

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION

CONSENT ORDER

ISSUED TO

TRUSTEES

OF

CALVARY BAPTIST CHURCH

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code ' 10.1-1182 *et seq.* and ' ' 10.1-1402, 10.1-1405, and 10.1-1455 between the Virginia Waste Management Board and the Trustees of Calvary Baptist Church for the purpose of resolving certain violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations (VSWMR), 9 VAC 20-80-10 *et seq.*

SECTION B: Definitions:

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

1. "VSWMR" means Virginia Solid Waste Management Regulations.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia and described in Code ' ' 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in ' 10.1-1183.

4. “Director” means the Director of the Department of Environmental Quality.
5. “Facility” means the real property owned by or adjacent to the Calvary Baptist Church in Culpeper, Virginia where solid waste has come to be located.
6. “Order” means this document, also known as a Consent Order.
7. “CBC” means Calvary Baptist Church located in Culpeper County, Virginia.
8. “Pastor” means Dr. Charles Shifflett, Pastor of Calvary Baptist Church.
9. “NVRO” means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.

SECTION C: Finding of Facts and Conclusions of Law

1. DEQ received a citizen’s complaint (IR 2001-N-0901) on June 11, 2001 alleging unpermitted dumping of solid waste on CBC grounds. A second citizen e-mailed a complaint on June 14, 2001 also alleging unpermitted dumping at CBC.
2. On July 18, 2001, DEQ visited CBC and observed what appeared to be solid waste including but not limited to: household goods; furniture and other miscellaneous debris; a pile of metal and cast iron piping; a pile of woody and or vegetative waste; scrap metal; and plastic. DEQ also observed evidence of objects protruding from the ground as well as material pushed into the adjacent ravine suggesting that solid waste may have been buried on the property.
3. On July 30, 2001, DEQ sent a letter along with photos to the Pastor discussing the requirements for the regulations governing disposal and treatment of solid waste. On September 10, 2001, DEQ discussed the July 18, 2001 site visit and the July 30, 2001 letter with the Pastor explaining the VSWMRs. In addition, DEQ explained that burning was not allowed. DEQ suggested proper disposal of the waste at the county landfill.
4. On September 19, 2001, DEQ staff again visited CBC and again observed burn piles and what appeared to be partially buried solid waste protruding from the ground and such things as metal, plastic, and empty containers visible at the edge of the fill area. DEQ also observed a burnt out school bus filled with scrap metal.
5. On September 21, 2001, DEQ met with the Pastor to discuss the observations made in

the July 30, 2001 letter. DEQ stated that the fill area would need to be excavated

and requested that CBC contact DEQ when CBC completed the excavation in order for DEQ to verify removal of all the waste.

6. On October 1, 2001, DEQ issued a Warning Letter (WL) to the Pastor as a result of the September 19, 2001 site visit and September 21, 2001 meeting. The WL alleged that CBC may be in violation of VSWMR 9 VAC 20-80-90 for operating a facility for the disposal, treatment, and storage of solid waste without a permit.
7. On October 30, 2001, DEQ again visited CBC and observed that the fill area identified from previous site visits had not been excavated. In addition, the burnt out school bus was still on site. DEQ talked to a representative of CBC from Branch Highways, Inc. (Branch). Branch stated that they brought rubble and soil material from a demolished school to the CBC site for use as fill but did not bring the waste items that DEQ identified as unacceptable fill. The representative stated that he would be willing to remove the waste placed by his company at CBC.
8. On November 2, 2001 DEQ issued a Notice of Violation (NOV) to CBC for operating a facility for the disposal, treatment, and storage of solid waste without a permit in accordance with VSWMR 9 VAC 20-80-90.A.1, 2.
9. On January 3, 2002, DEQ received a letter from Branch stating that they would remove the waste to the depth of material provided by them and cap the area with two feet of cover.
10. On January 8, 2002, DEQ again visited the CBC site. The area appeared to have been re-graded and smoothed with no waste or other objects visible. The edge of the ravine also appeared smoothed over with soil so that most of the rubble was no longer visible. In addition, the ground surface appeared higher than on previous visits. DEQ also noted that the school bus had been removed. The Pastor identified the northern-most corner of the fill area as the area that Branch would excavate. The Pastor stated that no waste had been placed in the other portions of the fill area.
11. On January 15, 2002, DEQ compliance referred CBC to enforcement for disposal, treatment, and storage of solid waste without a Permit in accordance with VSWMR 9 VAC 20-80-90.A.1, 2.
12. On February 11, 2002, DEQ waste compliance manager and enforcement representative

met with the Pastor at CBC. DEQ observed another burn pile containing remnants of a cut up bus, its contents, and tree stumps. The compliance manager reminded the Pastor again that burning was not permitted. DEQ again noted that the fill area identified from previous site visits had not been excavated. DEQ

stated that the material observed sticking out of the ground required removal from the fill area. DEQ also observed a second debris pile on the far side of the fill area. DEQ observed tile, seat frames, mufflers, tires, scrap metal, and pieces of concrete in this debris pile. DEQ stated that the rubble pile should be sorted and disposed accordingly. The Pastor stated that Branch was awaiting DEQ approval to come in and remove the waste material that they placed on site. In addition, Branch would remove any debris piles along with the excavated material. Once Branch excavated the waste, the plan was to fill, cover and seed the area.

13. On February 22, 2002, DEQ sent a letter to CBC stating that DEQ had no objection to Branch beginning the excavation; however DEQ stated that removal of the solid waste by Branch may not resolve all noncompliance issues as DEQ had not completed its review of the case. DEQ also requested that CBC notify them to conduct an inspection of the excavated area prior to placement of any cap or cover material in the fill area.
14. On February 22, 2002, DEQ staff met with the CBC neighbor who filed the first complaint on June 11, 2001. DEQ staff walked the neighbor's property. The neighbor pointed out fill debris piled approximately twenty feet high and resembling a sort of retaining wall. The fill debris runs along the edge of his property and has begun to encroach on his property. Protruding from the debris, DEQ noted a car seat, a vehicle engine, other car parts, steel pipes, and other metal debris. The neighbor stated that large chunks of concrete debris roll off the wall and fall onto his property. In addition, the neighbor also stated that water leaching from the fill area has caused severe erosion of a spring that runs through his property. The spring is a major source of drinking water for his cattle. DEQ staff took video and digital pictures of the area while walking the property.
15. Appendix A of this Order requires CBC to remove and dispose of the solid waste in accordance with Virginia Solid Waste Management Regulations.

SECTION D: Agreement and Order

Accordingly the Board, by virtue of the authority of Code " 10.1-1182 *et seq.* and " 10.1-1402, 10.1-1405, and 10.1-1455, orders the Trustees, and the Trustees agree to comply with the terms of Appendix A of this Order. In addition, DEQ assessed CBC a civil charge of \$8,000.00 in settlement of the violations cited in this Order. CBC; however, provided financial information to DEQ documenting its inability to pay a civil charge. DEQ determined that CBC was unable to pay the civil charge. Accordingly, DEQ is not

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Trustees, for good cause shown by the Trustees, 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 Warning Letter and Notice of Violation issued to CBC by DEQ on October 1 and November 2, 2001 respectively. 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, the Trustees admit the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Trustees 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. The Trustees declare they have received fair and due process under the Administrative Process Act, Code ' ' 9-6.14:11 *et seq.*, and the Virginia Waste Management Act, Code ' ' 10.1-1400 *et seq.*, and waive 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 or the Director to enforce this Order.
6. Failure by the Trustees 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 Trustees shall be responsible for failure to comply with any of the terms and conditions by this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Trustees shall show that such circumstances were beyond their control and not due to a lack of good faith or diligence on its part. The Trustees shall notify the DEQ 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 Regional Director within 24 hours of learning of any condition above, which the parties intend 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 the Trustees. Notwithstanding the foregoing, the Trustees agree to be bound by any compliance date which 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 either: 1) upon 30 days written notice to the Trustees of Calvary Baptist Church, or 2) upon receiving a petition from the Trustees of Calvary Baptist Church at least two years after the effective date of this Order requesting termination of the Order. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Trustees from their obligation to comply with any statute, regulation, permit

condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By the signature below, the Trustee(s) of Calvary Baptist Church voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

The Trustees of Calvary Baptist Church voluntarily agree to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of _____, 2002, by _____, who is
(name)

_____ of Calvary Baptist Church.
(title)

Notary Public

My commission expires: _____.

APPENDIX A

SCHEDULE OF COMPLIANCE

The Trustees of Calvary Baptist Church shall comply with 9 VAC 20-80-200.C by removing and properly managing solid waste at CBC as follows:

1. By May 31, 2002, begin excavation of the fill area at the northern end of the access road approximately 500 yards north of the church building from the original embankment to the edge of the ravine. Excavation will proceed to a depth sufficient to remove all solid waste. Containerize and dispose of waste at a permitted solid waste facility in accordance with Virginia Solid Waste Management Regulations (VSWMR). Notify DEQ at least 48 hours prior to the commencement of this operation.
2. Notify DEQ within ten days of completion of the excavation of the solid waste, to schedule a final inspection.
3. By May 31, 2002, remove any regulated solid waste on the western side of CBC including waste bordering the property on the western side and transport and dispose of the waste at an appropriate treatment or disposal facility.
4. By May 31, 2002, dispose of batteries, rims, bicycles, metal debris, and empty fuel tanks in accordance with Virginia Solid Waste Management Regulations (VSWMR).
5. By May 31, 2002 store and manage any other metal products and materials designated for reuse in accordance with Virginia Solid Waste Management Regulations (VSWMR).
6. By July 31, 2002, complete the excavation of the solid waste and dispose of the solid waste in accordance with the VSWMR.
7. By November 22, 2002, provide DEQ with copies of the tipping receipts for all solid waste removed from CBC pursuant to this Order.