

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Mr. Sturgil K. Lowman,	:	
D.B.A. Lowman Logging Company	:	<u>Director's Final Findings</u>
Box 231, US Route 50	:	<u>and Orders</u>
Bainbridge, Ohio 45612	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Sturgil K. Lowman, D.B.A. Lowman Logging Company ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03, 3734.02, 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 ownership of the Respondent's facility or of the property owned by E. Don Wilson as hereinafter identified in Finding 1 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 used in ORC Chapters 3704 and 3734 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a sawmill located at 1660 Carl Penn Road, Bainbridge, Pike County, Ohio. Pike County Auditor's Office records indicate this facility is located on property owned by E. Don Wilson of 535 Dean Street, Waverly, Ohio. This facility is located more than 1,000 feet outside the boundary of any municipal corporation, and is therefore in an "unrestricted area," as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(J).

2. OAC Rule 3745-19-04 states, in part, that no person or property owner shall cause or allow open burning, as defined in OAC Rule 3745-19-01(G), in an unrestricted area except as provided in paragraphs (B) to (D) of such rule or in ORC § 3704.11.

3. OAC Rule 3745-27-05(B) states that disposal of solid waste, as defined in OAC Rule 3745-27-01(B)(43), by means of open burning, as defined in OAC Chapter 3745-19, is permitted only as provided therein.

4. OAC Rule 3745-27-05(C) states that no person shall conduct, permit, or allow open dumping.

5. ORC § 3704.05(G) states that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704.

6. ORC § 3734.03 states, in part, that no person shall dispose of solid wastes by open burning or open dumping, except as otherwise authorized by the Director or ORC § 941.14.

7. The Pike County General Health District ("PCGHD") is approved by Ohio EPA to administer the solid waste and infectious waste management program in Pike County.

8. On August 17, 2000, Ohio EPA received a citizen's complaint regarding open burning at Respondent's facility. Ohio EPA Division of Air Pollution Control, Southeast District Office ("DAPC/SEDO") conducted an investigation of the complaint on September 14, 2000. At that time, Respondent stated that he had burned several old buildings on the property. On September 21, 2000, DAPC/SEDO sent a Notice of Violation ("NOV") to Respondent, citing him for violation of OAC Rule 3745-19-04 for open burning in a unrestricted area.

9. On March 17, 2001, the Pebbles Township Fire Department ("Pebbles Township FD"), located at 330 Carl Penn Road, Waverly, responded to another fire at Respondent's facility. At that time, Pebbles Township FD observed a large pile of slabs (i.e., the outside pieces cut from a log when squaring it for lumber) burning near Respondent's sawmill. Due to deep mud at the scene, fire apparatus could not access the fire area. Per the Pebbles Township FD, Respondent refused to use his heavy equipment to separate the pile of slabs that were not burning from the burning slabs. Respondent did commit to maintaining personnel on site to ensure the fire would not spread to the surrounding woods.

10. The Pebbles Township FD, the Pike County Sheriff's Department, and a local citizen all contacted DAPC/SEDO regarding the March 17, 2001, open burning incident. DAPC/SEDO investigated the complaints on April 2, 2001, and found evidence of open burning at the site. In a telephone conversation on April 3, 2001 with DAPC/SEDO, Respondent stated that the slabs belonged to the other listed owner of the property, E. Don Wilson, but provided no evidence to demonstrate this. On April 10, 2001, DAPC/SEDO sent

a NOV to Respondent, citing him for a second violation of OAC Rule 3745-19-04 for open burning in a unrestricted area.

11. PCGHD also received a complaint regarding the March 17, 2001, incident. PCGHD visited the site, verbally warned Respondent's operator not to open burn the sawmill wood waste, and sent a warning letter to Respondent on April 17, 2001.

12. On May 19, 2002, DAPC/SEDO received a third complaint regarding open burning at Respondent's facility. On May 23, 2002, DAPC/SEDO investigated the complaint and observed evidence of the open burning of wood waste at the Respondent's facility, including a still-smoldering area where a large pile of slabs had been stored. In a telephone conversation on May 23, 2002 with the Pebbles Township FD, DAPC/SEDO learned that the fire department had responded to the fire and that a third party (not the Respondent) had attempted to obtain a "permit" to burn the slabs from the Pebbles Township FD but had been refused prior to the fire occurring. On May 28, 2002, DAPC/SEDO sent NOVs to Respondent and E. Don Wilson via certified mail, citing the violation of OAC Rule 3745-19-04 and requesting a written commitment to cease open burning in violation of OAC Rule 3745-19-04, and a compliance plan and schedule to remove the ash generated by the open burning and to dispose of the remaining solid waste at the site.

13. DAPC/SEDO received a written response from E. Don Wilson on June 21, 2002, in which he stated that he had sold the property to Respondent in August, 2000, and that he had told Respondent to clean up the property and cease open burning.

14. On July 1, 2002, DAPC/SEDO also received a written response from Respondent in which he stated that he had not operated at the Carl Penn Road site since April 2002 and that the slabs had been left for firewood cutters. Respondent stated that he believed the firewood cutters had probably accidentally started the fire.

15. On June 6, 2002, PCGHD and the Ohio EPA Division of Solid and Infectious Waste Management, Southeast District Office ("DSIWM/SEDO") inspected Respondent's facility. On July 12, 2002, DSIWM/SEDO sent Respondent and E. Don Wilson NOVs citing violations of OAC Rule 3745-27-05(B) for open burning of solid wastes, OAC Rule 3745-27-05(C), for open dumping solid waste, and ORC § 3734.03. On July 18, 2002, PCGHD sent Respondent a NOV also citing violations of OAC Rules 3745-27-05(B) and (C).

16. On August 3, 2002, DSIWM/SEDO received a written response from legal counsel representing E. Don Wilson, in which he stated that he had signed a land contract purchase agreement with Respondent regarding the Carl Penn Road property, effective on August 2, 2000. Mr. Wilson proposed a cleanup plan for the property that would remove the remaining slabs through firewood sales and arrange for the proper disposal of the remainder of the solid waste (such as sawdust) on the property.

17. On August 6, 2002, DAPC/SEDO received a fourth complaint regarding open burning at Respondent's facility. The Pebbles Township FD and a local citizen contacted

DAPC/SEDO regarding another large slab fire at the Respondent's facility. The Pebbles Township FD was called to the site twice on August 6, 2002. The fire department observed a slab pile over 100 yards long burning at the facility; sawdust near the sawmill ignited later in the day as the result of radiant heat or flying embers from the slab pile fire. DAPC/SEDO visited the site on August 8, 2000 and observed extensive evidence of recent open burning; sawdust and trees near the sawmill were still smoldering.

18. Respondent was not authorized to burn wastes as provided in OAC Rules 3745-19-04 (B), (C), and (D), and ORC § 3704.11.

19. Respondent was not authorized by the Director of the Ohio EPA or ORC § 941.14 to open dump or open burn wastes.

20. Based on the above information, Ohio EPA finds that Respondent violated OAC Rules 3745-19-04, 3745-27-05(B) and 3745-27-05(C), and ORC §§ 3734.03 and 3704.05(G) as a result of the open dumping and open burning incidents at this facility.

21. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their relation to benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall immediately cease open dumping and open burning of solid waste in violation of OAC Chapter 3745-19, OAC Rule 3745-27-05(B), and ORC § 3734.03 and shall maintain compliance thereafter. Within fourteen (14) days after the effective date of these Orders, Respondent shall send a written commitment to Ohio EPA to cease all open dumping and open burning at its facility that is in violation of OAC Chapter 3745-19, OAC Rule 3745-27-05(B), and ORC § 3734.03 and use legally acceptable waste disposal services.

2. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay the amount of two thousand dollars (\$2,000) in settlement of DAPC's claim for civil penalties related to the open burning incidents, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and submitted to Brenda Case, or her successor, with a letter identifying the Respondent and the site of the open burning incidents, to:

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

Within fourteen (14) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of five thousand dollars (\$5,000) in settlement of DSIWM's claims for civil penalties related to the open dumping incidents, which may be assessed pursuant to ORC Chapter 3734 and which will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and shall be submitted to Brenda Case, or her successor, Ohio EPA, Office of Fiscal Administration at the above address, with a letter identifying the Respondent and the site of the open dumping incidents.

A copy of both checks shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, and Ann Wood, Legal Office, or her successor, at the following addresses:

Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: James A. Orlemann, Assistant Chief, Enforcement
Section

and:

Legal Office
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Ann Wood, Staff Attorney

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 the Chiefs of Ohio EPA's Division of Air Pollution Control and Division of Solid and Infectious Waste Management acknowledge, 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 the Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-35-02(B)(3) for a sole proprietorship.

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 Respondent's conduct of the operation of the facility specified in these Orders.

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 the Respondent.

IX. MODIFICATIONS

These Orders may be modified by mutual 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

All documents required to be submitted by Respondent pursuant to these Orders, shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Air Pollution Control
2195 Front Street
Logan, Ohio 43138
Attention: Lisa Duvall, Environmental Specialist

Ohio Environmental Protection Agency
Southeast District Office
Division of Solid and Infectious Waste Management
2195 Front Street
Logan, Ohio 43138
Attention: Dan Bergert, Environmental Specialist

Pike County General Health District
229 Valley View Drive
Waverly, Ohio 45690
Attention: Sandy Colegrove

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Supervisor, Enforcement Section

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Solid and Infectious Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Sharon Gbur, Assistant Chief

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

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, Respondent consents 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 the Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders and Respondent hereby waives 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 the Respondent agrees that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, the Respondent retains the right to intervene and participate in such appeal. In such an event, the Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless said 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

Christopher Jones
Director

Date

IT IS SO AGREED:

Mr. Sturgil K. Lowman, D.B.A. Lowman Logging Company

By: Sturgil K. Lowman

Date