



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

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Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Canonie Atlantic Co.
FOR
Bay Coast Railroad**

IR 2015-T-2924

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 Canonie Atlantic Co. regarding the Bay Coast Railroad for the purpose of resolving certain 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. "BCR" means Bay Cost Railroad, a short-line railroad operating a 68.3-mile rail line on the Eastern Shore of Virginia and Maryland.
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. "Canonie" means Canonie Atlantic Co., a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Canonie is a "person" within the meaning of Va. Code § 10.1-1400. Canonie, acting on behalf of Accomack-Northampton Transportation District Commission, leases Property

to Cassatt Management, LLC d/b/a Bay Coast Railroad (BCR), a noncarrier, to operate a rail line.

4. “Cassatt” means Cassatt Management, LLC d/b/a Bay Coast Railroad, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries. Cassatt is a “person” within the meaning of Va. Code § 10.1-1400.
2. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
5. “Order” means this document, also known as a “Consent Order” or “Order by Consent.”
6. “Property” means the Bay Coast Railroad property owned by Cassatt and located in Northampton County, Virginia (Tax Map ID 90-A-9).
7. “Regulations” or “VSWMR” means the Virginia Solid Waste Management Regulations, 9 VAC20-80-10 *et seq.*
8. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
9. “Va. Code” means the Code of Virginia (1950), as amended.
10. “VAC” means the Virginia Administrative Code.
11. “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. Canonie owns the Property located in Northampton County, Virginia (Tax Map ID 90-A-9). Canonie leases to Cassatt the rail line on the Property, which Cassatt operates as BCR.

2. On May 27, 2015 and June 11, 2015, DEQ staff inspected the Property for compliance with the VSWMR. Based on the inspections and follow-up information, DEQ staff made the following observations:
 - a. An approximately 120-foot by 200-foot by 6-foot pile of broken, crushed, and partially decayed railroad ties had been covered with a mixture of soil and mulch.
 - b. DEQ files indicated that neither Cassatt nor Canonie had been issued a permit for the storage or disposal of solid waste at the Property.
3. 9 VAC 20-81-40 and Va. Code § 10.1-1408.1.A state that “[n]o person shall operate any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste without a permit from the director.”
4. On June 24, 2015, based on the May 27, 2015 and June 11, 2015 inspections and follow-up information, DEQ issued to Cassatt an NOV for the violation described in paragraph C(2), above.
5. On January 19, 2017, after learning that Canonie owned the Property, DEQ issued to Canonie an NOV for the violation described in paragraph C(2), above.
6. On April 28, 2017, DEQ met with representatives of Cassatt to discuss corrective action to resolve the violation described in C(2). During the meeting, Cassatt provided DEQ with an updated status on the conditions of the railroad ties on the Canonie Property. The information that Cassatt provided indicated that the railroad ties were significantly decayed and appeared to present little or no harm to human health and the environment. Therefore, it was agreed that the remaining railroad ties may remain in place with a cover of earthen materials and application of grass seed to control erosion.
7. Based on the May 27, 2015 and June 11, 2015 inspections, follow-up information and the April 28, 2017 meeting with Canonie and Cassatt representatives, the Board concludes that Canonie has violated 9 VAC 20-81-40 and Va. Code § 10.1-1408.1.A, as described in paragraph C(2) above.
8. In order for Canonie to return to compliance, DEQ staff and representatives of Canonie 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 pursuant to Va. Code § 10.1-1455, the Board orders Canonie and Canonie agrees to:

1. Pay a civil charge of \$7,800.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

<u>Payment Due Date</u>	<u>Payment Amount</u>
July 3, 2017	\$2,800
August 1, 2017	\$1,000
September 1, 2017	\$1,000
October 2, 2017	\$1,000
November 1, 2017	\$1,000
December 1, 2017	\$1,000

2. If the Department fails to receive a civil charge payment pursuant to the schedule described in the above paragraphs D.2, the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance under this Order by Canonie. Canonie shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.
3. 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

4. Canonie 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Canonie shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify or amend this Order with the consent of Canonie for good cause shown by Canonie, 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 the purposes of the issuance of this Order and subsequent actions with respect to this Order only, Canonie admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies the findings of fact and conclusions of law contained herein. Canonie reserves all rights and defenses otherwise available to it under applicable law.
4. Canonie 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. Canonie 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 Canonie 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. Canonie 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.

Canonie shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Canonie 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.

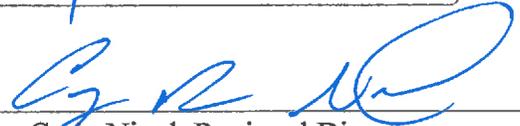
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Canonie. Nevertheless, Canonie agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a) The Director or his designee terminates the Order after Canonie has completed all of the requirements of the Order;
 - b) Canonie 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 Canonie.

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

And it is so ORDERED this 17 day of July, 2017.



Craig Nicol, Regional Director
Department of Environmental Quality

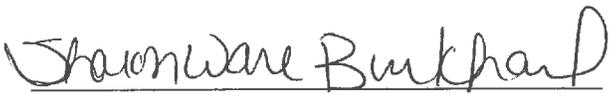
Canonie Atlantic, Co. voluntarily agrees to the issuance of this Order.

Date: 6/6/17 By: Larry Lemond, Chairman
(Person) (Title)

of Canonie Atlantic, Co.

Commonwealth of Virginia
City/County of Northampton

The foregoing document was signed and acknowledged before me this 6th day of June, 2017, by Larry Lemond, who is Chairman of Canonie Atlantic, Co. on behalf of the company.



Notary Public
7101560

Registration No.

My commission expires: 3/31/19

Notary Seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Canonie shall:

1. By no later than November 1, 2017, complete the following corrective actions:
 - a. Cover all exposed materials with a minimum of six inches of earthen material that is capable of sustaining grass seed. The cover shall be configured to control runoff and erosion adequately;
 - b. Seed area with grass seed in a manner to provide a stabilized vegetative cover; and
 - c. Notify the Department:
 - i. At the commencement of application of the clean earthen material cover;
 - ii. At the completion of application of the clean earthen material cover; and
 - iii. Upon completion of the grass seeding, for Department inspection.
2. Mail all submittals required by this Appendix A to :

Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd
Virginia Beach, VA 23462