STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	**Settlement Tracking No.**
	*	**SA-MM-08-0041**
M. R. GILLIAM, INC.	*	
	*	
	*	**Enforcement Tracking No.**
AI # 132838	*	**MM-P-07-0129**
	*	
PROCEEDINGS UNDER THE LOUISIANA	*	
ENVIRONMENTAL QUALITY ACT	*	**Docket No. 2008-3027-EQ**
LA. R.S. 30:2001, ET SEQ.	*	

SETTLEMENT

The following Settlement is hereby agreed to between M. R. Gilliam, Inc. ("Respondent") and the Department of Environmental Quality ("DEQ" or "the Department"), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. ("the Act").

I

Respondent is a corporation that owned and/or operated a disposal site of construction and demolition debris located at 8601 Joe LeDoux Road in Lake Charles, Calcasieu Parish, Louisiana ("the Facility").

II

On January 4, 2008, the Department issued to Respondent a Penalty Assessment, Enforcement No. MM-P-07-0129, in the amount of $18,771.46, which was based upon the following findings of fact:

The Respondent owned and/or operated the Gilliam C and D Disposal Site located at 8601 Joe LeDoux Road in Lake Charles, Calcasieu Parish, Louisiana. The Department approved the site for disposal of construction and demolition (C & D) debris resulting from Hurricane Rita on

December 20, 2005. The Department approved the site for disposal of friable asbestos-containing waste material (ACWM) and Category I and II nonregulated ACWM resulting from Hurricane Rita on April 19, 2006.

On or about August 17, August 23, and September 11, 2006, investigations of the Respondent's facility were performed to determine the degree of compliance with the Act and the Declaration of Emergency and Administrative Orders.

The following violations were noted during the course of the inspections:

A. The Respondent failed to maintain copies of chain of custody documents as required in the amended Declaration of Emergency and Administrative Order dated March 31, 2006, Appendix J1, Paragraph 1.c.ii for enhanced C & D landfills. This is a violation of La. R.S. 30:2033(C).

B. The Respondent failed to maintain copies of calibration checks for air monitoring equipment as required in the amended Declaration of Emergency and Administrative Order dated March 31, 2006, Appendix J1, Paragraph 1.c.iii for enhanced C & D landfills. This is a violation of La. R.S. 30:2033(C).

C. The Respondent failed to conduct air monitoring activities while operating an enhanced C & D disposal site as required in the amended Declaration of Emergency and Administrative Order dated March 31, 2006, Appendix J1, Paragraph 1 for enhanced C & D landfills. This is a violation of La. R.S. 30:2033(C).

D. The Respondent failed to maintain records of location, depth and area, and quantity in cubic meters (cubic yards) of ACWM while operating an enhanced C & D disposal site as required in the amended Declaration of Emergency and Administrative Order dated March 31, 2006, Appendix J1, Paragraph 6 for enhanced C & D landfills. This is a violation of La. R.S. 30:2033(C).

E. The Respondent failed to assure that method detection limits were set at stipulated values of 0.01-0.02 fibers per cubic centimeters during phase contrast microscopy analysis as required in the amended Declaration of Emergency and Administrative Order dated March 31, 2006, Appendix J1, Paragraph 1.b.i for enhanced C & D landfills. This is a violation of La. R.S. 30:2033(C).

F. The Respondent failed to furnish all records upon request during normal business hours as required in the amended Declaration of Emergency and Administrative Order dated March 31, 2006, Appendix J1, Paragraph 1.c.v for enhanced C & D landfills. This is a violation of La. R.S. 30:2033(C).

G. The Respondent failed to record meteorological data daily whenever disposal activities occur as required in the amended Declaration of Emergency and Administrative Order dated March 31, 2006, Appendix J2, Paragraph E.1 for enhanced C & D landfills. This is a violation of La. R.S. 30:2033(C).

H. The Respondent failed to furnish proof of receipt for operational and monitoring results to the Office of Environmental Services, Air Permits Division as required in the amended Declaration of Emergency and Administrative Order dated March 31, 2006, Appendix J2, Paragraph G.4 for enhanced C & D landfills. This is a violation of La. R.S. 30:2033(C).

I. The Respondent failed to submit air monitoring samples to a Louisiana Environmental Laboratory Accreditation Program accredited laboratory so that sampling results would be available to the facility in no greater than 48 hours from sampling time as required in the amended Declaration of Emergency and Administrative Order dated March 31, 2006, Appendix J2, Paragraph G.4 for enhanced C & D landfills. This is a violation of La. R.S. 30:2033(C).

On October 27, 2006, a Consolidated Compliance Order and Notice of Potential Penalty (CONOPP), Enforcement Tracking No. AE-CN-06-0140, was issued to the Respondent.

On or about January 23, 2007, the Department received the Respondent's response to the CONOPP. The response was unsigned, not dated, and contained comments related to the violations cited in the CONOPP.

On or about August 30, 2007, the Respondent attended a fact-finding meeting in response to a subpoena that ordered the production of all records required by the Louisiana Environmental Quality Act and the Declaration of Emergency and Administrative Orders for the operation of an enhanced C & D disposal site, the most current annual gross revenues statement for M. R. Gilliam,

Inc., and an analysis of the monetary benefit of noncompliance to M. R. Gilliam, Inc. for the citations in CONOPP, Enforcement Tracking No. AE-CN-06-0140, issued to the Respondent on October 27, 2006. The Respondent did appear with most of the required records.

An inspection conducted by the Department on or about August 17, 2006, in response to a citizen's complaint, revealed that the Respondent failed to sample and monitor the pit water as required in the Forth Amended Declaration of Emergency and Administrative Order issued on July 29, 2006. Each failure to sample the pit water is a violation of the Amended Declaration of Emergency and Administrative Order, Page 5, Paragraph 1.f, and Appendix H, La. R.S. 30:2076 (A) (1) (a) and (b), La. R.S. 30:2076 (A) (3) , and LAC 33:IX.501.A [*sic*]

On September 19, 2007, a Notice of Potential Penalty (NOPP), Enforcement Tracking No. WE-PP-06-0404, was issued to the Respondent.

A penalty in the amount of $18,771.46 is hereby assessed together with legal interest as allowed by law and all costs of bringing and prosecuting this enforcement action accruing after the date of issuance.

III

In response to the Penalty Assessment, Respondent made a timely request for a hearing.

IV

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

V

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of FOURTEEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($14,500.00), of which

One Thousand Two hundred Twenty-six and 46/100 Dollars ($1,226.46) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

VI

Respondent further agrees that the Department may consider the inspection report(s), the Penalty Assessment and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VII

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

VIII

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act.

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in, Calcasieu Parish, Louisiana. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

X

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Accountant Administrator, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

XI

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his or her respective party, and to legally bind such party to its terms and conditions.

M. R. GILLIAM, INC.

BY: _____
(Signature)

_____
(Print)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this 17th day of June, 20 09, at Lake Charles.

_____
NOTARY PUBLIC (ID # _____)

LISA J. BROWN
Notary Public
Notary (ID No) 49210
Commission Expires At Death
Calcasieu Parish, Louisiana

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Harold Leggett, Ph.D., Secretary

BY: _____
Peggy M. Hatch, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 21st day of September, 20 09, at Baton Rouge, Louisiana.

_____
NOTARY PUBLIC (ID # 10149)

Christopher A. Ratcliff
(Print)

Approved: _____
Peggy M. Hatch, Assistant Secretary