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

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
MR. J. E. LIESFELD, JR.

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d) between the State Water Control Board and J. E. Liesfeld, Jr. 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 State Water Control Board, a permanent citizen's board of the Commonwealth of Virginia as described in VA Code §§ 10.1-1184 and 62.1-44.7.

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. "Gillies Creek RC" means the Gillies Creek Recycling Center located at 4200 Masonic Lane in Henrico County, Virginia.

6. "Mr. Liesfeld" means Mr. J. E. Liesfeld, Jr., who is the owner of the Gillies Creek RC.

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

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

9. "Permit" means VWP Permit No. 00-0925, issued to Mr. J. E. Liesfeld, Jr. on August 29, 2001 and expired on August 29, 2006.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Liesfeld was issued a Permit in August 2001, and the Permit expired in August 2006. The Permit was issued for the proposed impacts to approximately 2.7 acres of wetlands as part of the construction of the Gillies Creek Recycling Center in Henrico County. To address the impacts, Mr. Liesfeld proposed and was approved to create ~ 5.05 acres of wetlands on-site. The 5.05 acres of wetland creation was divided into North and South mitigation sites.

2. A review of the Permit file in March 2006, and a site visit in April 2006, revealed the following:

   a. Neither the North nor South mitigation sites had been completed. The North site had been graded, had some volunteer wetland vegetation present, but it had not been planted. The South site had not been completely graded and no wetland vegetation was present. Site development of the recycle center was complete and the associated wetland impacts had occurred. *The cover page of the Permit required that the North site be constructed either prior to or concurrently with the development of the property; the South site was to be completed no later than 6 months after the wetland impacts had occurred; Part I.23 of the Permit required mitigation be provided through on-site creation; and Part 1.24 required that the mitigation be performed in accordance with the final mitigation plan and in accordance with 9 VAC 25-210-90.A.*

   b. Annual construction monitoring reports, due by September 30th of each year, for construction impacts to wetlands and waters had not been submitted. *Part I.38 of the Permit and 9 VAC 25-210-90.A requires the submittal of the construction monitoring reports by September 30th of each year.*

   c. Wetland mitigation monitoring reports, due by September 30th of each year, had not been submitted. *Part I. 39 of the Permit requires the submittal of the monitoring reports as required by Part I.29, I.30, I.32, and I.33. The final monitoring report was to be submitted by March 2, 2006 (180 days prior to permit expiration).*

   d. Failure to submit a complete application for Permit reissuance by March 2, 2006. The Department received an incomplete permit application in August 2006. *Part I.3 of the Permit requires the permittee to submit an application 180 days prior to the permit expiration date.*

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

4. Mr. Liesfeld met with the Department on December 21, 2006 to discuss resolution of the NOV. Mr. Liesfeld agreed to submit a complete application for reissuance of the VWP permit; complete creation of the on-site wetland mitigation areas; and submit the required reports.

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 Mr. Liesfeld, and Mr. Liesfeld voluntarily agrees to perform the actions described in Appendix A of the Order. In addition, the Board orders Mr. Liesfeld, and Mr. Liesfeld voluntarily agrees to pay a civil charge of **$25,350** in accordance with Appendix A 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, Mr. Liesfeld shall include his Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Liesfeld for good cause shown by Mr. Liesfeld, 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, Mr. Liesfeld admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Mr. Liesfeld 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. Mr. Liesfeld declares he 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 he 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 Mr. Liesfeld 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. Mr. Liesfeld 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. Mr. Liesfeld shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Liesfeld 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.

   Failure to so notify the Regional Director 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 Mr. Liesfeld. Notwithstanding the foregoing, Mr. Liesfeld 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 Mr. Liesfeld. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Liesfeld from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By his signature below, Mr. Liesfeld voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____, 2007.

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

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

By: _____

Date: 6/20/07

Commonwealth of Virginia

City/County of Virginia

The foregoing document was signed and acknowledged before me this 21st day of

June, 2007, by J. E. Liesfeld Jr, who is
(Name)

Sole member of Gillies Creek RC.
(Title)

Julia Morgan Slagel
Notary Public

My commission expires: October 31, 2009.

APPENDIX A

Mr. Liesfeld shall:

1. Submit to the Department, PRO, a complete re-issuance application for VWP Permit No. 00-0925 by **July 20, 2007.**

2. Complete creation of wetland mitigation at the North and South sites as required by the re-issued VWP Permit No. 00-0925.

3. Submit to the Department, PRO, all wetland construction and mitigation monitoring reports as required by the re-issued VWP Permit No. 00-0925.

4. Maker four quarterly payments in settlement of the violations cited in the Order as scheduled:

   - The first payment of **$6337.50** shall be due within **30 days** of the effective day of the Order
   - **$6337.50** shall be due by .....**January 1, 2008**
   - **$6337.50** shall be due by .....**April 1, 2008**
   - **$6337.50** shall be due by .....**July 1, 2008**

5. **Pursuant to this Order, submit all documentation, except for the quarterly payments of the civil charge, as required by Appendix A to**:

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