



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Douglas W. Domenech
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Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BEAR ISLAND PAPER COMPANY, LLC
FOR THE
BEAR ISLAND INDUSTRIAL LANDFILL
Solid Waste Permit No. 573**

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 Bear Island Paper Company, LLC, regarding the Bear Island Industrial Landfill, 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. "Bear Island" means Bear Island Paper Company, LLC, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Bear Island is a "person" within the meaning of Va. Code § 10.1-1400.
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 Bear Island Industrial Landfill Facility located on State Route 738, 2 miles east of Interstate 95 in Hanover County, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
8. "Permit" means Solid Waste Permit No. 573, which was issued under the Virginia Waste Management Act and the Regulations to Bear Island on May 5, 1995.
9. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
10. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "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 10.1-1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.
14. "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 May 5, 1995, Bear Island was granted the Permit to operate an industrial Landfill by the Director of DEQ. The Permit allows for the disposal of sanitary waste.
2. The Facility has been operated as a industrial 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 February 23, 2012, Department staff conducted an inspection of the Bear Island Landfill, and observed the following:
 - a. Bear Island did not have financial assurance for the Landfill. The Royal Bank of Canada sent DEQ and Bear Island notice that it would not be renewing the letter of credit used to demonstrate financial assurance and Bear Island did not provide an

alternate mechanism prior to the expiration date of the letter of credit. DEQ cashed the letter of credit and funded the standby trust established at Sun Trust Bank.

9 VAC20-70-81(A) states that in order to assure that the costs associated with protecting the public health and safety from the consequences of an abandonment or a failure to properly execute closure, post-closure care or corrective action at a facility are to be recovered from the owner or operator, the owner or operator of such facility shall obtain one, or a combination of the financial responsibility mechanisms described 9 VAC 20-70.

- b. Waste placement including unapproved process treatment sludge was outside the lined disposal area.

9 VAC 20-81-100(B) states that “[a]ll solid waste disposal facilities shall be maintained and operated in accordance with the permit issued pursuant to this regulation, and in accordance with the approved design and intended use of the facility.”

- c. Storm Water conveyance channels were in need of maintenance and runoff from process treatment sludge was allowed to comingle with stormwater that ultimately discharges to state waters.

9 VAC 20-81-140(A)(7) states that “[o]wners or operators shall maintain the run-on/runoff control systems designed and constructed in accordance with 9 VAC 20-81-130(H)(3),” which states that “[d]rainage structures shall be installed and continuously maintained to prevent ponding and erosion, and to minimize infiltration of water into solid waste cells.”

- d. Process treatment sludge containing bottom ash was in use as a periodic and intermediate cover instead of the required soil cover and excessive exposed waste due to insufficient cover was observed at the landfill.

9 VAC 20-81-140(D)(1)(c) states in part that where it is necessary for the specific waste, daily soil cover, or other suitable material shall be placed upon all exposed solid waste prior to the end of each operating day. For wastes such as fly ash and bottom ash from burning of fossil fuels, periodic cover to minimize exposure to precipitation and control dust or dust control measures such as surface wetting or crusting agents shall be applied. At least three days of acceptable cover soil or approved material at the average usage rate shall be maintained at the fill at all times at facilities where daily cover is required unless an offsite supply is readily available on a daily basis. In addition, 9 VAC 20-81-140(D)(1)(d) states “[i]ntermediate cover of at least one foot of compacted soil shall be applied whenever an additional lift of refuse is not to be applied within 30 days unless the owner or operator demonstrates to the satisfaction of the director that an alternate cover material or an alternate schedule will be protective of public health and the environment.”

4. On April 3, 2012, based on the February 23, 2012 inspection of the Landfill, the Department issued NOV No. 2012-03-PRO-601 to Bear Island for the violations in C(3).
5. Based on the results of the February 23, 2012 inspection, and the information provided by Bear Island, the Board concludes that Bear Island has violated 9 VAC 20-70-81, 9 VAC 20-81-100(B), 9 VAC 20-81-130(H)(3), 9 VAC 20-81-140(A)(7), 9 VAC 20-81-140(D)(1)(c), and 9 VAC 20-81-140(D)(1)(d) as described in paragraph C(3).
6. Based on the March 6, March 8, March 19, March 29, and May 1 progress reports submitted by Bear Island to the Department, DEQ staff and representatives of Bear Island have agreed that Bear Island has returned to compliance.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Bear Island, and Bear Island agrees to pay a civil charge of \$20,000 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

Bear Island 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 this Order with the consent of Bear Island for good cause shown by Bear Island, 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, Bear Island admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Bear Island 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. Bear Island 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 Bear Island 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. Bear Island 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Bear Island shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Bear Island 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 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 and any 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 Bear Island. Nevertheless, Bear Island 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. The Director or his designee terminates the Order after Bear Island has completed all of the requirements of the Order;
 - b. Bear Island 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 Bear Island.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Bear Island 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 Bear Island 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 Bear Island certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Bear Island to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Bear Island.
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, Bear Island voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15th day of July, 2012.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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Bear Island Paper Company, LLC voluntarily agrees to the issuance of this Order.

Date: 6/13/12 By: Wayne Griffin, General Manager
Name Title
Bear Island Paper Company, LLC

Commonwealth of Virginia
City/County of Hanover

The foregoing document was signed and acknowledged before me this 13 day of June, 2012, by Wayne Griffin on behalf of Bear Island Paper Company, LLC.

Patricia W. Nowell
Notary Public

283909

Registration No.

My commission expires: 12/31/15

Notary seal:

