BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:  

Chipmunk Logging and Lumber, LLC  
15750 Chipmunk Lane  
Middlefield, Ohio 44062  

:  

Director's Final Findings  
and Orders

Respondent

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Chipmunk Logging and Lumber, LLC ("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 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 Chapters 6111 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA makes the following findings:

1. Respondent owns and operates a timber harvesting operation located at 15750 Chipmunk Lane, Middlefield, Ohio 44062. Respondent performed timber cutting and wood milling operations at 2150 Milton Newton Road (Parcel No. 51-021-0-001.00-0), Milton Township, Ohio, Mahoning County (the "Site") during the months of March, April and May 2019.
2. The Site discharged storm water associated with industrial activity to Kale Creek. Kale Creek is considered a “waters of the state” as defined by R.C. Section 6111.01.

3. Respondent is considered to be operating under the Standard Industrial Classification (“SIC”) codes 2411 Logging and 2421 Sawmills and Planing Mills, General. Therefore, Respondent is considered to be generating storm water associated with industrial activity based on the qualifying Standard Industrial Classifications per OAC 3745-39-04(B)(13)(b).

4. ORC Section 6111.04(A) prohibits any person from causing pollution or causing any sewage, industrial waste, or other waste to be placed in any location where they cause pollution to waters of the state, except if such discharges occur in accordance with a valid, unexpired NPDES permit issued by the Director or if an application for renewal of such permit is pending.

5. Ohio Administrative Code (OAC) Rule 3745-38-02 provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without either applying for and obtaining an Ohio National Pollutant Discharge Elimination System (“NPDES”) individual permit in accordance with requirements of OAC Chapter 3745-33, complying with the indirect discharge permit program pursuant to OAC Chapter 3745-36 or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of OAC Chapter 3745-38.

6. On March 29, 2019, Ohio EPA conducted an inspection at the Site to determine Respondent’s compliance with Ohio’s environmental laws and regulations, as well as to follow-up on a received complaint. Respondent was not available on-site during the inspection.

7. On April 10, 2019, Ohio EPA issued the Site owner, CLDF, LLC, a Notice of Violation (“NOV”) letter for discharges of storm water associated with industrial activity to waters of the state without authorization from a valid, unexpired NPDES permit. The letter requested documentation be provided within 30 days of receipt of the letter detailing the actions to be taken to resolve the violation. On April 13, 2019, the Site owner forwarded the NOV letter to Respondent.
8. On May 9, 2019, Ohio EPA performed an inspection of the Site with the Site owner, a representative of Respondent, and the Ohio Department of Natural Resources ("ODNR"). Industrial activities in the form of wood milling operations from a mobile sawmill were still occurring at the Site and were expected to be complete on May 10, 2019. Corrective actions that ODNR had instructed Respondent to implement had been completed. The mobile sawmill was expected to be removed from the Site on May 13, 2019. Ohio EPA explained to Respondent’s representative that Respondent had failed to obtain coverage under the NPDES Multi-Sector General Permit ("MSGP") for Storm Water Discharges Associated with Industrial Activity, and the issue would be elevated to management.

9. Previously, Ohio EPA had conducted a complaint inspection on February 13, 2017 at a site in Trumbull County where Respondent was conducting timber cutting and milling operations. NOV letters were subsequently issued to Respondent on February 28, 2017 and April 6, 2017 for discharging storm water associated with industrial activities to Deacon Creek, a “waters of the state” as defined by R.C. Section 6111.01, without authorization under the NPDES MSGP.

10. On April 18, 2017, Ohio EPA mailed Respondent a Notice of Intent ("NOI") application with instructions for applying for NPDES permit coverage, as well as contact information for the Office of Compliance Assistance and Pollution Prevention ("OCAPP").

11. Ohio EPA Division of Surface Water ("DSW") exchanged numerous correspondence with Respondent during the months of March, April and May 2017, in addition to outreach from OCAPP staff. Respondent had repeatedly refused to apply for NPDES permit coverage, insisting that their activities were agricultural operations and therefore exempt from NPDES permitting requirements. However, Ohio EPA had observed milling operations from a mobile sawmill, which meets the definition of “industrial activity” as defined in OAC 3745-39-04(B)(13).

12. Respondent had eventually terminated the industrial activities and Ohio EPA issued a Resolution of Violation ("ROV") letter on September 18, 2017, due to the violation having ceased.

13. At the present Site, Respondent once again conducted and later terminated industrial activities despite being informed by Ohio EPA multiple times that authorization from the NPDES MSGP was required to discharge storm water associated with industrial activity into waters of the state.

14. On May 17, 2019, Ohio EPA Northeast District Office ("NEDO") Chief and NEDO DSW Manager called Respondent and informed them that they were being referred to Ohio EPA Central Office for possible enforcement action.
15. The Director has given consideration to, and based her 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 purpose of ORC Chapter 6111.

V. ORDERS

1. Respondent shall submit a storm water pollution prevention plan and submit an NOI application and appropriate application review fee to Ohio EPA in order to obtain NPDES permit coverage for any future site where storm water associated with industrial activities will discharge to waters of the state.

2. Respondent shall pay the amount of two thousand dollars ($2,000) in settlement of Ohio EPA’s claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) days from the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to “Treasurer, State of Ohio”. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondent, to:

   Office of Fiscal Administration
   Ohio Environmental Protection Agency
   P.O. Box 1049
   Columbus, Ohio 43216-1049

A copy of the check shall be sent to Larry Reeder, Environmental Manager, Enforcement Section, or his successor, at the following address:

   Division of Surface Water
   Ohio Environmental Protection Agency
   P.O. Box 1049
   Columbus, Ohio 43216-1049
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 Chief of 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 the Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(F).

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 activities occurring on or at 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. RESERVATION OF RIGHTS

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

XII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director’s journal.
XIII. SIGNATORY AUTHORITY

Each undersigned representative or 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

[Signature]
Laurie A. Stevenson, Director

AUG 19 2019
Date

IT IS SO AGREED:

Chipmunk Logging and Lumber, LLC

[Signature]
Jacob Detweiler
Printed or Typed Name

[Title] Chipmunk Logging and Lumber LLC

8-7-19
Date