



# **COMMONWEALTH of VIRGINIA**

## **DEPARTMENT OF ENVIRONMENTAL QUALITY PIEDMONT REGIONAL OFFICE**

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Michael P. Murphy  
Regional Director

### **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO SHOOSMITH BROS., INC. FOR SHOOSMITH SANITARY LANDFILL Solid Waste Permit No. 587**

#### **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 Shoosmith Bros., Inc. regarding the Shoosmith Sanitary Landfill, for the purpose of resolving 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. "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 "Landfill" means Shoosmith Sanitary Landfill, located at 11800 Lewis Road, Chester, Virginia in Chesterfield County, Virginia, which is owned and operated by the Shoosmith Bros., Inc.
5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
6. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
7. "Permit" or "SWP" means Solid Waste Permit No. 587, which was originally issued by the Commissioner of the Virginia Department of Health as Permit No. 211 to Shoosmith. Permit No. 211 was changed to SWP No. 587 and issued under the Virginia Waste Management Act and the Regulations to Shoosmith on December 6, 1995, and last modified on May 9, 2014.
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. "Shoosmith" means Shoosmith Bros., Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Shoosmith is a "person" within the meaning of Va. Code § 10.1-1400.
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 -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

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

1. On September 29, 1976, Shoosmith was granted permit No. 211 to operate a solid waste landfill by the Commissioner of the Virginia Department of Health, predecessor-in-interest to the Director of DEQ. Permit No. 211 was subsequently changed to SWP No. 587 by the Board on December 6, 1995, and last modified on May 9, 2014. The Permit allows for the disposal of solid waste.
2. The Facility has been operated as a solid waste landfill since the Permit was issued. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit. The Facility operates 24 hours per day, 7 days per week.

3. On June 16, 2014, DEQ staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act, the Regulations and the Permit. DEQ staff observed the following:
  - a. At approximately 8:00 a.m., DEQ staff observed exposed waste, without daily cover from the previous day, on the slope of Cell 22. DEQ staff also observed a washed out area of exposed waste at the bottom of the slope, which indicated the waste was uncovered for multiple days, as the most recent rainfall event at the Facility occurred on June 13, 2014.
4. 9 VAC 20-81-140.B.1.c. states, “[d]aily 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, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging. Alternate materials of an alternate thickness may be approved by the department if it has been demonstrated that the alternate material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. At least three days of acceptable cover soil or approved material at the average usage rate shall be maintained at the landfill or readily available at all times.”
5. SWP No. 587 Part II.D.1. states “[d]aily 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 day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.”
6. By the end of the day on June 16, 2014, the exposed waste on the slope of Cell 22 was covered.
7. On June 19, 2014, DEQ staff met with representatives of Shoosmith to discuss the lack of cover.
8. On July 3, 2014, DEQ issued NOV No. 2014-06-PRO-601 to Shoosmith for the violations described in paragraph C (3) above.
9. On July 9, 2014, Shoosmith stated that the Shoosmith inspector had only been inspecting for daily cover from the top of the cell and could not see all the way down the slope of Cell 22 from that vantage point. Shoosmith stated it has since changed its site inspection procedures such that cells are inspected both from the top and the bottom of the slope to ensure the entire working face has daily cover.
10. Based on the results of June 16, 2014 inspection and the June 19, 2014, meeting, the Board concludes that Shoosmith has violated SWP No. 587 Part II.D.1 and 9 VAC 20-81-140.B.1.c described in paragraphs C(3) through C(6), above.

11. In order for Shoosmith to complete its return to compliance, DEQ staff and representatives of Shoosmith 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 in Va. Code § 10.1-1455, the Board orders Shoosmith, and Shoosmith agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$26,720 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

Shoosmith 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, Shoosmith 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 Shoosmith for good cause shown by Shoosmith, 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, Shoosmith admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.

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

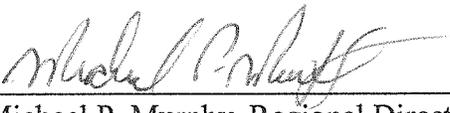
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Shoosmith. Nevertheless, Shoosmith agrees to be bound by any compliance date which 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 Shoosmith has completed all of the requirements of the Order;
  - b. Shoosmith 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 Shoosmith.

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

And it is so ORDERED this 14<sup>th</sup> day of NOVEMBER, 2014.

Consent Order  
Shoosmith Bros., Inc.  
SWP No. 587  
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Michael P. Murphy, Regional Director  
Department of Environmental Quality

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Shoosmith Bros., Inc. voluntarily agrees to the issuance of this Order.

Date: 10-8-14 By: J. Fletcher Kelly VICE PRESIDENT  
(Person) (Title)  
Shoosmith Bros., Inc.

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 8 day of October, 2014, by J. FLETCHER KELLY who is VICE PRESIDENT of Shoosmith Bros., Inc., on behalf of the corporation.

[Signature]  
Notary Public

7039385  
Registration No.

My commission expires: 1/31/18

Notary seal:

## APPENDIX A SCHEDULE OF COMPLIANCE

Shoosmith agrees to the following:

1. Within 60 days of the effective date of this Order, Shoosmith shall submit to DEQ for review and approval, an updated Operations Manual which includes the recent changes to site inspection procedures as noted in Shoosmith's correspondence with DEQ on July 9, 2014.

### **DEQ Contact**

Unless otherwise specified in this Order, Shoosmith shall submit all requirements of Appendix A of this Order to:

Gina Pisoni  
Enforcement Specialist  
VA DEQ – Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060  
804-527-5156  
804-527-5106 (fax)  
[Gina.Pisoni@deq.virginia.gov](mailto:Gina.Pisoni@deq.virginia.gov)