# COMMONWEALTH of VIRGINIA

*DEPARTMENT OF ENVIRONMENTAL QUALITY*
SOUTH CENTRAL REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Thomas L. Henderson
Regional Director


**VIRGINIA WASTE MANAGEMENT BOARD**
**ENFORCEMENT ACTION**

**ORDER BY CONSENT**
**ISSUED TO**
**Gladys Timber Products, Inc.**
**VAD988203675**

## 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 Gladys Timber Products, Inc. of Gladys, Virginia for the purpose of resolving certain 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. "Board" means the Virginia Waste Management Board, a permanent citizen's board of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.

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.

4. "Facility" means Gladys Timber Products, Inc.

5. "Gladys Timber" means Gladys Timber Products, Inc., licensed to do business in the Commonwealth.

6. "NOV" means Notice of Violation.

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

8. RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*

9. "Regulations" means the Virginia Hazardous Waste Management Regulations (VHWMR) at 9 VAC 20-60-12 *et seq.*, which incorporates text from Title 40 of the Code of Federal Regulations (CFR).

10. "SCRO" means the South Central Regional Office of DEQ, located in Lynchburg, Virginia.

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

**SECTION C: Findings of Fact and Conclusions of Law**

1. Gladys Timber Products, Inc. ("Facility") is located on US Route 501 South in Gladys, VA. Gladys Timber manufactures treated fence posts and components under the agricultural use exemption of RCRA Subpart W (40 CFR 265.440 *et. seq.*). As part of the production process, the Facility operates a drip pad which is subject to the full RCRA Subpart W requirements.

2. On March 20, 2007, DEQ-SCRO staff conducted a compliance inspection of the Facility, and issued a Notice of Violation No. 07-04-SCRO-003 on April 20, 2007 to address noncompliance with Waste Management Law and Regulations.

3. The Facility failed to perform an Annual review and recertification of the drip pad assessment since the initial assessment in January 2002. 9 VAC 20-60-265, which incorporates 40 CFR 265.443(a)(4)(ii), requires that a written assessment of the drip pad must be reviewed, updated, and recertified annually by a registered professional engineer. The evaluation must document the extent to which the drip pad meets the design and operating standards of the regulation.

4. The Facility failed to maintain procedures for minimizing tracking of treatment chemicals off the drip pad. This is in contravention of 9 VAC 20-60-265, which incorporates 40 CFR 265.443(j), which requires that drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

5. The Facility failed to document weekly drip pad cleaning. Pursuant to 9 VAC 20-60-265, which incorporates 40 CFR 265.443(i), the owner or operator must document the date and time of each cleaning , and the cleaning procedure used in the Facility's operating log.

6. The Facility failed to maintain records that document that the treated wood is held on the pad until drippage ceases. 9 VAC 20-60-265, which incorporates 40 CFR 265.443(k), requires the owner or operator to maintain records sufficient to document that all treated wood is held on the pad following treatment until all drippage ceases.

7. The Facility failed to maintain adequate records of weekly drip pad inspections. Pursuant to 9 VAC 20-60-265, which incorporates 40 CFR 265.444(b),while a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of deterioration of the drip pad surface, improper operation of run-on and run-off systems, leakage, and malfunctioning of the leak detection system.

## SECTION D: Agreement and Order

Accordingly, the Virginia Waste Management Board, by virtue of the authority granted it in Va. Code § 10.1-1455, orders Gladys Timber, and Gladys Timber voluntarily agrees that:

1. The Board orders, and Gladys Timber consents to pay a civil charge of **$10,650.00** in settlement of the alleged violations cited herein, as outlined in the payment schedule contained in Appendix A of the Order.

2. Payments shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer of Virginia" and sent to:

   Receipts Control
   Department of Environmental Quality
   PO Box 1104
   Richmond, VA 23218

   Either on a transmittal letter or as a notation on the check, Gladys Timber shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for Gladys Timber.

## SECTION E: Administrative Provisions

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

2. This Order only addresses and resolves those 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 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 affect appropriate enforcement actions by other federal, state, or local regulatory authorities whether or not arising out of the same or similar facts.

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

4. Gladys Timber 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. Gladys Timber declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, and the Waste Management Act, Code § 10.1-1400 *et seq.*, and 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 Gladys Timber 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. Gladys Timber 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 similar occurrence. Gladys Timber shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Gladys Timber shall notify the SCRO Regional Director verbally and 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 written 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.

Failure to notify the SCRO Regional Director verbally within one business day and in writing within five business days of learning of any condition above, which Gladys Timber 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. Any plans, reports, schedules, or specifications attached hereto, or submitted by or on behalf of Gladys Timber, 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.

10. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

11. This Order shall become effective upon execution by the Director, or his designee, and Gladys Timber. Notwithstanding the foregoing, Gladys Timber agrees to be bound by any compliance date which precedes the effective date of this Order.

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

13. By its signature of an authorized official below, Gladys Timber Products, Inc. voluntarily consents to the issuance of this Order.

14. The undersigned representative of Gladys Timber 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 Gladys Timber to this Order. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Gladys Timber.

And it is so ORDERED this _____ day of _____, 2008.

_____

Thomas L. Henderson, Director
South Central Regional Office
Department of Environmental Quality

Gladys Timber Products, Inc. consents to the issuance of this Order.

By: _____

Date: 11-28-07

Commonwealth of Virginia
City/County of Campbell

The foregoing document was signed and acknowledged before me this 28th day of November, 2007, by Bruce Wallace, who is the
Bruce Wallace

President of Gladys Timber Products, Inc., Gladys, Virginia.

Barbara H. Waller
Notary Public

My commission expires: 10-31-2011

BARBARA H. WALLER
NOTARY PUBLIC
REG. #141440
MY COMMISSION EXPIRES
10-31-2011
COMMONWEALTH OF VIRGINIA

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## APPENDIX A
## SCHEDULE OF COMPLIANCE
## GLADYS TIMBER PRODUCTS, INC.

1. Within thirty (30) days of the execution of this Order, Gladys Timber shall submit to the Treasurer of Virginia the first payment towards the civil charge outlined in the Order, in the amount of **$2,662.50**.

2. The remaining payments shall be due according to the following schedule:

   a. The second installment payment of **$2,662.50** shall be due within sixty (60) days of the execution date of the Order.

   b. The third installment payment of **$2,662.50** shall be due within ninety (90) days of the execution date of the Order.

   c. The fourth and final payment of **$2,662.50** shall be due within one hundred and twenty (120) days of the execution date of the Order.

3. Gladys Timber shall comply with all conditions described in the facility's Permit, as well as RCRA Subpart W (40 CFR 265.440 *et. seq.*) requirements.

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