



# **COMMONWEALTH of VIRGINIA**

Molly Joseph Ward  
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY  
Blue Ridge Regional Office  
3019 Peters Creek Road, Roanoke, Virginia 24019  
(540) 562-6700; Fax (540) 562-6725  
www.deq.virginia.gov

David K. Paylor  
Director

Robert J. Weld  
Regional Director

## **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO AMHERST COUNTY FOR THE AMHERST COUNTY LANDFILL**

### **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 Amherst County, for the purpose of resolving certain violations of the Virginia Waste Management Act, and the applicable regulations.

### **SECTION B: Definitions**

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

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
4. "County" means Amherst County, a political subdivision of the Commonwealth of Virginia. The County is a "person" within the meaning of Va. Code § 10.1-1400.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Landfill" means the Amherst County Landfill, located at 715 Kentmoor Farm Rd., Madison Heights, Virginia, which is owned and operated by Amherst County.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
9. "Order" means this document, also known as a Consent Order.
10. "Permit" means Solid Waste Permit ("SWP") No. 563, which was issued under the Virginia Waste Management Act and the VSWMR to the County on January 21, 1994.
11. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
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. "VSWMR" or "Regulations" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*

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

1. On January 21, 1994, the County was granted Permit No. 563 to operate a sanitary landfill by the Director of DEQ or his designee. The Permit allows disposal of solid waste at the Landfill in accordance with its terms.
2. The Landfill has been operated as a sanitary landfill since the permit was issued. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit.
3. On March 24 and April 5, 2017, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:
  - a. The Facility had not placed daily cover or intermediate cover on approximately

1.49 acres of exposed waste. This region of exposed waste included areas that had uncovered waste during an inspection that occurred on December 30, 2016.<sup>1</sup>

- b. A drop inlet that was part of the stormwater management system was silted in by sediment and there was evidence that stormwater had bypassed the sediment basin. In addition, the facility had installed a diversionary soil berm to divert stormwater flow away from the leachate basin and over a bank into a wooded ravine, eventually reaching an unnamed tributary of Partridge Creek. Evidence of sediment deposition was observed along the slope of the ravine. Moreover, an erosion gully was observed on the north side of the waste management unit.
  - c. During the March 24, 2017 inspection, the facility representative explained that the County had experienced staffing problems since December 2016. The County was unable to keep the landfill adequately staffed to provide daily and intermediate cover and to address stormwater management issues. One operator was at the working face during the March 24, 2017 inspection.
  - d. The Facility failed to provide the Department with a 24-hour oral notification and a five-day written notification of non-compliance. Specifically, the Facility failed to notify the Department when the daily and intermediate cover was not applied, when the facility did not maintain adequate personnel to operate the facility, and when the stormwater management basin was bypassed.
4. Permit Condition II.D.1 states that daily cover consisting of six inches of compacted soil or other approved material shall be placed upon and maintained on all exposed solid waste prior to the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.
  5. 9 VAC 20-81-140(B)(1)(c) states that daily cover consisting of at least six inches of compacted soil or other approved material shall be placed upon and maintained on all exposed solid waste prior to the end of each operating day.
  6. Permit Condition II.D.2 states that intermediate cover shall be applied when another lift of waste will not be placed for more than 30 days or to areas which exhibit erosion, cracking or settlement.
  7. 9 VAC 20-81-140(B)(1)(d) states that intermediate cover of at least six inches of additional compacted soil shall be applied and maintained whenever an additional lift of refuse is not to be applied within 30 days.

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<sup>1</sup> On December 30, 2017, only an equipment operator was present at the Facility. The DEQ inspector therefore did not speak with Facility management during that inspection. The County did not receive a written description of the results of the December 30, 2016 inspection from DEQ until May 23, 2017.

8. Permit Condition I.B.5 states that the permittee shall at all times properly operate and maintain all units (and related appurtenances) which are installed or used by the permittee to achieve compliance with the operations manual and the conditions of this permit.
9. 9 VAC 20-81-140(A)(15) states that operators with training appropriate to the tasks they are expected to perform and in sufficient numbers for the complexity of the site shall be on the site whenever it is in operation.
10. 9 VAC 20-81-530(C)(3) states that the permittee shall report to the Department any noncompliance or unusual condition that may endanger health or environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances.
11. On May 23, 2017, based on the inspection and follow-up information, the Department issued NOV No. NOV-17-05-BRRO-001 to the County for the waste violations described in Paragraph C(3), above.
12. On June 1, 2017, the County submitted a written response to the NOV.
13. On July 11, 2017, Department staff met with representatives of the County to discuss the violations, including the County's written response.
14. Based on the results of the March 24 and April 5, 2017 inspections, the July 11, 2017 meeting, and the documentation submitted by the County, the Board concludes that the County has violated Permit Condition II.D.1, 9 VAC 20-81-140(B)(1)(c), Permit Condition II.D.2, Permit Condition II.D.2, 9 VAC 20-81-140(B)(1)(d), Permit Condition I.B.5, 9 VAC 20-81-140(A)(15), and 9 VAC 20-81-530(C)(3), as described in Paragraphs C(3) through C(10), above.
15. On March 24, 2017, the County's landfill operations consultant contacted the Department to discuss the inspection observations.
16. On March 25, 2017, the County completed minor repairs (grading) to the lower end of the landfill to improve drainage and to improve stormwater routing into the basin. The County also cleaned out the existing storm drain inlet.
17. On March 27, 2017, the County's landfill operations consultant met with the County and its Contractor (George E. Jones & Sons) onsite to review project requirements. Project to consist of placement of daily (6") and intermediate (12") of soil cover, installation of storm drain improvements and rip rap outfall channel. Draper Aden Associates met with DEQ later that afternoon to discuss County's next steps.
18. On March 29-30, 2017, the County and its Contractor completed contract documents and the Contractor mobilized onsite to carry out improvements.

19. On March 31, 2017, the Contractor initiated work beginning with placement of cover material of 6" of soil over working face; 12" intermediate cover on side slopes. The work completed over several days. The Contractor also initiated stormwater improvements at lower end of drainage area. Storm drain improvements designed by Contractor included a series of seven drainage inlets, placement of approximately 1,150 linear feet of HDPE drainage pipe, and installation of rip rap outfall protection where pipe drains into sediment basin.
20. On April 5, 2017, the County, Draper Aden Associates, DEQ, and Contractor met at the landfill to review the improvements, which were significant. VDEQ and Draper Aden Associates walked down the slope and along the unnamed tributary to look for sediment deposition.
21. On April 7, 2017, the Contractor continued work on storm drainage improvements and provided County with stockpile of readily available soil for cover.
22. On April 14, 2017, Contractor completed work: all cover placed, stockpile of soil provided and storm drain improvements completed. County requested Draper Aden Associates to provide DEQ with as-built.
23. On June 14, 2017, the as-built survey was completed by the County's Consultant, Draper Aden.
24. On July 6, 2017, the as-built drawings, surveys, and calculations were submitted to DEQ by the County's Consultant.
25. On July 11, 2017, the County Administrator, County Attorney, the Consultant, the Landfill Manager, and DEQ met to discuss the Notices of Violation and future courses of action.
26. The County has submitted documentation that verifies that the violations described in Paragraphs C(3) through C(10), above, have been corrected.

**SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders the County, and the County agrees to pay a civil charge of \$19,791.00 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

The County shall include its Federal Employer Identification Number (FEIN) 54-6001115 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). If the Department has to refer collection of moneys due under the Order to the Department of Law, the County shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of the County for good cause shown by the County, 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, the County admits the jurisdictional allegations, findings of fact, 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 that 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 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 acts of God, war, strike, or such other occurrence. The County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County 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.

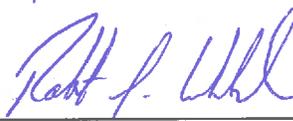
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the County intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement 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 the County.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after the County has completed all of the requirements of the Order;
  - b. The County 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
  - c. 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.

12. 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.
13. 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.
14. By its signature below, the County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 30<sup>th</sup> day of January, 2018, 2017. <sup>RJW</sup>



Robert J. Weld, Regional Director  
Department of Environmental Quality

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Amherst County voluntarily agrees to the issuance of this Order.

Date: 12/15/2017 By: 

Commonwealth of Virginia  
~~City/County of~~ Amherst

The foregoing document was signed and acknowledged before me this 15<sup>th</sup> day of

December, 2017, by Dean C. Rodgers, who is  
County Administrator for Amherst County

  
Notary Public

205667  
Registration No.

My commission expires: November 30, 2018

Notary seal:

