COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN VIRGINIA REGIONAL OFFICE
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~~Jeffery A. Steers~~
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION

ORDER BY CONSENT
ISSUED TO
RAPPAHANNOCK COUNTY
FOR THE
RAPPAHANNOCK COUNTY LANDFILL
(Solid Waste Permit No. 520)

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 Rappahannock County, for the purpose of resolving certain alleged violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations as specified in SECTION C of this Order.

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 body of the Commonwealth of Virginia as described in Code §§10.1-1401 and 10.1-1184.

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.

4. "Facility" or "Landfill" means the Rappahannock County Landfill facility located at 160 Weaver Road, Amissville, Virginia 20106 (Rappahannock County) and permitted under Solid Waste Permit Number 520 issued by DEQ.

5. "County" means Rappahannock County, a political subdivision of the Commonwealth of Virginia.

6. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

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

8. "Regulations" refers to the Virginia Solid Waste Management Regulations (VSWMR) 9 VAC 20-80-10 *et seq.*

9. "VAC" means Virginia Administrative Code.

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

SECTION C: Findings of Fact

1. The Facility is a solid waste landfill owned by the County and operated by Updike Industries, Inc. of Culpeper, Virginia. The Facility is the subject of Solid Waste Permit Number 520.

2. A landfill is required under 9 VAC 20-80-250.C.2 to maintain sufficient daily, intermediate and vegetative cover to prevent exposed waste and erosion.

3. On May 15, 2006 during a DEQ compliance evaluation inspection of the facility DEQ found numerous areas of erosion, a lack of vegetative cover, and trees and brush growing on top of the landfill cover in violation of 9 VAC 20-80-250.C.2 of the Regulations.

4. The May 15, 2006 inspection report was transmitted by DEQ to Rappahannock County in the form of a letter dated July 11, 2006. Joyce Engineering, Inc., the County's consultant submitted a written response, dated July 27, 2006, that stated that Updike Industries had completed the following corrective actions:
    a. Over 16 loads of soil have been hauled to the working face area. The soil was placed to provide the proper 6-inches of daily cover and 12-inches of intermediate cover in areas where waste has not been applied in 30 days.
    b. During the placement of the cover soils, the area of the working face was graded to prevent surface water from ponding.
    c. Soil was stockpiled near the working face to provide enough cover material for at least 3 days.

d. Finally, a new tarp has been brought to the facility and is being used as alternate daily cover.

5. DEQ noted during an inspection on September 26, 2006 that the County had made improvements, but violations of the Regulations still were present. DEQ staff found that the County had not sufficiently repaired the intermediate cover nor fixed all the areas of erosion on the site that were previously identified.

6. The September 26, 2006 inspection report was transmitted by DEQ to Rappahannock County in the form of a letter dated December 8, 2006. As Joyce Engineering, Inc. reported in a written response, dated January 9, 2007:
   a. In November 2006, improvements to the existing stormwater management system were completed with the construction of a sediment trap and associated conveyance channels down gradient from the facility's borrow area.
   b. On December 19, 2006, DEQ conducted the fourth quarter compliance inspection of the Facility and observed that site improvements were continuing and that there would not be a warning letter associated with that inspection. The inspector observed that although the cover was not perfect, improvements had been made to the general regulating polices throughout the site and to the sediment trap.

7. On March 26, 2007, the Facility was inspected by DEQ staff who found violations consistent with the previous inspections in 2006. The landfill had many areas of erosion and areas of exposed waste because of insufficient intermediate and a lack of vegetative cover. DEQ issued a Warning Letter on April 23, 2007 as a result of these violations.

8. The same compliance problems were present at the Facility during the DEQ inspection conducted on May 9, 2007. On June 1, 2007, in response to the May 9, 2007 inspection results, DEQ issued a Notice of Violation (NOV) to the County citing the following alleged violations of the Regulations:

   a. DEQ found areas of exposed waste, due to a lack of vegetative cover and areas of erosion during a May 5, 2006 inspection. (9 VAC 20-80-250.C.2)
   b. DEQ found areas of exposed waste, due to a lack of intermediate cover and continued areas of erosion during a September 26, 2006 inspection. (9 VAC 20-80-250.C.2)
   c. DEQ found areas of exposed waste, due to a lack of intermediate and vegetative cover, and continued areas of erosion during a March 26, 2007 inspection. (9 VAC 20-80-250.C.2)
   d. DEQ found areas of exposed waste, due to a lack of both intermediate and vegetative cover, and continued areas of erosion during a May 9, 2007 inspection. (9 VAC 20-80-250.C.2)

9. During an inspection conducted on September 12, 2007, DEQ observed areas of exposed waste, due to a lack of both intermediate and vegetative cover, and continued areas of erosion. On October 19, 2007, in response to the September 12, 2007 inspection results, DEQ issued another NOV to the County.

10. On October 12, 2007 Joyce Engineering submitted a revised Final Closure Plan to DEQ NRO on behalf of Rappahannock County, in preparation for final closure of the Facility.

11. In response to the October 19, 2007 NOV, Rappahannock County retained a local contractor to establish a minimum 3-day stockpile of soil for use as daily cover, improve roads to the borrow area and place soil over portions of the landfill.

12. During an inspection conducted by DEQ on October 29, 2007, there existed areas of exposed waste, due to a lack of cover both daily and intermediate, continued areas of erosion, improper use of mulch as a cover material or the complete lack of daily cover material and a lack of permanent roads to safely access the working face of the landfill. On December 18, 2007, in response to the October 29, 2007 inspection results, DEQ issued a NOV to the County.

13. The facility's contractor completed placement of additional daily and intermediate cover by November 2, 2007. According to Updike Industries, 4 acres were seeded on November 6, 2007.

14. A November 28, 2007 inspection by DEQ, noted that the alleged areas of deficiency had been corrected.

15. On December 15, 2007, the County stopped placing all waste on the Landfill for disposal in accordance with the closure date developed by DEQ pursuant to Va. Code §10.1-1413.2.

16. DEQ inspected the Facility on January 22, 2008 and again on February 29, 2008. During each inspection the Facility was found be in compliance and to have corrected previously identified issues.

17. On March 13, 2008, Rappahannock County Staff met with DEQ at NRO to discuss closure and terms of the Consent Order.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority of Va. Code § 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455 orders Rappahannock County and Rappahannock County voluntarily agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Rappahannock County, and Rappahannock County voluntarily agrees to pay a civil charge in the amount of four thousand eight hundred dollars ($4,800). The civil charge is

due 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 payable to the "Treasurer of Virginia", delivered to:

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

Either on a transmittal letter or as a notation on the check, Rappahannock County shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for Rappahannock County.

SECTION E: Administrative Provisions

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

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violations issued June 1, 2007, October 19, 2007 and December 18, 2007. 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 as may be authorized by law; or (3) taking subsequent action to enforce the 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, Rappahannock County admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Rappahannock 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. Rappahannock County declares it has received fair and due process under the Administrative Process Act, Va. 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 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 enforce this Order.

6. Failure by Rappahannock 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. Rappahannock 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 acts of God, war, strike, or such other occurrence. Rappahannock County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rappahannock County Landfill shall notify the NRO Regional Director in writing 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 NRO Regional Director within five days of learning of any condition above, which the parties intend to assert will result or has resulted in the impossibility of compliance, shall constitute a 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. This Order shall become effective upon execution by both the Director or his designee and Rappahannock County. Notwithstanding the foregoing, Rappahannock County agrees to be bound by any compliance date that precedes the effective date of this Order.

11. 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 Rappahannock County. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rappahannock County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

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

And it is so ORDERED this day of _____, 2008.

_____
Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

Rappahannock County voluntarily agrees to the issuance of this Order.

By: _____

Date: April 14, 2008

Commonwealth of Virginia
City/County of Rappahannock

The foregoing document was signed and acknowledged before me this 14th day of April, 2008, by John W. McCarthy, who is
(name)
County Administrator of Rappahannock County, on behalf of the Organization.
(title)

_____
Notary Public

My commission expires: CANDACE W. WROTH
NOTARY PUBLIC
Comm. of Virginia, No. 332344
Rappahannock County
Commission Expires November 30, 2011

Appendix A

Rappahannock County agrees to the following corrective action measures and shall:

A. Within 30 days of the execution of this Order revise Rappahannock County's Solid Waste Management Plan to address the closing of the county landfill and update the County's plan for handling solid waste in accordance with 9 VAC 20-130-10 *et seq.*

B. Proceed with the development of the closure plan, permit amendment, and Final Cover certification report in a timely fashion.

C. Upon the approval of the County's Landfill Permit Amendment and certification of the Final Cover System by DEQ all terms and conditions of this Consent Order will be satisfied.