# COMMONWEALTH of VIRGINIA

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# VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO THOMAS BROS., L.C. FOR THOMAS BROTHERS DEBRIS LANDFILL Solid Waste Permit No. 445

## 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 Thomas Bros., L.C., regarding the Thomas Brothers Debris Landfill, for the purpose of resolving violations of the Virginia Waste Management Act and the applicable permit and regulations.

## SECTION B: Definitions

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

1. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

2. "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.

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 "Landfill" means the Thomas Brothers Debris Landfill, located off Route 311 just south of the Bradshaw Road intersection, in Roanoke County, Virginia, which is owned and operated by Thomas Brothers, Inc.

6. "FAR" means the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, 9 VAC 20-70-10 *et seq.*

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

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

9. "Permit" means Solid Waste Permit (SWP) No. 445, which was issued under the Department of Health on September 28, 1984. The permit has been revised to incorporate groundwater modules X and XL under the Virginia Waste Management Act and the Regulations to Thomas Bros, L.C.

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

11. "Thomas Brothers" means Thomas Bros., L.C., a limited liability company authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Thomas Brothers is a "person" within the meaning of Va. Code § 10.1-1400.

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

13. "VAC" means the Virginia Administrative Code.

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 September 28, 1984, Thomas Brothers was granted a permit to operate a construction and demolition debris ("CDD") Landfill by the Commissioner of the Virginia Department of Health, predecessor-in-interest to the Director of DEQ. The Permit allows the disposal of construction and demolition debris. The Permit has been revised to incorporate groundwater modules X and XI.

2. The Facility has been operated as a CDD Landfill since the permit was issued. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit.

3. Thomas Brothers has been working to expand the Landfill under HB1911 which allows owners to expand the original footprint of their landfills provided they can demonstrate compliance with the solid waste management regulations. The expansion will be for the disposal of vegetative waste exclusively.

4. In 2007, the Department reviewed and approved documentation related to the expansion. In a letter dated November 9, 2007, the Department informed Thomas Brothers that it needed to submit Construction Quality Assurance ("CQA") documents for the construction of the expansion area and revise its financial assurance to include closure and post-closure care costs associated with the expansion.

5. On August 11, 2009, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act, the Regulations and the Permit. Based on the inspection and follow-up information, Department staff made the following observations:

    a. The placement of various materials in the expansion area of the Landfill. The materials consisted of land clearing debris and soil mixed with logs, roots, and other wood vegetation. The materials were mixed and not managed in a commodity-like fashion. The materials appear to be placed in the expansion area as solid waste and are not being managed for recycling.
    b. At the time of the inspection, the Department had not received the CQA documents or the updated financial assurance documents related to the expansion as required in 9 VAC 20-80-260(B)(17)(d).
    c. Dense growth of large woody vegetation on the side slopes and the top area of the active unit. The active unit of the Landfill is near final elevation and Thomas Brothers has not applied additional waste on the side slopes in several years or the top area in more than six months.

6. 9 VAC 20-80-260(B)(17)(d) requires that waste shall not be received in a landfill unit until the owner or operator has submitted to the Department by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of this section. Documentation supporting the CQA officer's certification shall be submitted to the Department upon request. An additional certification is required under the provisions of 9 VAC 20-80-550(A)(1).

7. 9 VAC 20-80-60(C)(5) states that nothing in subdivisions 1b, 2b, and 3b of this subsection shall alter any requirement for ground water monitoring, financial responsibility, operator certification, closure, post-closure care, operation, maintenance or corrective action imposed under this chapter, or impair the powers of the director to

revoke or amend a permit pursuant to §10.1-1409 of the Virginia Waste Management Act or Part VII (9 VAC 20-80-480 et seq) of this chapter..

8. 9 VAC 20-80-260(C)(11)(b) requires that compacted soil cover shall be applied as needed for safety and aesthetic purposes. A minimum one-foot thick progressive cover shall be maintained weekly such that the top of the lift is fully covered at the end of the work week. A fire break as specified in subdivision 10 of this subsection will be installed on the top, side slopes, and on the work face as weekly progressive cover or as required in the facility permit. The open working face of a landfill shall be kept as small as practicable, determined by the tipping demand for unloading.

9. On September 9, 2009, based on the August 11, 2009 inspection, the Department issued a Warning Letter to Thomas Brothers.

10. Thomas Brothers responded to the Warning Letter on November 4, 2009. Thomas Brothers stated that the materials in the expansion area had been removed.

11. On December 11, 2009, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act, the Regulations and the Permit. The inspection was a follow-up to the August 2009 inspection. Department staff observed that most of the material observed in the expansion area during the August 11, 2009 inspection remained and that the cover problem on the previously active unit had not been corrected. This was contrary to the assertion made by Thomas Brothers on November 4, 2009.

12. On February 11, 2010, based on the inspections, the Department issued a Notice of Violation to Thomas Brothers for the violations described in paragraphs C5 through C8 and C11, above.

13. On April 5, 2010, Department staff conducted a file review of the facility operating under SWP 445. The purpose of the file review was to assess the submittal status of the 2009 Solid Waste Information and Assessment Form 50-25, which is due annually by March 31st of each year. At the time of the review, the Department had not received Form 50-25 from Thomas Brothers.

14. 9 VAC 20-80-115(A) requires owners and operators of all permitted solid waste management facilities that treat, store, or dispose of solid waste shall report by March 31 of each year the amount of solid waste, by weight and volume, received and managed by the facility during the preceding calendar year.

15. On April 6, 2010, based on the April 5, 2010 file review, the Department issued a warning letter to Thomas Brothers for the violation described in paragraphs C13 and C14, above.

16. Based on the results of the August 11, 2009 and December 11, 2009 inspections and the April 5, 2010 file review, the Board concludes that Thomas Brothers has violated 9 VAC

20-80-260(B)(17)(d), 9 VAC 20-80-60(C)(5), 9 VAC 20-80-260(C)(11)(b), and 9 VAC 20-80-115(A), as described in paragraphs C5 through C8 and C13 through C14, above.

17. In order for Thomas Brothers to return to compliance, Department staff and representatives of Thomas Brothers 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 Thomas Brothers, and Thomas Brothers agrees to:

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

2. Pay a civil charge of $14,560 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, 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

Thomas Brothers shall include its Federal Employer Identification Number (FEIN) 54-1673011 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 Thomas Brothers for good cause shown by Thomas Brothers, 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, Thomas Brothers admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

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

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

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, Thomas Brothers voluntarily agrees to the issuance of this Order.

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

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

Thomas Brothers, Inc. voluntarily agrees to the issuance of this Order.

Date: 5-18-10 By: Kevin Broughman, Managing Member

Thomas Bros., L.C.

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 18 day of May, 2010, by Kevin Broughman who is the Managing Member of Thomas Bros., L.C., on behalf of the company.

Pamela S Brooks
Notary Public

351911
Registration No.

My commission expires: 11/30/13

Notary seal:

PAMELA S. BROOKS
NOTARY PUBLIC
REG. #351911
MY COMMISSION EXPIRES 11/30/13
COMMONWEALTH OF VIRGINIA

# APPENDIX A
# SCHEDULE OF COMPLIANCE

Thomas Bros., L.C. shall:

1) Not place waste in the lateral expansion cell until all requisite Department approvals have been received and adequate financial assurance is in place for the facility including the expansion.

2) No later than July 15, 2010, correct the cover issues on the side slopes and the top area of the in-active portion of the landfill in order to achieve compliance with 9 VAC 20-80-260(C)(11)(b).

3) No later than September 1, 2010, submit the appropriate CQA plans for the lateral expansion cell to the Department for approval. Thomas Bros., L.C. shall respond to the Department within 30 days to any additional informational requests or requests for revision of the CQA plans, as applicable until such time that Thomas Bros., L.C. receives approval from the Department or Thomas Bros., L.C. chooses to abandon pursuing the lateral expansion cell.

4) No later than September 1, 2010, submit an updated financial assurance demonstration for closure and post-closure care to include cost estimates for the lateral expansion cell. Thomas Bros., L.C. shall respond to the Department within 30 days to any additional informational requests or requests for revision to the financial assurance demonstration, as applicable until such time that Thomas Bros., L.C. receives approval from the Department or Thomas Bros., L.C. chooses to abandon pursuing the lateral expansion cell.

4) Submit all requirements of Appendix A of this Order to:

Jerry Ford, Jr.
VA DEQ - Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019
Phone: (540) 562-6817
e-mail: Jerry.Ford@deq.virginia.gov