



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Blue Ridge Regional Office

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Steven A. Dietrich
Regional Director

Lynchburg Office
7705 Timberlake Road
Lynchburg, Virginia 24502
(434) 582-5120
Fax (434) 582-5125

Roanoke Office
3019 Peters Creek Road
Roanoke, Virginia 24019
(540) 562-6700
Fax (540) 562-6725

VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION

ORDER BY CONSENT ISSUED TO INTERMET Corporation Falwell Airport Industrial Waste Landfill Permit Number 517

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1185 and 10.1-1455 between the Virginia Waste Management Board and INTERMET of Lynchburg, Virginia for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

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

1. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Lynchburg, Virginia (formerly the South Central Regional Office).
2. "Board" means the Virginia Waste Management Board, a permanent citizen's board 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 Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Facility" or "Landfill" means the Falwell Airport Industrial Waste Landfill, Permit Number 517.

6. "INTERMET" means INTERMET Corporation, which owns and operates Archer Creek Foundry, a ductile iron operation located in Campbell County, Virginia.
7. "NOV" means Notice of Violation.
8. "Net project costs" 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.
9. "Order" means this document, also known as a Consent Order.
10. "Permit" means Industrial Waste Landfill Permit Number 517, issued on November 19, 1987.
11. "SCRO" means the South Central Regional Office of DEQ, located in Lynchburg, Virginia.
12. "VSWMR" or "Regulations" means the Virginia Solid Waste Management Regulations 9 VAC 20-80-10 *et seq.*
12. "Va. Code" means the Code of Virginia (1950), as amended.

SECTION C: Findings of Fact and Conclusions of Law

1. On November 19, 1987, INTERMET was granted a Permit to operate an Industrial Landfill by the Director of the Virginia Department of Waste Management, predecessor to DEQ. INTERMET utilized the landfill to dispose of casting sand and slag from manufacturing operations at its Archer Creek Foundry. The Facility consists of two waste management cells designated as Cell 1A and Cell 1B. INTERMET currently leases the landfill site from the owners of a general aviation airport located on the east side of the City of Lynchburg.
2. INTERMET asserts that Cell 1A last received waste in February 1992, and that Cell 1B last received waste on or about April 18, 2002.
3. VAC 20-80-270 E.3. (a.)-(b.), *inter alia*, requires the owner to begin closure activities no later than 30 days after the date on which the unit receives the last waste, and to complete closure in accordance with the Closure Plan within 180 days after receiving the final volume of waste.
4. Delays occurred in closing Cell 1A involving leachate management issues, inadequate cap depth, and sliding of the cover on the toe slope. Corrective actions for Cell 1A were completed in September 2000. Cell 1B was delayed in closing due to revisions to the closure plan, as well as addressing the discharge emanating

from the French drains underneath both cells into surface waters. The rust-colored discharge is characterized by elevated levels of both iron and manganese.

5. 9 VAC 20-80-270(C.)(6.), provides, "Solid waste shall not be deposited in, nor shall it be permitted to enter any surface waters or ground waters."
6. 9 VAC 20-80-10 provides in part, "'Leachate' means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials from such wastes. Leachate and any material with which it is mixed is solid waste..."
7. INTERMET held discussions with the landowner(s) and submitted a letter to the Department on June 4, 2001, expressing the landowner's plans to install aircraft hangars on top of the cap for Cell 1A. INTERMET later informed the Department that in a February 10, 2004 meeting between INTERMET and the landowners, INTERMET learned that the proposed aircraft hangars would not be built.
8. DEQ received INTERMET's initial Closure/Post-Closure Plan for review on June 9, 2004. The Department issued its first technical review of the Plan on July 29, 2004.
9. INTERMET filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code on September 29, 2004, which delayed the response due regarding the Closure/Post-Closure Plan. The Department granted INTERMET an extension for response to the first technical review of the Closure/Post-Closure Plan on January 18, 2005.
10. Based on observations made during a January 4, 2005, compliance inspection of the Facility, SCRO issued Warning Letter No. WL-05-01-SCRO-007 to INTERMET on January 20, 2005. The inspection findings revealed that the financial assurance annual inflation update was not performed due to the current bankruptcy status; documentation was made of the discharge issuing from the bottom of the waste units into surface waters; and observations were made of discoloration of the surface waters by the discharge.
11. Based on observations made during an April 19, 2005, compliance inspection of the Facility, SCRO issued Notice of Violation No. NOV-05-06-SCRO-002 to INTERMET on July 7, 2005. The inspection revealed that the French drains installed below the waste units were discharging to surface waters, which showed visible impacts from the discharge. The Department cited INTERMET for failure to comply with the prohibition that solid waste shall not be deposited in, nor shall it be permitted to enter any surface waters or ground waters.
12. INTERMET met with the Department on August 3, 2005 to discuss the nature of the discharge to surface waters, including groundwater monitoring, surface water sampling, and corrective action required.

13. DEQ received the third revision to the initial Closure/Post-Closure Plan on August 17, 2005, incorporating comments from the Department's second technical review on May 17, 2005.
14. An unannounced compliance inspection was conducted at the Facility on September 14, 2005, which documented that conditions had not changed from the two previous inspections, and that potential wastes were being discharged into state waters. The Facility was advised to perform ambient stream monitoring to obtain reference data to apply as to whether the iron and manganese levels were naturally occurring and indicative of similar springs in the area. The Facility was also advised that if the discharge could not be proven as naturally occurring, or was not collected and hauled as leachate, it should apply for a VPDES permit to continue discharging into surface waters.
15. INTERMET emerged from Chapter 11 bankruptcy court protection on November 9, 2005, when the reorganization plan became effective.
16. The Department issued its third technical review of the Closure/Post-Closure Plan on May 26, 2006, which addressed final concerns with both plans. INTERMET and the Department participated in a conference call on August 22, 2006 in which iron levels present in groundwater monitoring and the discharge issuing from the French drains were discussed. INTERMET was advised again by the Department that in order to support their contention that the iron and manganese present in the discharge from the French drains was "naturally occurring", they would need to submit data to fully support their assertion. The Department issued final approval of the Closure/Post-Closure Plan on September 5, 2006.
17. INTERMET met with the Department on May 24, 2007 to further discuss the findings from groundwater monitoring and surface water analysis, the Construction Quality Assurance Plan due once Cell 1B is capped, and the requirements for a VPDES permit to cover the discharge from the French drains. A follow-up meeting was held on June 7, 2007 to address the submission of an amendment to the Closure/Post-Closure Plan.
18. Based on observations made during a compliance inspection conducted on July 9, 2007, DEQ issued Notice of Violation No. NOV-07-07-SCRO-003 on July 31, 2007. The NOV cited INTERMET for leachate management deficiencies, as well as time allowed for closure.
19. INTERMET held a pre-construction meeting at the Facility on July 12, 2007, with the firm's engineering consultants, contractor personnel, local Erosion & Sediment Control officials, and DEQ staff to discuss the project. Final cover construction began on July 16, 2007, with Department staff making site visits periodically throughout the project.

20. Additional enforcement meetings were held with INTERMET on August 16 and September 11, 2007. INTERMET did not furnish sufficient evidence that the iron and manganese present in the discharge from the french drains were “naturally occurring”. The Department was informed that INTERMET would proceed with plans to apply for a VPDES permit and install a sand filter to treat the constituents present in the discharge.
21. The Department issued VPDES Permit No. VA0092258 on July 2, 2008, which authorizes the discharge of treated wastes to waters of the Commonwealth.
22. INTERMET filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code on August 12, 2008.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 10.1-1455 C and F, orders INTERMET, and INTERMET agrees:

1. To perform the actions described in Appendix A and Appendix B of this Order to remedy the violations described above and achieve compliance with the Regulations. In addition, the Board orders, and INTERMET consents, to pay a civil charge of **\$3,640.00** in settlement of the violations cited herein.
2. **\$910.00** of this civil charge shall be paid within **30** days of the effective date of this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for INTERMET. The 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
PO Box 1104
Richmond, VA 23218

3. **\$2,730.00** of this civil charge shall be satisfied upon completion by INTERMET of a Supplemental Environmental Project (SEP) pursuant to Va. Code § 10.0-1186.2, and as described in Appendix B of this Order.
4. By signing this Order, INTERMET certifies that it has not commenced performance of the SEP before the Department identified the violations in this Order and approved the SEP.
5. The net project cost of the SEP to INTERMET shall not be less than the amount set forth in paragraph D.3. If it is, INTERMET shall pay the remaining amount in

accordance with paragraph D.1. of this Order, unless otherwise agreed to by the Department. "Net project costs" 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. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

6. In the event it publicizes the SEP or the SEP results, INTERMET shall state in a prominent manner that the project is part of a settlement of an enforcement action.
7. The Department has the sole discretion to:
 - a. Authorize any alternate, equivalent SEP proposed by INTERMET; and
 - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
8. Should the Department determine that INTERMET has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify INTERMET in writing. Within 30 days of being notified, INTERMET shall pay the amount specified in paragraph D.3., above, as provided in paragraph D.1., above.
9. INTERMET shall comply with the terms and conditions set forth in its Permit, as well as all applicable regulatory requirements of the Commonwealth.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of INTERMET, for good cause shown by INTERMET, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not affect appropriate enforcement actions by other federal, state, or local regulatory authorities whether or not arising out of the same or similar facts.
3. For the purposes of this Order and subsequent actions with respect to the execution of this Order, INTERMET admits the jurisdictional allegations, and will not controvert DEQ's jurisdiction. INTERMET neither admits nor denies the factual findings and conclusions of law contained herein.

4. INTERMET declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the 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 enforce this Order.
5. Failure by INTERMET 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.
6. 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.
7. INTERMET 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 other similar occurrence. INTERMET shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. INTERMET shall notify the DEQ South Central Regional Director verbally and in writing 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 written 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.

Failure to notify the Regional Director verbally within one business day and in writing within five business days of learning of any condition above, which INTERMET 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.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by the Director, or his designee, and INTERMET. Notwithstanding the foregoing, INTERMET agrees to be bound by any compliance date which precedes the effective date of this Order.

10. This Order shall continue in effect until the Board, the Director, or his designee, terminates the Order in its or his sole discretion upon 30 days written notice to INTERMET. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve INTERMET from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By its signature below, INTERMET Corporation consents to the issuance of this Order.

(The remainder of this page is intentionally left blank)

And it is so ORDERED this 12th day of JANUARY, 2008⁹.

Steven A. Dietrich

Steven A. Dietrich, P.E.
Blue Ridge Regional Director
Department of Environmental Quality

INTERMET Corporation consents to the issuance of this Order.

By: Troy T. Jonas

Date: November 26, 2008

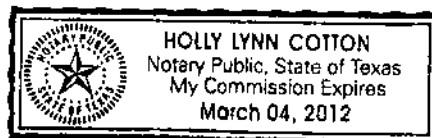
State of Texas
City of FORT WORTH

The foregoing document was signed and acknowledged before me this 26 day of
November, 2008, by Troy T. Jonas, who is the
Troy T. Jonas

Group President of the INTERMET Ferrous Group on behalf of INTERMET Corporation.

Holly Lynn Cotton
Notary Public

My commission expires: 3/4/2012



**APPENDIX A
SCHEDULE OF COMPLIANCE**

**INTERMET Corporation
Falwell Industrial Waste Landfill
Permit Number 517**

1. INTERMET shall achieve and maintain consistent compliance with all requirements and conditions of VPDES Permit No. VA0092258, issued July 2, 2008, and in accordance with the regulations set forth in 9 VAC 25-31-50. The Permit is to address the filtration and the subsequent discharge of treated wastes to waters of the State.
2. INTERMET shall submit to the Department for review and approval, a minor Permit amendment to the Facility's Closure/Post-Closure Plan by **March 31, 2009**, to include the installation of the leachate treatment system at the Facility. The amendment shall include an Operation and Maintenance (O & M) Manual as required by in Part I.B.3. of the subject VPDES Permit, to detail the practices and procedures to be followed to ensure compliance with the requirements of the Permit. The permittee shall maintain an accurate, approved O & M Manual for the treatment works and operate the treatment works in accordance with the approved O & M Manual. The Manual shall include, but not necessarily be limited to, the following items, as appropriate:
 - a. Treatment works design and operation, including normal and emergency start-up and shut-down procedures;
 - b. Routine preventative maintenance of units within the treatment system, critical spare parts inventory and record keeping;
 - c. Procedures for measuring and recording the duration and volume of treated wastewater discharged;
 - d. Techniques to be employed in the collection, preservation, and analysis of effluent samples.

Upon review and approval of the O & M Manual by the Department, the Manual shall become an integral and enforceable part of this Order. Any planned changes in the practices and procedures followed by the permittee shall be documented and submitted for review and approval by the Department within 90 days of the effective date of the changes. Upon approval of the revised Manual, the Manual shall remain an enforceable part of the VPDES Permit, as well as this Order. Noncompliance with the O & M Manual shall be deemed a violation of the Facility's VPDES Permit, as well as a violation of the terms and conditions of an enforcement action issued by the Virginia Waste Management Board.

3. INTERMET shall comply with the conditions outlined in VPDES Permit No. VA0092258, Part I.B.9., Annual Qualitative Benthic Invertebrate Monitoring, and

Part I.C.1., Whole Effluent Toxicity (WET) Monitoring in order to demonstrate to the Department a reasonable potential for water quality impacts of the treated landfill leachate on the receiving stream. WET compliance for INTERMET shall be determined with the following endpoints:

- A. Acute LC₅₀ of 100% equivalent to a TU_a of 1.0
 - B. Chronic NOEC of 100% equivalent to a TU_c of 1.0
- 4. INTERMET shall carry out the benthic and WET monitoring requirements of the VPDES Permit according to the schedule contained in Part I, Section B.9. and Section C.2. of the subject Permit. INTERMET shall maintain coverage of the Facility in compliance with a VPDES Permit during the period that the Facility is in Closure/Post-Closure Care.
 - 5. INTERMET shall apply to the Department for a review of the Facility's water quality impacts on the receiving stream within **30 days** of the Facility's termination of post-closure care. The Department shall conduct a review of the WET and Benthic monitoring data and notify INTERMET of future treatment requirements on the Facility's leachate.
 - 6. INTERMET shall comply with all post-closure care requirements in accordance with 9 VAC 20-80-270 F., and as described in the Facility's approved Closure/Post-Closure Plan.
 - 7. All correspondence related to this Order, unless otherwise specified, shall be sent to:
 - G. Marvin Booth, III
 - Department of Environmental Quality
 - Blue Ridge Regional Office
 - 7705 Timberlake Road
 - Lynchburg, Virginia 24502

(The remainder of this page is intentionally left blank)

APPENDIX B

SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

**INTERMET Corporation
Falwell Industrial Waste Landfill
Permit Number 517**

1. The SEP to be performed by INTERMET shall consist of financial assistance to the City of Lynchburg in conducting a regularly scheduled Household Hazardous Waste (HHW) collection event at the City's municipal landfill.
2. The SEP shall be completed **within 180 days** of the effective date of this Order.
3. INTERMET acknowledges that it is solely responsible for completion of the SEP. Any transfer of funds, tasks, or otherwise by INTERMET to a third party, shall not relieve INTERMET of its responsibility for completion of the SEP as contained in this Order in the event that the third party does not perform tasks assigned to it by INTERMET.
4. INTERMET shall submit written verification to the Department in the form of a certified statement which itemizes costs with invoices or similar documentation of the final overall and net project cost of the SEP from the City of Lynchburg. Such verification shall be submitted **within 15 days** of the SEP completion date.
5. INTERMET shall comply fully with the provisions of Section D of this Order in performing the SEP approved herein.

(The remainder of this page is intentionally left blank)