

COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
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David K. Paylor
Director

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Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
NRM ASSOCIATES, INC.
FOR THE
GARLAND-RODES SCHOOL RENOVATION
(Unpermitted Facility)
LOCATED AT 2244 RIVERMONT AVENUE
LYNCHBURG, 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 NRM Associates, Inc., regarding the Garland-Rodes School Renovation in Lynchburg, 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. "ACM" or "asbestos-containing material" mean (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations, as defined in 40 CFR 61.141.

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2. "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.
3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Salem, Virginia.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" or "Site" means the Garland-Rodes School ("Site") located at 2244 Rivermont Avenue, Lynchburg, Virginia. A renovation project of the structure was in progress at the time of the inspection.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
8. "NRM" means NRM Associates, Inc. a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. NRM is a "person" within the meaning of Va. Code § 10.1-1400.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
10. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
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. NRM owns the Facility located at 2244 Rivermont Avenue, Lynchburg, Virginia.
2. On March 29, 2018, Virginia Department of Labor & Industry ("DOLI") staff conducted an inspection at the Facility. A renovation project of the structure was in progress at the time of the inspection. NRM had removed a boiler unit, associated piping, and other materials such as flooring tile and mastic. Prior to the inspection, renovation and demolition waste had been placed in roll-off containers provided by County Waste Southwest VA, LLC, and transported

to the Region 2000 Landfill (permitted by DEQ under permit number SWP610). DOLI staff collected samples of the building materials and demolition waste.

3. NRM was informed by DOLI staff that the asbestos survey for the Facility, performed by Acres of Virginia, Inc. in January 2018, was not a valid survey because that company is not licensed to conduct asbestos surveys. Following the DOLI inspection, NRM contracted for a second asbestos survey with a different company. In a report dated April 10, 2018, renovation waste (i.e., floor tile, mastic, and caulk) was determined to contain greater than 1% asbestos.
4. The boiler and pipe insulation consisted of regulated ACM.
5. On April 20, 2018, DOLI staff contacted the Department to request assistance in obtaining information regarding the shipment of renovation and demolition waste from the Facility to the Region 2000 landfill.
6. On April 24, 2018, Region 2000 staff provided documentation for sixteen (16) loads of renovation and demolition waste that originated at the Facility. The loads were received between January 18, 2018 and April 23, 2018. Region 2000 staff reported they had not received notification that the loads contained ACM. The Region 2000 landfill is not permitted to accept ACM and the waste loads containing ACM were not properly prepared or marked for transport to the landfill.
7. On April 25, 2018, DOLI staff visited the Facility and observed flooring material (e.g., tile) and roofing material (which were suspected ACM) on the ground, which had not been cleaned up or properly managed.
8. 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.
9. 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.
10. 9 VAC 20-81-620 (A) states that the additional standards contained in this section apply to the management of all asbestos-containing waste materials ("ACM") generated by asbestos mills, by manufacturing, fabricating, and spraying operations, and Regulated Asbestos Containing Material (RACM) as defined by 40 CFR Part 61, Subpart M, as amended, generated in the course of demolition and renovation of installations, structures or buildings, or other waste-generating activities....all definitions included in 40 CFR Part 61, Subpart M, as amended, are hereby included by reference and (B) in order for ACM to accepted at the disposal site, these materials shall meet the transporting and packaging requirements for ACM according to 40 CFR Part 61, Subpart M, as amended, which is hereby incorporated.

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11. 9 VAC 20-81-620 (B) states that in order for ACM to be accepted at the disposal site, these materials shall meet the transporting and packaging requirements for ACM according to 40 CFR Part 61, Subpart M, as amended, which is hereby incorporated.
12. On June 21, 2018, the Department issued Notice of Violation ("NOV") No. NOV-18-06-BRRO-003 to NRM as a result of the information provided to the Department by DOLI staff and Region 2000 staff. NRM did not respond to the NOV as requested.
13. On April 3, 2019, DOLI staff confirmed that the renovation was complete and that NRM had managed the remaining ACM properly following the April 25, 2018 site visit by DOLI staff. Further, DOLI issued a fine/penalty to NRM for the improper removal, handling, and disposal of the RACM.
14. Based on the information provided to the Department by DOLI staff and Region 2000 staff, the Board concludes that NRM has violated 9 VAC 20-81-40.B-C and 9 VAC 20-81-620.A & B regarding the management and disposal of solid waste containing ACM, as described in paragraphs C(2) and C(7) of this Order.
15. DOLI staff has verified to the Department that the clean-up at the Facility has been completed and that the violations described in paragraphs C(2) and C(7), 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 NRM, and NRM agrees to pay a civil charge of **\$6,300** in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

<u>Due Date</u>	<u>Amount</u>
September 15, 2019	\$1,575 or balance
December 15, 2019	\$1,575 or balance
March 15, 2020	\$1,575 or balance
June 15, 2020	\$1,575

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 NRM. Within 15 days of receipt of such letter, NRM 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.

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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

NRM shall include its Federal Employer Identification Number (FEIN) **52-1383511** 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.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of NRM for good cause shown by NRM, 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, NRM admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. NRM 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. NRM 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 NRM 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. NRM 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. NRM shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NRM 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 NRM.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after NRM has completed all of the requirements of the Order;
 - b. NRM 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

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- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to NRM.

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

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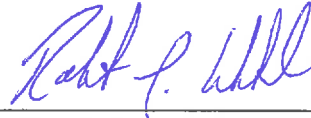
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15. By its signature below, NRM Associates, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15th day of August, 2019.



Robert J. Weld, Regional Director
Department of Environmental Quality

NRM Associates, Inc. voluntarily agrees to the issuance of this Order.

Date: 7-10-19 By:  Partner
Mr. Mitchell Namrow

Commonwealth of Virginia

City/County of Lynchburg

The foregoing document was signed and acknowledged before me this 10 day of July, 2019, by Mitchell Namrow who is a partner of NRM Associates, Inc., on behalf of the corporation.


Notary Public

7818392

Registration No.

My commission expires: 5/31/2023

Notary seal:

