



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Dennis H. Treacy  
Director

Richard F. Weeks, Jr.  
Regional Director

### COMMONWEALTH OF VIRGINIA WASTE MANAGEMENT BOARD CONSENT ORDER ISSUED TO CPFILMS INC.

#### **Section A: Purpose**

This is a consent order issued under the authority of §§ 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455 of the Code of Virginia (1950), as amended, by the Virginia Waste Management Board to CPFilms Inc. to provide for closure in place of trenches historically used for sludge disposal at the CPFilms Inc. Martinsville facility.

#### **Section B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "CPFilms" means CPFilms Inc., a Delaware corporation registered in Virginia.
6. "Order" means this document, also known as a consent order.
7. "Regulations" means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.* ("SWMR").

8. "The Facility" means the four former sludge disposal trenches at the CPFilms property in Martinsville, Virginia.
9. "Hazardous waste" means a hazardous waste as defined in the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.*
10. "Regional office" means the West Central Regional Office of the Department of Environmental Quality, located at 3019 Peters Creek Road, in Roanoke, Virginia.
11. "Trench" means an unlined pit previously used to dispose of wastewater sludge.

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

1. CPFilms owns an industrial property located in Martinsville, Virginia. The facility consists of two manufacturing plants located on approximately 30 hectares of land. CPFilms is involved in the manufacturing of various film products for the window, reprographic, lighting, electronics, and transportation industries.
2. In 1998, as a part of a routine Phase II Environmental Site Assessment ("ESA") for a pending real estate transaction, an investigation of apparent former sludge disposal trenches near Plant 2 was performed. As a result of the excavation and sampling of several test pits, sludge-like material was encountered in four trenches.
3. Based on information from plant personnel, the three lower trenches are approximately 8 meters wide, 3 meters deep, and 30 meters in length, while the upper trench is approximately 8 meters wide, 3 meters deep, and 100 meters long.
4. According to interviews with plant personnel, the trenches were for the disposal of industrial wastewater sludge during the 1970's until approximately 1986. The sludge disposal practices occurred during a time when the plant was owned by Martin Processing, Incorporated, prior to the purchase of the plant by CPFilms.
5. Representatives of CPFilms met with DEQ staff on May 6, 1999 to discuss avenues for remediation of the site. Department staff conducted an inspection of the site on May 18, 1999 and completed an Initial Site Evaluation ("ISE") on May 25, 1999. The ISE concluded that the site was an unpermitted solid waste management facility operated until the early 1980's. In a letter dated October 25, 2001, CPFilm's consultant, Olver, Inc., requested that the Department allow closure in place of the site under a consent order.
6. Soil and groundwater sampling of the site confirms that the sludge is not a hazardous waste.
7. Remedial action pursuant to 9 VAC 20-80-200.B has not been performed at the Facility.

8. On the basis of the administrative record in this case, the Director determines that remedial action regarding the solid waste and constituents of solid waste at the Facility should be performed in accordance with 9 VAC 20-80-210.

#### **Section D: Agreement and Order**

Accordingly, the Board, by virtue of the authority of Code §§ 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455, orders CPFilms, and CPFilms voluntarily agrees to perform the actions described in Appendix A of this Order.

#### **Section E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of CPFilms, for good cause shown by CPFilms, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those matters pertaining to the facility specifically identified herein. 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 if such remediation is authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, CPFilms admits the jurisdictional allegations, but does not admit nor deny the factual findings and conclusions of law contained herein.
4. CPFilms 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. For purposes of entry of this Order, CPFilms declares that it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:11 *et seq.*, and the Virginia Waste Management Act, Code § 10.1-1400 *et seq.*, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to 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, or to judicial review of, any action taken by the Board or the Director to enforce this Order.
6. Failure by CPFilms 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 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. CPFilms 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, or other act of God, war, strike, or other such occurrences. CPFilms must show that the circumstances resulting in the noncompliance were beyond its control and were not due to a lack of good faith or diligence on its part. CPFilms shall notify the Director and the Director of the Department's West Central Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of 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 Director and the Director of the Department's West Central Regional Office within 72 hours of the commencement of the condition causing or anticipated to cause the delay or noncompliance shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, parent companies, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director of the Department of Environmental Quality or his designee and CPFilms. Notwithstanding the foregoing, CPFilms agrees to be bound by any compliance date that precedes the effective date of this Order.
11. This Order continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to CPFilms. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve CPFilms from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By the signature of an authorized official below, CPFilms voluntarily agrees to the issuance of this Order.

*for Robert G. Bunnley* *[Signature]*  
Dennis H. Treacy, Director  
Department of Environmental Quality

2-11-02  
Date

Seen and Agreed to: *Ralph E. Sink*  
For CPFilms Inc.

The foregoing instrument was acknowledged before me on Dec. 17, 2001  
by *Ralph Sink*, *V.P. Human Resources* on behalf of CPFilms Inc.  
(name) (title)

in the County/City of *Henric*, Commonwealth of Virginia.

*[Signature]*  
Notary Public

My Commission expires: *April 30, 2005*



## APPENDIX A

1. Not later than ninety (90) days after the effective date of this Order, the CPFilms shall submit a demonstration to the Regional Office of the suitability of the Facility for closure in place in accordance with 9 VAC 20-80-210.B. That demonstration shall include:
  - a. Separate characterization of the sludge contained in each trench in accordance with 9 VAC 20-80-210.B.1.a.
  - b. A siting evaluation performed in accordance with 9 VAC 20-80-210.B.1.b.
  - c. Certification in accordance with 9 VAC 20-80-210.B.1.c by a registered professional engineer or qualified groundwater scientist that in his professional judgment that the facility can be closed with the waste left in place without posing a threat to human health or the environment.
2. The Department will evaluate the demonstration submitted by CPFilms under Paragraph 2 above. If the Department on the basis of that demonstration determines that the Facility may be closed in place, then not later than sixty (60) days after receiving that determination from the Department, CPFilms shall submit closure and post-closure plans to the Department in accordance with 9 VAC 20-80-210.B.2.a.
3. Not later than thirty (30) days after receiving written approval from the Department, CPFilms shall begin implementation of the approved closure plan.
4. Not later than thirty (30) days after completion of closure, CPFilms shall submit a quality control / quality assurance and closure certification report in accordance with 9 VAC 20-80-270.E.4.b to the Department. After receiving the closure certification report, the Department will inspect the Facility in accordance with 9 VAC 20-80-270.E.5.
5. In accordance with 9 VAC 20-80-270.E.6, the post-closure care period begins on the date of the certification of completion of closure signed by a registered professional engineer pursuant to 9 VAC 20-80-270.E.4. In accordance with 9 VAC 20-80-270.E.6, if the Department's inspection required by 9 VAC 20-80-270.E.5 reveals that the Facility has not been properly closed in accordance with the applicable regulations, the post-closure care period will begin on the date that the Department acknowledges proper closure has been completed.
6. CPFilms will begin post-closure care in accordance with the approved post-closure care plan upon the commencement of the post-closure care period.
7. CPFilms shall perform any corrective action required under Part V of the Regulations should the results of the groundwater monitoring performed during the post-closure care period warrant such action.

8. CPFilms shall maintain financial assurance for closure and post-closure in accordance with the Financial Assurance Regulations for Solid Waste Facilities, 9 VAC 20-70-10 *et seq.*
9. CPFilms shall perform any other actions deemed necessary to protect human health and the environment.
10. If the Department on the basis of the demonstration submitted pursuant to Paragraph 2 above determines that closure in place under 9 VAC 20-80-210.B is not appropriate, then CPFilms shall submit within sixty (60) days of receiving written notification of such determination a plan for remedial action under 9 VAC 20-80-210 for either Removal, Cleanup and Proper Management under 9 VAC 20-80-210.A or Alternate Remedial Action under 9 VAC 20-80-210.C.