



# ***COMMONWEALTH of VIRGINIA***

Matthew J. Strickler  
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY  
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David K. Paylor  
Director

Robert J. Weld  
Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
KENNETH W. TOOMBS  
FOR HIS PROPERTY LOCATED AT  
2388 COLEMANS FERRY ROAD  
(UNPERMITTED FACILITY)  
RANDOLPH, VIRGINIA**

## **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 Mr. Kenneth W. Toombs, regarding his property located at 2388 Colemans Ferry Road, Randolph, Virginia, 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 Salem, 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.

5. "Facility" or "Site" means the land parcel located at 2388 Colemans Ferry Road, Randolph, Virginia and identified by Charlotte County as Tax Map Parcel # 84-2-4 and owned by Mr. Kenneth W. Toombs.
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. "Owner" means Mr. Kenneth W. Toombs, currently a resident of Charlotte County, Virginia. The Owner is a "person" within the meaning of Va. Code § 10.1-1400.
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 -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

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

1. The Owner owns the Site.
2. On February 5, 2019, the U.S. Environmental Protection Agency ("EPA") forwarded a complaint to DEQ for investigation. The complaint alleged that solid waste was being improperly managed at the Site.
3. On February 13, 2019, an anonymous complainant submitted additional information and photographs about the Site. The photographs showed a large volume of solid waste consisting of plastics, lumber, plywood, cardboard, metal, wallboard, sewer pipe, and broken asphalt. The waste was mixed with vegetative and woody debris. The complainant followed up on the same day with more photographs showing that most of the waste had been burned at the Site.
4. On February 19, 2019, the complainant contacted the DEQ again, stating that additional solid waste had been placed at the Site. Photographs were provided showing a pile of wallboard and other items placed at the Site.
5. On February 27, 2019, DEQ staff attempted to conduct an inspection of the Site. Upon arriving, DEQ observed from the public road, a large amount of ash and residue from a

fire, mixed with other solid waste. The Site was not posted with "No Trespassing" signs and no one was present at the Site at the time of the DEQ's inspection.

6. During the inspection, staff observed mixed with the burn residue solid waste, which included but were not limited to wallboard and other construction debris, burned and rusted metals, fiberglass, plastics, vegetative waste such as large logs, brush and tree limbs, other wood waste such as pallets and lumber, plastic sewer pipe, metal pipe and broken asphalt and concrete.
7. A truck was observed at the Site bearing the logo for KCAN Recycling, Saxe, VA, and another truck with the logo for Toombs Tree and Lift Service. A bulldozer was also located at the Site along with a tractor and other equipment.
8. On March 7, 2019, DEQ received photographs from a citizen who requested to remain anonymous documenting the placement of a large pile of waste containing plastics and other items on the ground at the Site. A large covered roll-off container on a truck was visible in the photograph in addition to a tractor and a bulldozer.
9. On March 19, 2019 the complainant reported that the new waste pile had been burned at night on Saturday March 16, 2019. The complainant alleged that waste remaining after the fire is buried at the Site.
10. The complainant contacted DEQ again on March 28, 2019 to forward photographs showing a large volume of mixed solid waste at the Site which appeared to be on fire or smoldering after a fire. The complainant stated that the dumping and burning now occurred on nearly a daily basis at the Site.
11. Virginia Code § 10.1-1408.1.A. states that "[n]o 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.
12. 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.
13. 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.
14. 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.
15. On April 24, 2019, the Department issued Notice of Violation No. NOV-19-04-BRRO-001 to the Owner as a result of the March 2019 site visit and additional information provided to the Department in February and March 2019.

16. On May 1, 2019, the Owner contacted the DEQ as requested in the NOV. The Owner asserted that no solid waste was being brought to the site but vegetative waste was being brought in for sorting into firewood/logs and brush to be sent to Curtis Tharp Trucking to make mulch.
17. On May 19, 2019, the Owner submitted current photos of the Site and photos of tipping receipts to the DEQ to document the clean up of the Site and proper disposal of the solid waste.
18. Based on the February 27, 2019 site visit and additional information provided to the Department in February and March 2019, the Board concludes that the Owner has violated Code § 10.1-1408.1.A. and 9 VAC 20-81-40.A-D regarding the management and disposal of solid waste, as described in paragraphs C(3) and C(10) of this Order.
19. Department staff has verified that the clean-up at the Site has been completed and that the violations described in paragraphs C(3) and C(10), above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders the Owner, and the Owner agree to pay a civil charge of **\$6,300** in settlement of the violations cited in this Order. The civil charge payment shall be paid in accordance with the following schedule:

<b>Due Date</b>	<b>Amount</b>
<b>September 15, 2020</b>	<b>\$787.50 or balance</b>
<b>December 15, 2020</b>	<b>\$787.50 or balance</b>
<b>March 15, 2021</b>	<b>\$787.50 or balance</b>
<b>June 15, 2021</b>	<b>\$787.50 or balance</b>
<b>September 15, 2021</b>	<b>\$787.50 or balance</b>
<b>December 15, 2021</b>	<b>\$787.50 or balance</b>
<b>March 15, 2022</b>	<b>\$787.50 or balance</b>
<b>June 15, 2022</b>	<b>\$787.50 or balance</b>

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 the Owner. Within 15 days of receipt of such letter, the Owner 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.

All payments 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 Owner 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 Owner 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 the Owner for good cause shown by the Owner, 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 Owner 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. The Owner 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 Owner declares he has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and he 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 Owner 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. The Owner 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 his control and not due to a lack of good faith or diligence on his part. The Owner shall demonstrate that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. The Owner 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 Owner intends 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 Owner.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after the Owner has completed all of the requirements of the Order;
  - b. The Owner 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 Owner.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Owner from his obligation to comply with any statute, regulation, permit

**Consent Order**

**Kenneth W. Toombs; 2388 Colemans Ferry Road, Randolph, Virginia**

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condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Owner 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. Any documents to be submitted pursuant to this Order shall be submitted by the Owner or an authorized representative of the Owner.
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.

------(Signature Page Follows)-----

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Kenneth W. Toombs; 2388 Colemans Ferry Road, Randolph, Virginia

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15. By his signature below, the Owner voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 30<sup>th</sup> day of June, 2020. August RJW

Robert J. Weld  
Robert J. Weld, Regional Director  
Department of Environmental Quality

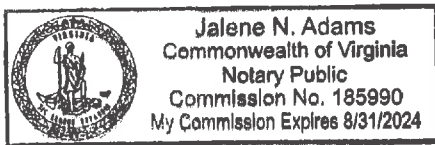
Mr. Kenneth W. Toombs voluntarily agrees to the issuance of this Order.

Date: 6-30-20 By: Kenneth W. Toombs  
Mr. Kenneth W. Toombs

Commonwealth of Virginia

City/County of Mecklenburg

The foregoing document was signed and acknowledged before me this 30 day of June, 2020 by Mr. Kenneth W. Toombs.



Jalene N. Adams  
Notary Public

185990  
Registration No.

My commission expires: 8-31-24

Notary seal: