



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Blue Ridge Regional Office

[www.deq.virginia.gov](http://www.deq.virginia.gov)

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**VIRGINIA WASTE MANAGEMENT BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO THE  
TOWN OF LA CROSSE  
FOR THE  
FORMER LANDFILL SITE (Unpermitted Facility)  
LOCATED ON ATLANTIC AVENUE  
TOWN OF LA CROSSE, VA**

#### **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 the Town of La Crosse, regarding the former landfill site on Atlantic Avenue, for the purpose of resolving 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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
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.

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5. "Facility" or "Site" means the Town of La Crosse's former landfill site, located at/near Atlantic Avenue in the Town of La Crosse, Virginia, which is owned by the Town of La Crosse. This location is the site of the management and disposal of solid waste without obtaining a permit.
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. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
9. The Town of La Crosse ("Town") is a political subdivision of the Commonwealth of Virginia. The Town is a "person" within the meaning of Va. Code § 10.1-1400 and § 62.1-44.3.
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 -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

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

1. The Town owns the Facility located at Atlantic Avenue, Town of La Crosse, Virginia.
2. On February 12, 2016, DEQ staff, in response to a complaint, conducted an inspection of the Facility. The complaint alleged that construction demolition debris ("CDD") was being disposed by open burning.
3. DEQ staff observed a large pile of co-mingled CDD and brush being open burned. Two Town employees were at the Facility to monitor the burning material. Other waste materials were observed at the Facility, including a partially buried load of roofing shingles pushed over an embankment near the burn pile and household appliances accumulated as scrap.
4. According to DEQ records, the Town is not permitted for open burning or waste management at the Facility.

5. VA Code § 10.1-1408.1 requires that 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.
6. 9 VAC 20-81-40(A) requires that 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.
7. 9 VAC 20-81-40(B) requires that no person shall allow waste to be disposed of or otherwise managed on his property except in compliance with this chapter.
8. 9 VAC 20-81-40(C) requires that it shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner.
9. 9 VAC 20-81-40(D) requires that any person who violates subsection A, B, or C of this section shall immediately cease the activity of improper management and the treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place.
10. On February 17, 2016, DEQ staff inspected the Facility and confirmed that Facility access had been controlled (locked gate) and that no additional waste had been transported to the Facility. The burn pile was still smoldering and the solid waste previously observed was still present.
11. On March 11, 2016, the Department issued NOV No. NOV-16-03-BRRO-001 to the Town for the violations listed in paragraphs C(2) and C(3), above. Town staff responded to the NOV as requested and began the process of removing and disposing of the solid waste at the Facility.
12. Based on the results of the February 12, 2016 and February 17, 2016 inspections, the Board concludes that the Town has violated VA Code § 10.1-1408.1 and 9 VAC 20-81-40 Prohibitions regarding open burning for disposal of solid waste, as described in paragraphs C(2) and C(3) of this Order.
13. The Town submitted documentation (photos and tipping receipts) to the Department on August 15, 2016 that the clean-up at the Facility had been completed and asserts that the violations described in paragraphs C(2) and C(3), above, have been corrected.

**SECTION D: Agreement and Order**

By virtue of the authority granted it pursuant to Va. Code § 10.1-1455 and upon consideration of Va. Code § 10.1-1186.2, the Board orders the Town, and the Town agrees:

1. To perform the actions described in Appendix A of this Order; and

2. To a civil charge of **\$1,950** in settlement of the violations cited in this Order, to be paid as follows:

- a. The Town shall pay **\$611** of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The Town shall include its Federal Employer Identification Number (FEIN) 54-6001380 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, the Town shall be liable for attorneys' fees of 30% of the amount outstanding.

- b. The Town shall satisfy **\$1,339** of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.
- c. The net project costs of the SEP to the Town shall not be less than the amount set forth in Paragraph D.2.b. If it is, the Town shall pay the remaining amount in accordance with Paragraph D.2.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.
- d. By signing this Order the Town certifies that it has not commenced performance of the SEP.
- e. The Town acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by the Town to a third party, shall not relieve the Town of its responsibility to complete the SEP as described in this Order.
- f. In the event it publicizes the SEP or the SEP results, the Town shall state in a prominent manner that the project is part of a settlement of an enforcement action.

- g. The Department has the sole discretion to:
- i. Authorize any alternate, equivalent SEP proposed by the Town; and
  - ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

Should the Department determine that the Town has not completed the SEP, or alternate SEP, in a satisfactory manner; the Department shall so notify the Town in writing. Within 30 days of being notified, the Town shall pay the amount specified in Paragraph D.2.b, above, as provided in Paragraph D.2.a, above.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of the Town for good cause shown by the Town, 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 Town admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Town 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 Town 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 the Town 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.

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

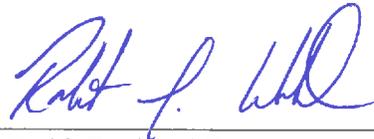
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement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

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

And it is so ORDERED this 22<sup>nd</sup> day of March, 2017.



Robert J. Weld, Regional Director  
Department of Environmental Quality

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The Town of La Crosse voluntarily agrees to the issuance of this Order.

Date: 2-15-17 By: F.A. Hendrick, Jr., Town Manager  
F. A. Hendrick, Jr.

Commonwealth of Virginia  
City/County of Mecklenburg

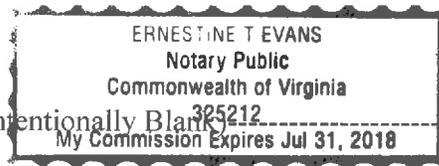
The foregoing document was signed and acknowledged before me this 15<sup>th</sup> day of February, 2017, by F.A. Hendrick, Jr. who is the Town Manager of the Town of La Crosse, on behalf of the Town.

Ernestine T Evans  
Notary Public

325212  
Registration No.

My commission expires: 07-31-2018

Notary seal:



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**APPENDIX A**  
**TOWN OF LA CROSSE**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**

In accordance with Va. Code § 10.1-1186.2, the Town shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix. As used in this Order and Appendix, SEP means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

1. The SEP to be performed by the Town is to provide the local fire department in the Town with hazardous materials emergency response spill containment and clean up materials (first four items in the 01/17/2017 SEP proposal from the Town).
2. The SEP shall be completed by June 30, 2017.
3. The Town shall submit invoices and payment documentation to the Department for verification, for the equipment purchased and training presented within 30 days of payment.
4. The Town shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment within 30 days of the project completion date. For purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from the Town's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
5. If the SEP has not or cannot be completed as described in the Order, the Town shall notify DEQ in writing no later than 30 days of the determination. Such notification shall include:
  - a. an alternative SEP proposal, or
  - b. payment of the amount specified in Paragraph D.2.b as described in Paragraph D.2.a.
1. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

**Jerry Ford, Jr.**  
**VA DEQ - Blue Ridge Regional Office**  
**3019 Peters Creek Road**  
**Roanoke, VA 24019**  
**Phone: (540) 562-6817**  
**e-mail: [Jerry.Ford@deq.virginia.gov](mailto:Jerry.Ford@deq.virginia.gov)**