COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2009
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Maria R. Nold
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT

ISSUED TO

EAST COAST GUTTERMAN, LLC

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 East Coast Gutterman, LLC for the purpose of resolving certain violations of the Virginia Waste Management Act and the Virginia Solid Waste Management 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "EGC" means East Coast Gutterman, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries. East Coast Gutterman LLC is a "person" within the meaning of Va. Code § 10.1-1400.

5. "Facility" means the Military Highway Recycling Center, owned and operated by East Coast Gutterman LLC, located at 5300 West Military Highway in Chesapeake, Virginia.

6. "Material Recovery Facility" or "MRF" means a solid waste management facility for the collection, processing, and recovery of material such as metals from solid waste or for the production of a fuel from solid waste.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.

8. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

9. "Permit" means the written permission of the Director to own, operate or construct a solid waste management facility.

10. "Permit-by-Rule" or "PBR" is a provision of the Regulations stating a facility or activity is deemed to have a permit if it meets the requirements of the Regulations. Unless the owner or operator of a transfer station, materials recovery, energy recovery, thermal incineration, incineration, compost facility or waste pile chooses to apply for and receive a full permit pursuant to the Regulations, the owner or operator shall be deemed to have a solid waste permit if the conditions of the Regulations are met.

11. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC20-80-10 *et seq.*

12. "Solid Waste" means any of those materials defined as 'solid waste' in 9 VAC 20-80-140 *et seq.*

13. "Solid Waste Management Facility" means a site used for planned treating, storing, or disposing of solid waste.

14. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

15. "Va. Code" means the Code of Virginia (1950), as amended.

16. "VAC" means the Virginia Administrative Code.

17. "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. ECG owns and operates the Facility located at 5300 West Military Highway in Chesapeake, Virginia.

2. On March 29, 2013, ECG submitted to DEQ a Notice of Intent to operate a MRF at the Facility under a PBR. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.

3. On June 7, 2013 and June 28, 2013, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:

    a. ECG was actively involved in the processing, transfer and storage of non-hazardous solid waste including wood pallets, metal, furniture, plastic, plywood, particle board, treated poles, painted wood and asphalt shingles.

    b. ECG had not been issued a solid waste management facility permit nor has ECG been acknowledged by DEQ as operating a MRF under a PBR at the Facility.

4. §10.1-1408.1(A) and 9 VAC 20-81-40(A) requires a permit for the management of solid waste, which includes disposal, treatment or storage of nonhazardous solid waste.

5. On July 8, 2013, based on the inspections and follow-up information, the Department issued a Notice of Violation to EGC for the violations described in paragraphs C(3) and C(4), above.

6. On July 18, 2013, DEQ met with representatives of ECG to discuss the violations.

7. Based on the results of the June 7, 2013 and June 28, 2013 inspections, and the July 18, 2013 meeting with ECG representatives, the Board concludes that ECG has violated Va. Code §10.1-1408.1(A) and 9 VAC 20-81-40(A) as described in paragraph C(3) and C(4) above.

8. In order for ECG to return to compliance, DEQ staff and representatives of ECG have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 10.1-1455, the Board orders ECG, and ECG agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $5,255.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

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, Virginia 23218

ECG shall include its Federal Employer Identification Number (FEIN) 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, ECG 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 ECG for good cause shown by ECG, 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 the purposes of this Order and subsequent actions with respect to this Order only, ECG admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

4. ECG 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. ECG 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 ECG 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. ECG 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. ECG shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. ECG 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 ECG. Nevertheless, ECG 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 ECG has completed all of the requirements of the Order;

   b) ECG 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 ECG.

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

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, ECG voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 6 day of May, 2014.

Regional Director
Department of Environmental Quality

East Coast Gutterman, LLC voluntarily agrees to the issuance of this Order.

Date: 03.25.14 By: Anthony Calcagni, Member
(Person) (Title)

of East Coast Gutterman LLC.

Commonwealth of Virginia
City/~~County of~~ Chesapeake

The foregoing document was signed and acknowledged before me this 25th day of March, 2014, by Anthony Calcagni, who is Member of East Coast Gutterman, LLC on behalf of the company.

Kelly S. Kaczmar
Notary Public

7379802
Registration No.

My commission expires: My Commission Expires February 28, 2015

Notary Seal:

APPENDIX A

SCHEDULE OF COMPLIANCE

EGC shall:

1. By April 15, 2014, submit to DEQ all information required for ECG to be acknowledged by DEQ as operating a MRF under a PBR in accordance with the Regulations.

2. Submit all requirements of Appendix A of this Order to:

Regional Director
Virginia Department of Environmental Quality
Tidewater Regional Office
5636 Southern Blvd
Virginia Beach, VA 23462