COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 Fax (804) 527-5106
www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
J. E. LIESFELD CONTRACTOR, INC.

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 J. E. Liesfeld Contractor, Inc. for the purpose of resolving certain alleged 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. "Va. Code" means the Code of Virginia (1950), as amended.

2. "Board" means the Virginia Waste Management Board, a permanent collegial body 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" means the property located at 1851 Bennington Road in Goochland County, Virginia, where the unpermitted construction, demolition debris (CDD) landfill and Liesfeld"s Corp.'s contracting firm is located.

6. "Liesfeld Corp." means J. E. Liesfeld Contractor, Inc., a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Order" means this document, also known as a Consent Order.

8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

9. "Unit" means a discrete area of land used for the management of solid waste.

SECTION C: Findings of Fact and Conclusions of Law

1. On May 6, 1997, a Consent Order (Order) was issued to Liesfeld Corp. to address violations of the Virginia Solid Waste Management Regulations (VSWMR) 9 VAC 20-80-10 et seq. for operating an unpermitted CDD landfill at the Facility.

2. Liesfeld Corp. decided to close-in-place the unpermitted landfill instead of removing the waste. The Order required Liesfeld Corp. to comply with the groundwater monitoring requirements, all closure and post-closure care requirements that are required by the Virginia Solid Waste Management Regulations (VSWMR).

3. Department records indicate that Liesfeld Corp. has not complied with the Order and has not fulfilled the following statutory and regulatory requirements for closure and post-closure care the facility.

   a. Liesfeld Corp. failed to implement the groundwater monitoring plan as required by Appdx. A, # 3, of the Order.
   b. Liesfeld Corp. failed to complete closure activities as required by Appdx. A, # 4, of the Order.
   c. Liesfeld Corp. failed to conduct post-closure care for 10 years as required by Appdx. A, #'s 5, 6 and 7 of the Order.
   d. Liesfeld Corp. failed to document compliance with the Financial Assurance Regulations as required by Appdx. A, # 8 of the Order.

4. A Notice of Violation (NOV) was issued to Liesfeld Corp. on November 30, 2006, citing the violations described above.

5. Liesfeld Corp. met with the Department on December 21, 2006, to discuss resolution of the NOV. Liesfeld Corp. has agreed to document compliance with Financial Assurance, complete the post-closure care requirements for the unpermitted landfill, and submit the required reports. In light of the meeting on September 26, 2007, Liesfeld has now agreed to remove the waste pursuant to a

plan that is referred to herein and in the Appendix which has been approved by the Department.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455(F), orders Liesfeld Corp., and Liesfeld Corp. voluntarily agrees to perform the actions described in Appendix A of the Order. In addition, the Board orders Liesfeld Corp., and Liesfeld Corp. voluntarily agrees to pay a civil charge of **$20,300** 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 cashiers check payable to the "Treasurer of Virginia" and shall be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on the check, Liesfeld Corp. shall include its Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Liesfeld Corp. for good cause shown by Liesfeld Corp., or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV (NOV No. 2006-11-PRO-602) issued by DEQ on November 30, 2006. 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 preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Liesfeld Corp. admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Liesfeld Corp. 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. Liesfeld Corp. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Solid 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.

6. Failure by Liesfeld Corp. 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. Liesfeld Corp. 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 such occurrences. Liesfeld Corp. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Liesfeld Corp. shall notify the DEQ Regional Director 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 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.

   Notice shall satisfy this requirement if made to the DEQ representative designated herein by telephone, facsimile or electronic mail, followed by written notice within three business days. Failure to give notice by telephone, facsimile or electronic mail within 24 hours 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, their 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 Liesfeld Corp.. Notwithstanding the foregoing, Liesfeld Corp. agrees to be bound by any compliance date which precedes the effective date of this Order.

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

12. This Order supersedes and cancels the Consent Order issued by the Virginia Waste Management Board on May 6, 1997.

13. By its signature below, Liesfeld Corp. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this May 12, 2008.

Gerard Seeley, Jr., Regional Director
Department of Environmental Quality

Liesfeld Corp. voluntarily agrees to the issuance of this Order.

By: J.E. Liesfeld Contractor, Inc.
C.P. [illegible], CFO

Date: 3/26/08

Commonwealth of Virginia
City/County of Goochland

The foregoing document was signed and acknowledged before me this 26th day of

March, 2008, by Charles P. Sheehy, who is
(Name)

CFO of Liesfeld Corp., on behalf of the Corporation.
(Title)

Julia Morgan Lloyd
Notary Public

Commonwealth of Virginia
Julia Morgan Lloyd - Notary Public
Commission No. 252895
My Commission Expires 10/31/2009

My commission expires: 10-31-2009.

APPENDIX A

In order to come into compliance:

1. By no later than **April 1, 2008**, Liesfield shall submit to DEQ-PRO:

    a. A plan for making a determination as to whether or not hazardous waste was disposed in the Unit. The determination shall include appropriate characteristic and listing criteria for waste, and be performed in accordance with EPA Document No. SW-846, "*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*".

2. By no later than **July 1, 2008**, Liesfeld shall:

    a. Implement, upon DEQ approval, the approved waste characterization plan.
    b. Submit analytical results of the waste characterization performed in accordance with 40 CFR Part 262.11 and the approved waste characterization plan, along with the name, address, and phone number of the provider of such testing.

3. If DEQ determines, based on the sampling performed in accordance with Appendix A, Number 1, that RCRA closure is necessary, Liesfeld shall perform closure and post-closure care for the facility in accordance with 40 CFR Part 265, Subpart G – Closure and Post-Closure, and:

    a. Submit an EPA 8700-12 Form;
    b. A closure plan completed in accordance with 40 CFR § 265.112 shall be submitted to DEQ no later than 90 days after the date of DEQ's notification to Liesfeld that closure and post-closure care will be necessary;
    c. Cost estimates for closure and post-closure care, completed in accordance with 40 CFR § 265.142 and § 265.144, respectively, shall be submitted to DEQ with the closure plan required by Appendix A, Number 3a, above; and
    d. Liesfeld shall establish financial assurance for closure and post-closure care in accordance with 40 CFR Part 265 Subpart H – Financial Requirements no later than 90 days after the date of DEQ's notification to Liesfeld that closure and post-closure care will be necessary;
    e. Implement, upon DEQ approval, the approved closure plan in accordance with the schedule therein; and

4. If pursuing removal of the unauthorized solid waste at the Property, Liesfeld shall:

    a. Submit an approvable removal plan and schedule for removal in accordance with 9 VAC 20-80-210.A by not later than **August 1, 2008**;
    b. Implement, upon DEQ approval, the approved removal plan in accordance with the schedule therein;

c. Take any and all actions necessary to abate any immediate threat to human health or the environment; and
d. Abide by all applicable requirements of 9 VAC 20-80-210.A, including but not limited to closure or alternate remedial action.

5. If pursuing alternate remedial action, Liesfeld shall:

a. Submit a letter of intent to pursue an alternate remedial action and an evaluation in accordance with the provisions of 9 VAC 20-80-210.C by no later than **August 1, 2008**;
b. Implement, upon approval, the alternate remedial action plan in accordance with the schedule therein;
c. Comply with all applicable provisions of 9 VAC 20-80-210.C;
d. Take any and all actions necessary to abate any immediate threat to human health or the environment; and
e. Submit any additional information requested by DEQ no later than the due date specified by such request.

6. **Pursuant to this Order, submit all documentation as required by <u>Appendix A</u> to:**

Cynthia Akers
Department of Environmental Quality
Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060