



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

8/28/2015

Latham Lumber & Pallet Company
9445 State Route 124
Latham, Ohio 45646

RE: Directors Final Findings & Orders
NPDES
Pike County
8OU00012

Ladies and Gentlemen:

Transmitted herewith is one copy of the Director's Final Findings and Orders in the referenced matter.

Sincerely,

Ed Swindall, Supervisor
Permit Processing Unit
Division of Surface Water

ERS/dks

Enclosure

CERTIFIED MAIL

cc: M. Mann, DSW
R. DeMuth, DSW
B. Schuch, DSW
L. Reeder, DSW
J. Martin, DSW
Fiscal
J. Witte, SEDO/DSW
Compliance Section
M. McCarron, PIC
H. Griesmer, PIC
B. Fischbein, Legal
P. Simcic, Legal
P. Fallah, DEFA
Journal Room
File

Ohio EPA Invoice/Receipt

Date Printed: August 28, 2015

Revenue ID: 1054448

Please include this Revenue ID with all correspondence.

Organization ID: 118140

Information: LATHAM LUMBER & MULCH
9445 STATE ROUTE 124 WEST
LATHAM, OH 45646-

Due Date: September 28, 2015

Amount Due: \$12,000.00

Effective Date: August 28, 2015

Revenue Description: DSW- Findings and Orders-Civil Penalties (FOSW)

Program Name: Surface Water Programs

Reason: FO for Latham Lumber & Pallet Co 8OU00012

For some Revenues, Interest and/or Penalties may be charged for late payment.

Next Interest Date (if applicable):

Next Penalty Date (if applicable):

Remittance Advice

Detach Here - Please Return This Portion With Your Payment

Organization ID: 118140

Information: LATHAM LUMBER & MULCH
9445 STATE ROUTE 124 WEST
LATHAM, OH 45646-

Due Date: Sep 28, 2015

Amount Due: \$12,000.00

Secondary Type/Id: /

Revenue Type: FOSW

Amount Enclosed: \$ _____

Please write this number on your check. Revenue ID: 1054448

Make check or money order payable to "Treasurer, State of Ohio"

Remit to: Ohio Environmental Protection Agency - OFA
Department L-2711
Columbus, OH 43260-2711

For Ohio EPA use only

Check ID: _____

Check Date: _____

Check Number: _____

Check Amount: \$ _____

118140	LATHAM LUMBER & MULCH	1200000	FOSW	1054448
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Ohio EPA Invoice/Receipt

Date Printed: August 28, 2015

Revenue ID: 1054447

Please include this Revenue ID with all correspondence.

Organization ID: 118140

Information: LATHAM LUMBER & MULCH
9445 STATE ROUTE 124 WEST
LATHAM, OH 45646-

Due Date: September 28, 2015

Amount Due: \$3,000.00

Effective Date: August 28, 2015

Revenue Description: DSW- Findings and Orders-Civil Penalties (FOSW)
Program Name: Surface Water Programs
Reason: FO for Latham Lumber & Pallet Co 8OU00012 school bus fund

For some Revenues, Interest and/or Penalties may be charged for late payment.

Next Interest Date (if applicable):

Next Penalty Date (if applicable):

Remittance Advice

Detach Here - Please Return This Portion With Your Payment

Organization ID: 118140

Information: LATHAM LUMBER & MULCH
9445 STATE ROUTE 124 WEST
LATHAM, OH 45646-

Due Date: Sep 28, 2015

Amount Due: \$3,000.00

Secondary Type/Id: /

Revenue Type: FOSW

Amount Enclosed: \$ _____

Please write this number on your check. Revenue ID: 1054447
Make check or money order payable to "Treasurer, State of Ohio"

Remit to: Ohio Environmental Protection Agency - OFA
Department L-2711
Columbus, OH 43260-2711

For Ohio EPA use only

Check ID: _____
Check Date: _____
Check Number: _____
Check Amount: \$ _____

118140	LATHAM LUMBER & MULCH	300000	FOSW	1054447
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OHIO E.P.A.

AUG 28 2015

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENVIRONMENTAL PROTECTION AGENCY JOURNAL

In the Matter of:

Latham Lumber & Pallet Co. :
9445 State Route 124 :
Latham, Ohio 45646 :
:

Director's Final Findings
and Orders

Respondent

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows:

By: Don J. Laska Date: 8-28-15

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Latham Lumber & Pallet Co. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in the composition of Respondent, or the ownership or operation of the Site (as defined herein), shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111 and the rules adopted thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent operates a mulch facility located at 9445 Ohio 124, Latham, Ohio in Pike County ("the Site.") Until August 13, 2014, Respondent did not have a National Pollutant Discharge Elimination System Permit for the Site. Runoff from the mulch piles drains to a small collection pond where a truck is used to haul the leachate to a point where it can be sprayed back onto the mulch piles as needed.

2. The truck used for hauling the leachate became disabled at some point and the collection pond overflowed into an unnamed tributary of Sunfish Creek. The discharge drastically lowered the dissolved oxygen in Sunfish Creek causing a fish kill.
3. Sunfish Creek and the unnamed tributary to Sunfish Creek are defined as "waters of the state" pursuant to ORC Section 6111.01.
4. On September 1, 2013, Ohio EPA Division of Emergency Response responded to a report of the fish kill. Working in conjunction with wildlife officers from the Ohio Department of Natural Resources ("ODNR"), Ohio EPA confirmed the fish kill was due to Respondent's leachate collection pond overflowing into the unnamed tributary of Sunfish Creek.
5. Respondent hired an environmental consultant to help mitigate the damage by installing a berm around the collection pond to avoid further releases and began aerating parts of Sunfish Creek to raise dissolved oxygen back to safe levels.
6. However, the slug of leachate discharged moved slowly downstream, and Ohio EPA observed dead fish downstream as late as September 10, 2013. In a letter dated February 3, 2014 sent to Respondent, ODNR determined that 2,897 fish and wild animals were killed as a result of the liquid mulch leachate runoff entering Sunfish Creek.
7. Respondent had a previous fish kill in Sunfish Creek on August 23, 2007. An inspection of the Site on August 24, 2007 by Ohio EPA confirmed that the fish kill had been the result of the collection ponds overflowing into the unnamed tributary to Sunfish Creek. ODNR determined that 543 fish and wild animals were killed as a result of the liquid mulch leachate runoff entering Sunfish Creek, and Respondent paid \$2,886.40 to ODNR in settlement.
8. After both the 2007 and 2013 incidents, Ohio EPA notified Respondent that they were in violation of R.C. 6111.04 and that Respondent needed to apply for coverage under Ohio EPA's NPDES Industrial Storm Water General Permit. This permit would apply to storm water from outside the working area, and any storm water that migrated through the working mulch pile. Respondent eventually received coverage under the NPDES Industrial Storm Water General Permit on August 13, 2014.
9. Additionally, on May 7, 2008, Ohio EPA sent a letter to Respondent, detailing an October 2007 ground water study of the leachate containment ponds. The study determined that there was ground water impairment from the leachate impoundments. Respondent was asked to submit a permit to install ("PTI") for a lined leachate collection, impoundment and disposal system within three months from receipt of the letter. No recommendations suggested by Ohio EPA to

remedy the situation were implemented until a PTI package was finally received by Ohio EPA on July 18, 2014. The PTI was approved by Ohio EPA on August 22, 2014.

10. Notice of Violation ("NOV") letters were also sent to Respondent on September 21, 2007 and September 12, 2013 documenting the above referenced violations: Through the Notice of Violations letters, Respondent has been provided notice of its violations of ORC Chapter 6111 and the Ohio Administrative Code.
11. Pursuant to ORC section 6111.04(A), no person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state. Such an action is prohibited under ORC section 6111.04(A) and is declared to be a public nuisance unless the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in ORC sections 6111.01 to 6111.08 or if the person's application for renewal of such a permit is pending.
12. Pursuant to ORC section 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC sections 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
13. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

1. Respondent shall complete installation of the approved onsite system per the requirements of its PTI within sixty (60) days from the effective date of these Orders.
2. Respondent shall pay the amount of fifteen thousand dollars (\$15,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for twelve thousand dollars (\$12,000.00) of the total amount. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondent and the site, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Ohio EPA, Southeast District Office, in accordance with Section X of these Orders.

3. In lieu of paying the remaining three thousand dollars (\$3,000.00) of the civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in that amount to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondent and the site, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of each check shall be sent to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 3, Respondent shall immediately pay to Ohio EPA the remaining \$3,000.00 of the civil penalty in accordance with the procedures in Order No. 2.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to the Site.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

Unless otherwise specified, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Attn: Enforcement Supervisor
Division of Surface Water

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically

cited in these Orders, through the date of these Orders, Respondent consent to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent' liability for the violations specifically cited herein.

Respondent hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waive any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency**



Craig W. Butler
Director

8/24/15
Date

**IT IS SO AGREED:
Latham Lumber & Pallet Co.**



By

July 14 - 2015
Date

KAREN Y. Chandler

Printed or Typed Name

President

Title