



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482

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Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

December 11, 2023

Responsible Party Address:	Other Address:
Mr. Buddy G. Powell 261 Snow Mountain Road Stanardsville, Virginia 22973	
Other Address:	Other Address:

**PROPOSED CONSENT ORDER AND
NOTICE OF INFORMAL FACT FINDING PROCEEDING**

RE:	Responsible Party(ies)	Buddy G. Powell
	Facility Name	Not Applicable
	Registration/ Permit No.	Not Applicable

Dear Sir/Madam:

The Virginia Department of Environmental Quality (“DEQ”) issued Notice(s) of Violation (the “NOV(s)”) on the following date(s) to the Responsible Party(ies) identified above for alleged violations observed at the facility identified above.

Proposed Consent Order and Notice of Informal Fact Finding Proceeding

NOV Date(s)	November 27, 2023
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The Responsible Party(ies) may resolve this matter quickly by entering into the enclosed Consent Order with DEQ within forty-five days from the date of this letter. If DEQ does not receive the signed Consent Order by that date, DEQ will proceed with conducting an Informal Fact Finding Proceeding as explained in Section II below.

I. PROPOSED CONSENT ORDER

DEQ wishes to resolve the alleged violations in the NOV by entering into a Consent Order with the Responsible Party(ies). DEQ’s proposed Consent Order is enclosed for your review. The proposed Consent Order includes:

<input checked="" type="checkbox"/>	A civil charge in the amount of <u>\$4,133.75</u>
<input checked="" type="checkbox"/>	Injunctive relief (corrective actions) in Appendix A.

If you agree with the terms of the proposed Consent Order, please sign and date the Consent Order and send it within forty-five days from the date of this letter to:

Enforcement Specialist	Michelle Callahan
Address	Virginia Department of Environmental Quality 1111 East Main St., Suite 1400 Richmond, Virginia 23219
Email	michelle.callahan@deq.virginia.gov

The order is subject to public notice and comment before it becomes final. A copy of the fully executed order will be returned to you for implementation upon signature on behalf of DEQ.

II. NOTICE OF INFORMAL FACT FINDING PROCEEDING

You are hereby notified that if DEQ does not receive the signed Consent Order within forty-five days from the date of this letter, an Informal Fact Finding Proceeding will be held via conference call at the date and time listed below. At the scheduled time, dial the Call-In Number listed below, and enter the Access Code listed below when requested.

Proceeding Date	February 8, 2024	Proceeding Time	10:00 a.m.
Call-In No.	1(312)757-3121	Access Code	253-160-749

If you have any difficulty accessing the conference call, please call:

Proposed Consent Order and Notice of Informal Fact Finding Proceeding

Agency Advocate	Michelle Callahan
Phone No.	804-664-3893

The Informal Fact Finding Proceeding will be conducted pursuant to Va. Code §§ 2.2-4019 and 10.1-1186 to determine whether the Responsible Party(ies) violated the Virginia Code and Regulations as listed in the Findings of Fact and Conclusions of Law in Section C of the enclosed Consent Order. The Informal Fact Finding Proceeding will also determine the appropriateness of a civil penalty and/or injunctive relief.

DEQ staff will request a Special Order requiring the Responsible Party(ies) to:

<input checked="" type="checkbox"/>	Pay the maximum civil penalty authorized by law, and pay attorneys' fees of 30% of the amount outstanding should DEQ have to refer collection of the civil penalty to the Department of Law
<input checked="" type="checkbox"/>	Comply with the Virginia Code and Regulations by completing the corrective actions listed in Appendix A of the enclosed proposed Consent Order.

To ascertain the facts in this matter, DEQ staff may rely upon DEQ's inspection report(s) for the Facility, the NOV(s), any registration statement and permit for the Facility, other public documents in DEQ files, and the information presented by witnesses. DEQ staff will also rely on applicable statutes, regulations, and DEQ guidance. Full texts of statutes, regulations, and DEQ guidance can be obtained at <http://www.deq.virginia.gov/LawsRegulations.aspx> or <http://lis.virginia.gov/> (statutes and regulations) and <http://townhall.virginia.gov/L/GDocs.cfm> (DEQ guidance). Copies will be provided upon request.

You may participate in the conference call yourself or by counsel or other qualified representative pursuant to Va. Code § 2.2-4019. At this proceeding, the Responsible Party(ies) will be able to present factual data, argument, or proof in connection with this case. A Presiding Officer will hear the evidence in this case and will prepare an independent Findings of Fact and Conclusions of Law and a draft Special Order for the Director's review. Then the Director may issue a Special Order under Va. Code § 10.1-1186, which may include both injunctive relief and a civil penalty.

Be advised that if you fail to attend or appear without good cause to an informal fact-finding proceeding conducted pursuant to Va. Code § 2.2-4019, the Presiding Officer may issue a default order regarding the subject of this notice. If a default order is issued, the Presiding Officer may conduct all further proceedings necessary to complete the adjudication and shall determine all issues in the adjudication, including those affecting you. Further, an order may be issued against you based on any admissions or other evidence without notice to you.

You will be notified of the results of the proceeding in accordance with Va. Code § 2.2-4019 and have the right to appeal any adverse decision in accordance with Va. Code § 2.2-4026.

If you have any questions or require assistance, please contact the following DEQ staff who will represent DEQ at this proceeding:

Agency Advocate	Michelle Callahan
Phone No.	804-664-3893
Email	michelle.callahan@deq.virginia.gov

Proposed Consent Order and Notice of Informal Fact Finding Proceeding

Sincerely,

Lee Crowell Digitally signed by Lee Crowell
Date: 2023.12.13 12:42:57 -05'00'

Director of Enforcement

Enclosure

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER by CONSENT
ISSUED TO

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FOR

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An Unpermitted Solid Waste Facility

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455 for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the terms used in this Consent Order have the meanings assigned to them in Va. Code §10.1-1182 et seq., §10.1-1400 et seq., and 9 VAC 20-81-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

The Responsible Party is a “person” within the meaning of Va. Code § 10.1-1455.

Responsible Party		Enforcement Action ID	
Facility Name			
Facility Address	Street Address		
	City	VA	Zip Code
Facility Type			
Inspection Date		Warning Letter Date	Notice of Violation Date

NOV Observation Number	Observations and Legal Requirements	Civil Charge		Subtotal
	Operation of solid waste management facility without a permit. §10.1-1408.1 §10.1-1418.1 9VAC20-81-40	# of Violations		
	Unauthorized open burning of solid waste. §10.1-1408.1 §10.1-1418.1 9VAC20-81-40 9VAC20-81-95	# of Violations		
	Improper management of waste. §10.1-1408.1 §10.1-1418.1 §10.1-1418.2 9VAC20-81-40 9VAC20-81-95 9VAC20-81-397 9VAC20-121-100 9VAC20-121-240	# of Violations		
	Other.	# of Violations		
	Other.	# of Violations		
Civil Charge Subtotal				

Aggravating Factors		
	Additional Civil Charge Assessment	Subtotal
Degree of Culpability		
Consent Order in another media Program within 36 months		
Consent Order in the same media program within 36 months		
Aggravating Factors Subtotal		
Civil Charge Subtotal and Aggravating Factor Subtotal		
Cooperativeness and Quick Settlement		
Economic Benefit of Noncompliance		
In accordance with 62.1-44.15(8e), the Responsible Party's Ability to Pay was evaluated and it was determined that there is an ability to pay.		
Total Civil Charge		
Based on the observations and legal requirements cited above, the Department concludes that the Responsible Party has violated Va. Code and Regulations as identified herein.		

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Department orders the Responsible Party, and the Responsible Party agrees to:

- Perform the actions described in Appendix A of this Order; and
- Pay the total civil charge of in settlement of the violations cited in this Order in accordance with the following:
 - Within 30 days of the effective date of the Order.
 - In accordance with the following schedule:

Due Date	Amount

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, VA 23218

The Responsible Party shall include its Federal Employer Identification Number (FEIN) and Taxpayer Identification Number (TIN), id different, 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 Petroleum Storage Tank Fund (VPSTF). The TIN is required under Federal law (26 USC § 6723) and this consent order cannot be executed and finalized until it is provided. In accordance with United States Code (26 USC § 1.6050X) and the Code of Federal Regulations (26 CFR § 1.6050X-1) this information will be provided by DEQ to the Internal Revenue Service. To provide DEQ with your TIN please mail the attached Virginia Form W-9 with your payment. If the Department must refer collection of the civil charge due under this Order to the Department of Law, Responsible Party shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of the Responsible Party for good cause shown by the Responsible Party, 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 Department 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 Responsible Party admits 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 Responsible Party 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 Responsible Party declares it has received fair and due process under the Administrative Process Act and the State Water Control Law 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 Department to modify, rewrite, amend, or enforce this Order.
6. Failure by the Responsible Party to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department 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 Responsible Party 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. The Responsible Party shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Responsible Party 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 The Responsible Party. Nevertheless, the Responsible Party 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 the Responsible Party has completed all of the requirements of the Order;
 - b. The Responsible Party 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 Department terminates the Order in his or its sole discretion upon 30 days' written notice to the Responsible Party.

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

And it is so ORDERED.

DEQ Signee name (Signature)

Date

DEQ Signee Name (Printed)

I hereby certify that I am the Responsible Party or duly appointed representative/officer of the Responsible Party and acknowledge that there are no material facts in dispute with respect to the violations as identified in this consent order.

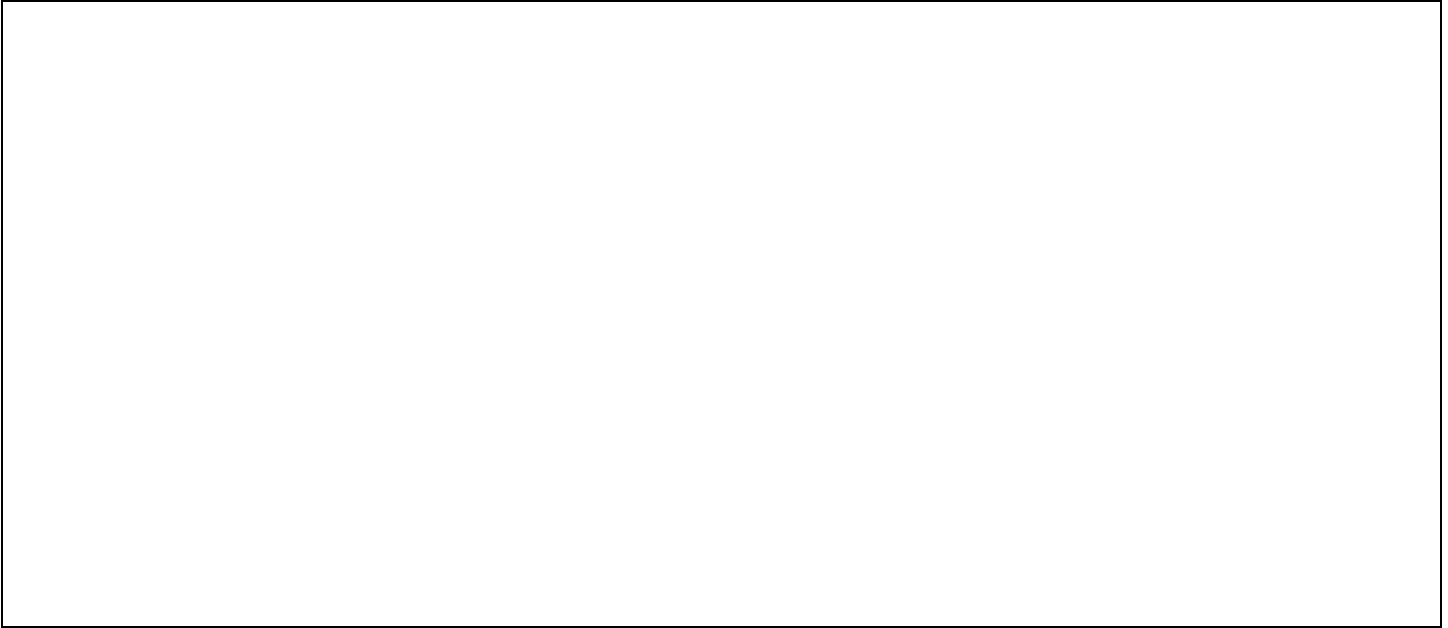
Responsible Party Name (Signature)

Date

Responsible Party Name (Printed)

DEQ Contact

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



**APPENDIX A
SCHEDULE OF COMPLIANCE**

The Responsible Party shall take the following actions:

	Correction to be Performed	Due Date
	Immediately cease all unpermitted waste management activities at the subject property. No unpermitted activities shall resume at the property until an appropriate waste permit is obtained from DEQ.	
	Immediately cease all improper waste management activities at the subject property. No waste management activities shall resume at the property until it can be demonstrated to DEQ that such activities can achieve compliance with an applicable exemption under 9VAC20-81-95.	
	Cease all open burning of solid waste, except for conditionally exempt allowable open burning in accordance with 9VAC20-81-95(D)(15).	
	Reduce the number of waste tires stored on-site to comply with § 10.1-1418.2.	
	Complete the removal of waste materials from the subject property and dispose of the materials in accordance with the Virginia Waste Management Act and the applicable regulations.	
	Submit disposal receipts from an appropriately permitted facility documenting disposal of the waste material.	
	Submit to DEQ for review and approval, a corrective action plan to address the violations described in this order. The corrective action plan shall include a plan and schedule to achieve and maintain consistent compliance with regulatory requirements. Upon approval by DEQ the corrective action plan and schedule become enforceable under this Order.	
	Submit to DEQ for review and approval a Notice of Intent and Part A Application Form and required attachments for a Solid Waste Permit in accordance with 9VAC20-81-450 and 9VAC20-81-460.	
	Submit to DEQ for review and approval the PBR Application Form and required attachments for a Solid Waste Permit-By-Rule in accordance with 9VAC20-81-410.	