



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE

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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

James J. Golden
Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FINCH EXCAVATION INC.
CUMBERLAND COUNTY
PARCEL ID: 103-A-24**

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 Finch Excavation Inc., regarding the property in Cumberland County identified as Parcel Id: 103-A-24, 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. "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. "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. "Facility" or "Site" means Finch Excavation Inc. property in Cumberland County Parcel Id: 103-A-24 located at 202 German Town Road, Farmville, Virginia, which is owned by Elwood C. Finch.
5. "Finch Excavation" means Finch Excavation Inc.

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. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
10. "Va. Code" means the Code of Virginia (1950), as amended.
11. "VAC" means the Virginia Administrative Code.
12. "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.

SECTION C: Findings of Fact and Conclusions of Law

1. On May 15, 2017, the Department received a call from a citizen, who reported that the owner of the Facility brought solid waste to the Site.
2. On May 15, 2017, the Department inspected the Facility and observed several large vegetative debris piles onsite, one of which was smoldering.
3. On July 12, 2017, the Department inspected the Facility a second time and observed the same large vegetative debris piles, along with an additional debris pile, and there was no observable additional land clearing on Site.
4. On August 7, 2017, the Department inspected the Site and observed additional vegetative waste piled next to the previously observed debris piles.
5. 9 VAC 20-81-40.A states "No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of solid waste without a permit from the Director."
6. 9 VAC 20-81-40.B states "No person shall allow waste to be disposed of or otherwise managed on his property except in accordance with this chapter."
7. Va. Code § 10.1-1408.1(A) states "No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director."
8. On September 7, 2017, the Department issued Notice of Violation (NOV) No. 2017-09-PRO-602 to Finch Excavation for storage and disposal of waste on the Site without a permit from the

Department. On the night that Finch Excavation received the NOV, the Department received a call from a neighbor of Finch Excavation who stated that the vegetative debris pile was being burned.

9. On September 28, 2017, the Department held a meeting with Finch Excavation to discuss the NOV.
10. Based on the results of the May 15, July 12, and August 7, 2017, site inspections and the September 28, 2017 meeting, the Board concludes that Finch Excavation has violated 9 VAC 20-81-40(A), 9 VAC 20-81-40(B), and Va. Code § 10.1-1408.1(A) as described above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455 the Board orders Finch Excavation, and Finch Excavation agrees to pay a civil charge of \$3,000 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
July 15, 2018	\$375.00 or balance
October 15, 2018	\$375.00 or balance
January 15, 2019	\$375.00 or balance
April 15, 2019	\$375.00 or balance
July 15, 2019	\$375.00 or balance
October 15, 2019	\$375.00 or balance
January 15, 2020	\$375.00 or balance
April 15, 2020	\$375.00

If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Finch Excavation. Within 15 days of receipt of such letter, Finch Excavation shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

Payments 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

Finch Excavation shall include its Federal Employer Identification Number (FEIN) with the civil charge payments and shall indicate that the payments are 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, Finch Excavation 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 Finch Excavation for good cause shown by Finch Excavation, 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 Landfill; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Finch Excavation admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Finch Excavation 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. Finch Excavation 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 Finch Excavation 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. Finch Excavation 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. Finch Excavation shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Finch Excavation 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 Finch Excavation. Nevertheless, Finch Excavation 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 Finch Excavation has completed all of the requirements of the Order;
 - b. Finch Excavation 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 Finch Excavation.

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

And it is so ORDERED this _____ day of _____, 2018.

Kyle Ivar Winter, P.E.
Department of Environmental Quality
Piedmont Deputy Regional Director

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Finch Excavation Inc. voluntarily agrees to the issuance of this Order.

Date: 8-20-2018 By: Elwood C Finch, President
Name Title
Finch Excavation Inc.

Commonwealth of Virginia
City/County of PRINCE EDWARD

The foregoing document was signed and acknowledged before me this 20th day of August,
2018, by Elwood C Finch who is PRESIDENT of
Finch Excavation Inc., on behalf of the company.

Hazel B Burley
Notary Public
159052
Registration No.

My commission expires: 01-31-2021

Notary seal:

