# COMMONWEALTH of VIRGINIA

*DEPARTMENT OF ENVIRONMENTAL QUALITY*
TIDEWATER REGIONAL OFFICE
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Secretary of Natural Resources

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Director

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Regional Director


## VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

## TIDEWATER GREEN CORPORATION

## FOR

## Unpermitted Facility

### 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 Tidewater Green Corporation for the purpose of resolving certain violations of the Virginia Waste Management Act and the Virginia Solid Waste Management 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. "Construction and Demolition Debris" or "CDD" means solid waste generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures; by the destruction of structures and their foundations and/or from land clearing operations.

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", means the asphalt roofing recycling facility, located at 1500 Steel Street in Chesapeake, Virginia, which is owned and operated by Tidewater Green Corporation.

6. "Materials Recovery Facility" or "MRF" means a solid waste management facility for the collection, processing and recovery of material such as metals from solid waste or for the production of a fuel from solid waste. This does not include the production of a waste-derived fuel product.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

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

9. "Permit" means the written permission of the director to own, operate or construct a solid waste management facility.

10. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC20-80-10 *et seq.*

11. "Solid Waste" means any of those materials defined as 'solid waste' in 9 VAC20-80-140 *et seq.*

12. "Solid Waste Management Facility" means a site used for planned treating, storing, or disposing of solid waste

13. "TGC" means Tidewater Green Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. TGC is a 'person' within the meaning of Va. Code § 10.1-1400.

14. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

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

16. "VAC" means the Virginia Administrative Code.

17. "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.

**SECTION C: Findings of Fact and Conclusions of Law**

1. TGC owns an asphalt roofing recycling facility located at 1500 Steel Street in Chesapeake, Virginia.

2. On November 26, 2008, DEQ received an anonymous complaint that TGC was operating a solid waste management facility without a permit.

3. On December 5, 2008, DEQ compliance staff conducted an inspection at the Facility and observed the unloading, processing and transfer of solid waste consisting of construction and demolition debris ("CDD"). TGC reported to have received and processed 55 loads of CDD on 28 different days. TGC's operation includes the recovery and size reduction of shingles from other components of the waste stream.

4. A review of DEQ records did not find that TGC was acknowledged by DEQ as operating a Materials Recovery Facility ("MRF") under a Permit-By-Rule ("PBR") or Permit.

5. 9 VAC 20-80-90 of the Regulations requires a Permit for the operation of a solid waste management facility. TGC violated the Regulations by operating a MRF prior to obtaining a Permit or PBR.

6. TGC reported to have stopped conducting MRF activities following the December 5, 2008 inspection and removed the remaining solid waste from the Facility.

7. On December 15, 2008, TGC submitted a Notice of Intent and a permit application to operate a MRF under a PBR.

8. On January 12, 2009, DEQ issued TGC a Notice of Violation for operating a MRF without a permit.

9. On April 17, 2009, DEQ requested additional information to process TGC's permit application. To date, TGC has not been acknowledged by DEQ as being authorized to operate a MRF under a PBR.

10. Based on the results of December 5, 2008 inspection, and the documentation submitted by TGC, the Board concludes that TGC has violated the Regulations as described in paragraph C5 above.

WKS/bjs
Enclosures

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1455 the Board orders TGC and TGC agrees to pay a civil charge of $3,500.00 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

TGC shall include its Federal Employer Identification Number (FEIN) 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 the Order with the consent of TGC good cause shown by TGC, 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 the purposes of this Order and subsequent actions with respect to this Order, TGC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. TGC 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. TGC declares it has received fair and due process under the Administrative Process Act, Va. Code 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 TGC 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. TGC 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. TGC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. TGC 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 TRO Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which TGC intends to assert will result 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 TGC. Nevertheless, TGC 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) TGC 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 TGC.

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

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, TGC voluntarily agrees to the issuance of this Order.

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

_____
Francis L. Daniel, Regional Director
Department of Environmental Quality

Tidewater Green Corporation voluntarily agrees to the issuance of this Order.

Date: 08·18·09 By: _____, President
(Person) (Title)

of Tidewater Green Corporation.

**Commonwealth of Virginia**

City/County of Chesapeake

The foregoing document was signed and acknowledged before me this ___ day of _____, 20___, by James A. Warren, who is President of Tidewater Green Corporation on behalf of Tidewater Green Corporation.

Tonya M Trueblood
Notary Public

2911643
Registration No.

My commission expires: 5/31/2012

Notary Seal:

Commonwealth of Virginia
Tonya Marie Trueblood - Notary Public
Commission ID: 2911643
My Commission Expires 05/31/2012