



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

LOUIE CASH CUSTOM BUILDER, LLC

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d) between the State Water Control Board and Louie Cash Custom Builder, LLC, to resolve certain alleged violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "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 DEQ.
5. "DEQ-VRO" means the Valley Regional Office of the DEQ.

6. "LCCB " means Louie Cash Custom Builder, LLC.
7. "The Site" means the residential construction site located approximately 5 miles west of Staunton, Virginia, along Route 254 and owned by LCCB.
8. "VWP Regulation" means the Virginia Water Protection Regulation, 9 VAC 25-210-10 *et seq.*
9. "VPDES Regulation" means the Virginia Pollutant Discharge Elimination System General Permit Regulation for Discharges of Stormwater from Construction Activities, 9 VAC 25-180-10 *et seq.*
10. "Order" means this document, also known as a Consent Special Order.
11. "ACOE" means the U.S. Army Corps of Engineers.

SECTION C: Findings of Fact and Conclusions of Law

1. As part of development of the Site, on May 27, 2004, the ACOE issued LCCB an "after-the-fact" permit authorizing the rehabilitation of an old farm pond by upgrading or removal of the dam of the pond and authorizing the placement of a culvert in an intermittent stream at a location upgradient of the pond. The ACOE permit did not authorize any work in the intermittent channel below the dam nor did it authorize impacts to the emergent wetlands located below the dam.
2. On September 16, 2004, staff of DEQ and the ACOE met with Mr. Lewis C. Cash, Jr., at the Site and observed the following conditions:
 - Approximately 380 linear feet of intermittent stream channel (an unnamed tributary to Middle River) located below the old farm pond dam had been altered by grading the channel. Approximately 50 linear feet of the graded channel was located on neighboring property;
 - Approximately 0.145 acre of emergent wetlands located below the pond had been permanently altered by site grading activities; and,
 - Construction activities at the Site have included clearing, excavating and filling. DEQ staff also observed that the construction site, which is greater than 1 acre in size, was configured to discharge stormwater from the Site into an unnamed tributary of Middle River.
3. Based on DEQ's observations made during the September 16, 2004 inspection of the Site, on September 28, 2004, DEQ issued Notice of Violation No. 04-9-VRO-3 to LCCB citing the following violations of State Water Control Law, the VWP Regulation and the VPDES Regulation:

- a. Dredging, filling or discharging of any pollutant into, or adjacent to surface waters, or otherwise altering the physical, chemical or biological properties of surface waters or excavating in wetlands without a permit in apparent violation of 9 VAC 25-210-50.A of the VWP Permit Regulation;
 - b. Discharging into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substance; or, otherwise altering the physical, chemical or biological properties of such state waters making them detrimental to the public health, or to the animal or aquatic life, or to the uses of such state waters for domestic or industrial consumption, or for recreation, or for other uses without a permit in apparent violation of Va. Code § 62.1-44.5.A; and,
 - c. Construction activities resulting in the disturbance (clearing, excavating and filling) of greater than one acre of area without first having submitted a Registration Statement in apparent violation of 9 VAC 25-180-60.A of the VPDES Regulation.
4. Pursuant to 9 VAC 25-180-60 of the VPDES Regulation, on September 21, 2004, LCCB submitted a Registration Statement for Construction activity Stormwater Discharges.
 5. During the September 16, 2004 inspection of the Site, the ACOE indicated that the 380 linear feet of unauthorized impact to the unnamed intermittent stream channel would be covered under an after-the-fact ACOE permit. During the inspection of the Site, Mr. Cash was advised that his options for addressing the 0.145 acre of unauthorized wetland impact included (a) on-site mitigation; (b) off-site mitigation; or, (c) the purchase of wetland credits from a wetlands bank. During the inspection, Mr. Cash indicated that his preferred option for addressing this noncompliance was through the purchase of wetland credits; accordingly, Appendix A of the Order is structured to reflect Mr. Cash's decision in this matter.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders LCCB, and LCCB agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders LCCB, and LCCB voluntarily agrees, to pay a civil charge of **\$2,000** within 30 days of the effective date of the Order in settlement of the alleged violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

LCCB shall include its Federal Identification Number with the civil charge payment and shall note on the check that payment is being made pursuant to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of LCCB, for good cause shown by LCCB, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations addressed in NOV No. 04-7-VRO-4, including those alleged violations specifically identified herein. 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 alleged 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, LCCB admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. LCCB 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. LCCB declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and waives its 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 by LCCB 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 LCCB 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 alleged 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. LCCB 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 occurrence. LCCB shall show that such circumstances were

beyond its control and not due to a lack of good faith or diligence on its part. LCCB shall notify the Regional Director of the VRO 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.

Failure to so notify the Regional Director of the VRO within 24 hours of learning of any condition above, which LCCB intends 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 LCCB. Notwithstanding the foregoing, LCCB 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 LCCB. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve LCCB from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signatures below, LCCB voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7 day of December, 2004.


Robert G. Burnley, Director
Department of Environmental Quality

LCCB voluntarily agrees to the issuance of this Order.

LEWIS C. CASH JR

By: [Signature]

Date: 10/14/04

Commonwealth of Virginia

City/County of Augusta

The foregoing document was signed and acknowledged before me this 14th day of October, 2004, by LEWIS C. CASH JR, who is
(name)

OWNER of Louie Cash Custom Builder, LLC on behalf of the LLC.
(title)

[Signature]
Notary Public

My commission expires: May 31, 2008.

**APPENDIX A
SCHEDULE OF COMPLIANCE**

LOUIE CASH CUSTOM BUILER, LLC

1. **By November 15, 2004**, LCCB shall purchase **0.145 acre credit** from the Shenandoah Wetlands Bank, LLC.
2. **By December 15, 2004**, LCCB shall provide to DEQ's Valley Regional Office a copy of the certificate for the purchase of **0.145 acre credit** from the Shenandoah Wetlands Bank, LLC.

Wetland Credit Certificate

This is to certify that Louie Cash Custom Builder, LLC has purchased
0.145 wetland credits in the

Shenandoah Wetland Bank

This wetland credit purchase is designated for use in connection with

Gap No. 2 Permit Number: 04:H0129-75



Shenandoah Wetland Company, L.C.

14 October 2004
Date

