover revealed significant erosion problems over a portion of the landfill. The final cover was slumping off in several areas and exposing waste in at least one area. A two foot deep erosion channel was observed during the inspection. In addition, vegetation was very sparse over the entire final cover and small cedar trees were observed growing in many areas. The sparse vegetation left many exposed areas over the entire cover. The issue was first noted during the DEQ staff's annual Compliance Inspection of the Facility on November 1, 2006. Follow-up site visits on June 4, 2007 and September 6, 2007, revealed that erosion channels on the cap of the closed landfill had worsened significantly, threatening the integrity of the cap itself. This issue was previously cited in NOV-021-1007-SW, dated October 22, 2007, and in WL-027-0107-SW, dated January 4, 2007. The 2008 annual formal compliance inspection, conducted October 23, 2008, confirmed that outslopes had been cleared of brush and trees, areas of erosion had been repaired, the cap fertilized and seeded, and overseeded.

7. Regulation 9 VAC 20-80-250(F)(1) states, "Following closure of all disposal units, the owner or operator shall conduct post-closure care of the facility. Post-closure care shall consist of at least the following: a. Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;..."

8. In conjunction with the County's subsurface investigation referenced in Section C paragraph 4, property boundary lines in question were surveyed. Results of these activities revealed that municipal solid waste was located at the property boundary in several locations. It appeared that waste had been placed in unpermitted areas beyond the property boundary. This violation was most recently cited in NOV-023-1108-SW, issued November 10, 2008. It had been previously cited in NOV-003-0108-SW, issued January 31, 2008, and NOV-021-1007-SW, dated October 22, 2007. Subsequent subsurface investigation determined that waste had been placed beyond the property line in the area of gas probe G-28, as stated in the GRP Phase III Addendum-Subsurface Investigation, which was received by DEQ on April 17, 2008.

9. Regulation 9 VAC 20-80-90(A)(1) states, "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".

10. Regulation 9 VAC 20-80-90(A)(3) states, "It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner".

11. Regulation 9 VAC 20-80-200(A) states, "Any solid waste management facility receiving or having received waste without a permit, in violation of statutory requirements or these or predecessor state regulations, shall be classified as an unpermitted facility".

12. Regulation 9 VAC 20-80-200(B) states, "The owner, operator, or any other party responsible for an unpermitted facility shall immediately cease treatment, storage, or disposal of any additional waste and shall initiate removal and cleanup as provided for in 9 VAC 20-80-210 A, or closure in place as provided for in 9 VAC 20-80-210 B, or an alternative remedial action in accordance with the requirements of 9 VAC 20-80-210 C, or a combination of the three".

13. Regulation 9 VAC 20-80-205(B)(3) states, "The wastes can simply be removed from the site and disposed of at a permitted facility without having to meet the requirements of 9 VAC 20-80-210. The department may require submission of evidence of proper management of the removed waste and may require evidence, including confirmatory sampling of the removal of solid waste and any hazardous constituents. A site inspection will be performed by the department to confirm the removal of waste materials".

14. A complete, revised solid waste management ("SWM") plan for the Facility was originally due July 1, 2004. A revised SWM Plan was submitted by Lee County by letter dated June 30, 2005. By letter dated September 22, 2005, DEQ staff notified Lee County that the revised SWM Plan was incomplete. Submittal of a corrected, revised SWM Plan was due no later than 90 days after receipt of notification of deficiencies. This violation was previously cited in NOV-021-1007-SW, dated October 22, 2007. A review of files indicates that DEQ received resubmittal of corrected, revised SWM Plans on June 4, 2008 and November 10, 2008. The most recent submittal is being reviewed by DEQ staff.

15. The SWM plan is required by Va. Code § 10.1-1411 of the Virginia Waste Management Act. The Regulations for the Development of Solid Waste Management Plans, 9 VAC 20-130-110.B of the VSWMR, stated that a complete, revised solid waste management plan in compliance with this chapter was to be provided to the department no later than July 1, 2004. These regulations have been amended (effective November 28, 2007) and are now called the Solid Waste Planning and Recycling Regulations ("Planning and Recycling Regulations"). Section 9 VAC 20-130-110 of both the former and amended Planning and Recycling Regulations requires submittal of a corrected revised SWM Plan no later than 90 days after receipt of notification of deficiencies.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code § 10.1-1455, and upon consideration of Va. Code § 10.1-1186.2, the Board orders Lee County, and Lee County agrees, to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders Lee County, and Lee County voluntarily agrees, to a civil charge of $11,130.00 in settlement of the violations cited in this Order, to be paid as follows:

1. Lee County shall pay $2,782.50 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

   Receipts Control
   Department of Environmental Quality
   Post Office Box 1104
   Richmond, Virginia 23218

   The payment shall include Lee County's Federal ID number and shall identify that payment is being made as a result of this Order.

2. Lee County shall satisfy $8,347.50 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.

3. The net project cost of the SEP to Lee County shall not be less than the amount set forth in Paragraph D.2. If it is, Lee County shall pay the remaining amount in accordance with Paragraph D. 1 of this Order, unless otherwise agreed to by the Department. "Net project costs" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (*e.g.*, tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

4. By signing this Order, Lee County certifies that it has not commenced performance of the SEP.

5. Lee County acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Lee County to a third party, shall not relieve Lee County of its responsibility to complete the SEP as described in this Order.

6. In the event it publicizes the SEP or the SEP results, Lee County shall state in a prominent manner that the project is part of a settlement of an enforcement action.

7. The Department has the sole discretion to:

   a. Authorize any alternate, equivalent SEP proposed by the Facility; and
   b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

8. Should the Department determine that Lee County has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Lee County in writing. Within 30 days of being notified, Lee County shall pay the amount specified in Paragraph D.2., above, as provided in Paragraph D.1., above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the County, for good cause shown by the County or on its own motion after notice and opportunity to be heard.

2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or 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 as may

be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, the County admits the jurisdictional allegations, factual findings and conclusions of law contained herein.

4. The County 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. The County declares it has received fair and due process under the Administrative Process Act, Code § 2.2-4000 *et seq.*, 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 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 enforce this Order.

6. Failure by the County 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. The County 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 act of God, war, strike, or such other occurrence. The County must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The County shall notify the Director of the SWRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

    a. the reasons for the delay or noncompliance;
    b. the projected duration of 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 notify by phone the Director of the SWRO within 24 hours of learning of any condition listed above, which the County intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of 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. Any plans, reports, schedules or specifications attached hereto or submitted by the County 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.

11. This Order shall become effective upon execution by both the Director or his designee and the County. Notwithstanding the foregoing, the County agrees to be bound by any compliance date which precedes the effective date of this Order.

12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the County. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. The undersigned representative of the County 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 the County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the County.

14. By its signature below, the County voluntarily agrees to the issuance of this Order.

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

_____

Dallas R. Sizemore, SWRO Regional Director
Department of Environmental Quality

Lee County voluntarily agrees to the issuance of this Order.

Name: Carl Bailey
Chairperson, Lee County Board of Supervisors

Date: 6-29-09

State of Virginia
City/County of Lee

The foregoing instrument was acknowledged before me this 29 day of June, 2009

by Carl Bailey (name), who is Chairperson (title) of Lee County, on

behalf of Lee County.

SHARON J. LAWSON
NOTARY PUBLIC
MY COMMISSION NUMBER 286413
COMMONWEALTH OF VIRGINIA

Sharon J. Lawson
Notary Public

My commission expires: June 30, 2012

APPENDIX A

In order to comply with the provisions of the Virginia Waste Management Act, the Virginia Solid Waste Management Regulations and the Solid Waste Planning and Recycling Regulations, Lee County agrees to implement the following actions as described below:

1. The County shall install a new gas monitoring probe to replace existing gas probe G-29 in accordance with the GRP Phase III addendum .....within 30 days of obtaining control of the property in question; the County will purchase the property in question or file for condemnation no later than June 30, 2009.

2. The County shall develop and record a comprehensive, certified survey plat which locates structures, groundwater monitoring wells, gas probes, and other appropriate land markers which accurately identify each of the following areas:

   a) the disposal boundary and property boundaries of the area obtained by deed, beyond the present gas probe G-28, where waste has been placed outside the permitted property boundary of SWP 027, certifying that the area in question (outside the original boundary) was closed in accordance with the approved closure plan for SWP 027 and the VSWMR; a new gas probe G-28R shall be installed on Lee County property beyond the limits of waste deposition;

   b) the area boundary, on the plat, obtained by deed or easement beyond the existing gas probe G-29 and to be utilized for installation of a new gas probe G-29R; and,

   c) the locations of new gas probes G-16R, G-18R, G-28R and G-29R.

   Recordation of the referenced comprehensive, certified plat shall be accomplished within 30 days after the installation of new gas probe G-29R.

3. In accordance with VSWMR 9 VAC 20-80-250(E)(5)(d)(2), within 30 days after the installation of new gas probe G-29R, the County shall submit to the local land recording authority a survey plat (Item 3 above) prepared by a professional land surveyor registered by the Commonwealth or a person qualified in accordance with Title 54.1 of the Code of Virginia indicating the location and dimensions of waste disposal areas. Monitoring well locations (including the proposed location of well G-29R) shall be included and identified by number on the survey plat. The plat filed with the local land recording authority shall contain a note, prominently displayed, which states the owner's or operator's future obligation to restrict disturbance of the site as specified. A copy of the recorded, certified plat shall be submitted to the Department within 10 days after recordation.

4. In accordance with VSWMR 9 VAC 20-80-250(E)(5)(d)(3), within 90 days from the effective date of this Order, the County shall record a notation on the deed obtained representing the area of the facility property identified in Item 3(a) above, notifying any potential purchaser of the property that the land has been used to manage solid waste and its use is restricted under subdivision VSWMR 9 VAC 20-80-250(F)(4)(c) of that section. A copy of the recorded deed notation(s) shall be submitted to the Department within 10 days after recordation.

5. The County shall respond to any written comments, requests for additional information or deficiencies regarding review for approval of the revised SWM Plan submitted to DEQ by transmittal letter dated March 17, 2009 within 45 days of receipt of notification of such comments.

6. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

   Ms. Ruby Scott
   Compliance Auditor
   355 Deadmore St.
   P.O. Box 1688
   Abingdon, VA 24212

APPENDIX B

Lee County shall perform the SEP identified below in the manner specified in this Appendix.

1. The SEP to be performed by Lee County is to provide additional funding for the Ewing Decentralized Wastewater Project. This funding, in the amount of $8,347.50, is to be paid by check, certified check, money order or cashier's check from Lee County to the Lee County Public Service Authority ("PSA"). The project will provide a Septic Tank Effluent System to provide treatment of wastewater from residential and commercial structures in the Ewing community that currently discharge raw sewage to Indian Creek in Lee County. With additional funding, additional drainfield can be added to the system which will allow more present and/or future connections to the system. This will allow the drainfield size to be increased to allow 5–10 additional hook-ups to the system.

2. The SEP shall be completed within 30 days from the effective date of the Order.

3. If the SEP has not or cannot be completed as described in the Order, Lee County shall notify DEQ in writing no later than 30 days from the effective date of the Order. Such notification shall include:

   a. an alternate SEP proposal, or
   b. payment of the amount specified in Paragraph D.2 as described in Paragraph D.1.

4. Lee County hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP. Lee County shall submit to DEQ within 45 days of the project completion date a written statement from the Lee County PSA that the SEP funds transferred to the PSA by Lee County shall be dedicated to and spent on the Ewing Decentralized Wastewater Project.

5. Lee County shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing payment amount and proof of payment within 45 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Lee County's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

6. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

   Ms. Ruby Scott
   Compliance Auditor
   DEQ – Southwest Regional Office
   P. O. Box 1688
   Abingdon, Virginia 24212