

STATE OF MARYLAND,  
DEPARTMENT OF THE  
ENVIRONMENT

Plaintiff

v.

EARL CENTER, ET AL.

Defendants

\* BEFORE THE  
\* OFFICE  
\* OF  
\* ADMINISTRATIVE HEARINGS,

\* OAH CASE NO. MDE-WAS-040-200300001

\* \* \* \* \*

CONSENT ORDER

The State of Maryland, Department of the Environment ("Department") and Earl Center and Earl Center Excavating Company ("Defendants") hereby represent and acknowledge that they enter this Consent Order as follows:

**EXPLANATORY STATEMENT**

A. The Department is charged with the responsibility for regulating the management and disposal of solid waste in the State of Maryland. The Department's authority is set forth in Sections 1-404, 9-201 through 9-229, inclusive 9-268 and 9-334 through 9-342 of the Environment Article, Annotated Code of Maryland and in the Code of Maryland Regulations (COMAR) 26.04.07.

B. The Department filed a Complaint, Order and Administrative Penalty (MDE # C-O-02-SW-066) against Defendants on or about March 28, 2002 alleging, among other things, the unpermitted operation of a refuse disposal system on property with a mailing address of 14616 Old Gunpowder Road, Laurel, Maryland and identified on Montgomery County Tax Map LR 123, parcels P258, P340, P454, and P202 (herein referred to as the "Site"). Defendants filed a timely request for a hearing.

C. Since receipt of the Complaint, Defendants have ceased operation of the refuse disposal system at the Site. Additionally, Defendants have submitted a tentative closure plan for closure of the refuse disposal system/landfill pursuant to COMAR 26.04.07.21.

D. Earl Center contends that he is in negotiations with the Maryland National Capital Parks & Planning Commission ("the Commission") to have the Commission purchase the Site for use as a prospective golf course. To that end, the Commission has listed the Site as a property to be acquired.

E. Settlement discussions between the parties have resulted in agreement to resolve the pending administrative litigation between the parties consistent with this Consent Order.

#### ORDER

NOW, THEREFORE, it is ORDERED by the Director of the Waste Management Administration of the Department and CONSENTED TO by Earl Center and Earl Center Excavating Company as follows:

1. Earl Center and Earl Center Excavating Company (herein "Defendants") shall cease and desist the operation of an open dump, land clearing debris landfill, or refuse disposal system at the property located on 14616 Old Gunpowder Road, Laurel, Maryland, as identified as Map LR 123, Parcels P258, P340, P454, and P202 of the Montgomery County tax map (the "Site"). This prohibition includes but is not limited to Defendants being prohibited from receiving and accepting, grinding and reclaiming land with any land clearing debris, solid waste or refuse at the subject property, subject to the provisions of paragraph 3 of this Consent Order. Land clearing debris shall include any earthen material such as clays, sands, gravels and silts, topsoil, tree stumps, root mats, brush, limbs, leaves, logs, mulch, compost and vegetation of any type;

2. Defendants shall grant the Department access to the Site at all reasonable hours, pursuant to §§ 1-404(k) and 9-261(c) of the Environment Article of the Annotated Code of Maryland for the purpose of monitoring compliance with this Consent Order;

3. Defendants shall submit to the Department within 30 days of this Consent Order a certified plan prepared by a civil engineer, to be approved by the Department, for the closure of the open dump, land clearing debris landfill and refuse disposal system at the Site. Such plan shall be in conformance with closure requirements for landfills found in COMAR 26.04.07.21 including, *inter alia*, a final earthen cover with a minimum thickness of at least 2 feet, a plastic geomembrane of at least 20 mil thickness, a drainage layer, and appropriate vegetative stabilization. Closure shall be completed pursuant to the approved plan, which shall provide a schedule for completion not to exceed 90 days after approval of the closure plan by the Department.

4. Defendants shall submit to the Department within 60 days of completion of the closure of the facility, pursuant to Environment Article § 9-204(i) and COMAR 26.04.07.12, a certified copy of plans showing all landfilled areas "as built" including a map depicting the final grade of the Site.

5. Defendants shall submit proof to the Department within 30 days of the submission of the closure plan that the Deed or Deeds pertaining to the Site has (or have) been amended and recorded with the land records of Montgomery County, Maryland to stipulate that construction on the Site may not begin without first obtaining written authorization from the Waste Management Administration of the Department pursuant to COMAR 26.04.07.12D;

6. Defendants shall be subject to post-closure monitoring and maintenance for five years pursuant to COMAR 26.04.07.22. Defendants shall inspect the subject property at least

twice per year and shall correct irregularities or problems noted during the inspection within 30 days of their observance unless otherwise directed by the Department. The results of the inspections shall be recorded and reported to the Department within 60 days of the inspection. Such reports shall be sent by first class mail to the Solid Waste Program Administrator, Maryland Department of the Environment, 1800 Washington Boulevard, Suite 605, Baltimore, MD 21230-1719;

7. Defendants shall pay an Administrative Penalty in the amount of \$50,000, subject to the following conditions. Defendants shall pay \$25,000 within 6 months of the date of this Consent Order. In the event Defendants comply with all of the terms and conditions of this Consent Order, including specified timelines, the Department will waive the remaining \$25,000 penalty. In the event of non-compliance with this Consent Order, the remaining \$25,000 shall be due and owing upon demand by the Department. Payments shall be made by certified check, payable to the Clean Water Fund. The check(s) shall reference the case number and be forwarded as provided in paragraph 8.

8. Copies of all notices and reports required by this Consent Order shall be provided by first class mail to J. Van Lear Dorsey, Assistant Attorney General, Office of the Attorney General, Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, MD 21230-1719.

9. The provisions of this Consent Order shall apply to and be binding on Defendants and their successors and assigns, including any transferee of any legal or equitable interest in the Site. At least 30 days prior to the transfer of any legal or equitable interest in the Site, Defendants shall provide a copy of this Consent Order by means of certified mail to the prospective successor-in-interest. Defendants shall contemporaneously provide the Department

with documentation satisfactory to the Department of their compliance with the provisions of this paragraph. Transfer of any interest in the Site shall be conditioned on compliance with this Consent Order such that the successor-in-interest must affirmatively acknowledge its obligation to comply with the terms of this Consent Order.

10. The Department agrees to renegotiate the closure of the landfill (paragraphs 3-6 of this Consent Order) in the event the Commission acquires a legal or equitable interest in the Site, provided that the Commission acquires the Site within six months from the date of execution of this Consent Order. Notwithstanding this paragraph, closure of the landfill shall be consistent with COMAR 26.04.07.21.

7/15/03  
Date

Jonas Jacobson  
Jonas Jacobson, Director  
Waste Management Administration

7/15/03  
Date

Earl Center  
Earl Center  
Individually and on behalf of  
Earl Center Excavating Company

Approved as to form and legal sufficiency this 15<sup>th</sup> day of July, 2003:

J. Van Lear Dorsey  
J. Van Lear Dorsey  
Assistant Attorney General