

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
DEC 31 2007

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

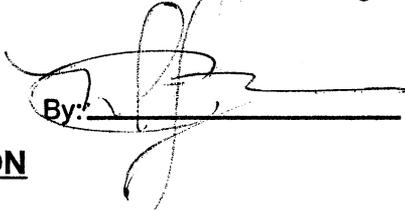
R.W. Long Lumber and Box Co., Inc. :
1840 Cornett Rd. :
Lebanon, Ohio 45036 :

Director's Final Findings
and Orders

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:  Date: 12/31/07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to R.W. Long Lumber and Box Co., Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 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 ownership of the Respondent or of facility as hereinafter identified 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 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a pallet and box manufacturing company located at 1840 Cornett Road, Lebanon, Warren County, Ohio. Respondent's facility is located in "restricted area," as defined in OAC Rule 3745-19-01(I) concerning open burning.
2. OAC Rule 3745-19-03(A) prohibits any person or property owner from open burning in an restricted area except as provided in OAC Rule 3745-19-03(B) to (D) or in ORC § 3704.11. These exceptions to the open burning prohibition do not include the open burning of wood waste from a manufacturing operation for disposal purposes.

3. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA.

4. On August 28, 2000, the Hamilton County Department of Environmental Services ("HCDES"), a contractual representative of Ohio EPA in Warren County, received a written report from the Lebanon Fire Division ("LFD") notifying HCDES that LFD had responded to five open burning incidences at the Respondent's Cornett Road facility during the year 2000. Since open burning of construction debris was conducted in a restricted area, Respondent was in violation of OAC Rule 3745-19-03(A) and ORC § 3704.05(G).

5. On September 14, 2000, HCDES conducted a field investigation into the allegations regarding open burning at the Respondent's facility. HCDES observed a burnt pile of wood waste material on the property. Respondent stated that the fire was being used for cooking and for ceremonial purposes. Respondent was told unattended ceremonial fires at a pallet and box facility was causing safety concerns and the size of the pile was excessive for cooking for human consumption. Respondent was notified that the burning for waste disposal was a violation of OAC Rule 3745-19-03(A).

6. On October 4, 2000, HCDES issued Respondent a notice of violation ("NOV") regarding the five documented open burning incidences at Respondent's facility. In this NOV, HCDES cited Respondent for its violations of OAC Rule 3745-19-03(A) for above-referenced open burning incidences.

7. On October 10, 2000, Respondent contacted HCDES via telephone to discuss getting an open burning permit to burn in a restricted area. An application was faxed to Respondent on the same date.

8. On October 10, 2000, LFD responded to two calls at Respondent's facility, and found open burning on both occasions. During the first field visit, LFD documented the observation of a pile of burning wood 20 feet in diameter. The fire was extinguished by LFD. Later, on October 10, 2000, LFD found another fire burning wood waste and an oil filter at Respondent's property. The Respondent was notified that the burning for waste disposal was a violation of OAC Rule 3745-19-03(A).

9. On October 11, 2000, Respondent submitted the open burning permit application to HCDES.

10. On October 12, 2000, LFD contacted HCDES by telephone to notify HCDES that a Cease and Desist Order was issued to Respondent on August 11, 2000, which was an attempt to prevent Respondent from conducting any future open burning.

11. On October 12, 2000, Respondent sent HCDES a letter as a response to HCDES's October 4, 2000 NOV. In this letter, Respondent stated that the five fires identified by LFD were just small smoldering fires. Respondent also denied that the violation identified on September 14, 2000 was a violation of open burning rules.

12. On October 25, 2000, HCDES sent Respondent a letter denying Respondent's open burning application because the open burning rules do not allow open burning of wood waste for disposal in restricted areas.

13. On March 15, 2002, HCDES held a meeting with Respondent and LFD. At this meeting, all applicable open burning rules were reiterated to Respondent by the LFD. Further, Respondent was informed that, if any further open burning violations were found, enforcement action would be initiated, including civil penalties.

14. On September 12, 2002, LFD notified HCDES of Respondent's open burning of wood waste earlier that day, which was a violation of OAC Rule 3745-19-03(A).

15. On February 5, 2003, HCDES issued a NOV to Respondent for the open burning incidence on September 12, 2002. In this NOV, Respondent was cited with a violation of OAC Rule 3745-19-03(A).

16. On February 13, 2003, Respondent replied by letter to HCDES's February 5, 2003 NOV. In this letter, Respondent stated that the fire that was documented in HCDES's February 5, 2003 NOV was for warming and cooking. However, according to HCDES, such fire was for waste disposal purposes and was not permitted under OAC Chapter 3745-19.

17. On March 20, 2003, HCDES received a letter from LFD regarding three additional unattended trash fires at Respondent's facility. Based on the information provided by LFD, the open burnings were conducted on March 2, 4 and 11, 2003, in violation of OAC Rule 3745-19-03(A).

18. On June 4, 2003, HCDES received a citizen's complaint of open burning at Respondent's facility. A field response was initiated by HCDES on the same day, and the LFD was at the scene to put out the fire. Respondent said the fire was for heat for outdoor workers although the temperature was at 57 degrees Fahrenheit during the field investigation. A violation of OAC Rule 3745-19-03(A) was found by both LFD and HCDES because the temperature did not support the need for a warming fire.

19. On June 6, 2003, HCDES issued a NOV for Respondent's violation of OAC Rule 3745-19-03(A) that was documented on June 4, 2003. In this NOV, HCDES requested Respondent to submit a compliance plan within ten (10) days of receipt of the NOV. No response was received from Respondent concerning this NOV.

20. On September 3, 2003, HCDES issued proposed Findings and Orders to Respondent for the thirteen (13) documented open burning incidences that happened in 2000, 2002 and 2003. In these Orders, HCDES proposed to require Respondent to submit a compliance plan and pay a civil penalty in the amount of thirteen thousand dollars (\$13,000) within fourteen (14) days of receipt of the Findings and Orders.

21. On November 17, 2003, HCDES conducted an investigation at Respondent's facility based on a complaint. During the course of investigation, HCDES documented that Respondent was conducting open burning of wood waste for disposal, in violation of OAC Rule 3745-19-03(A). HCDES issued verbal warning to Respondent during this investigation.

22. On February 24, 2004, HCDES received a letter from RENDIGS, a law firm that represented Respondent, as a response to HCDES's September 3, 2003 proposed Findings and Orders. In this letter, RENDIGS submitted on behalf of Respondent a commitment to stop conducting any open burning in the future and offered one thousand dollars (\$1,000) to HCDES's thirteen thousand dollar penalty proposal.

23. By a letter dated March 25, 2004, HCDES rejected Respondent's offer of one thousand dollars as indicated in Respondent's February 14, 2004 letter.

24. On October 12, 2004, HCDES conducted an investigation at Respondent's facility based on a complaint. HCDES documented that Respondent was conducting open burning of wood waste for disposal, in violation of OAC Rule 3745-19-03(A). HCDES issued a verbal warning to Respondent during this investigation.

25. On January 24, 2005, HCDES issued a NOV for Respondent's violations of OAC Rule 3745-19-03(A) that were documented on November 17, 2003 and October 12, 2004. In this NOV, HCDES requested Respondent to submit a compliance plan by February 5, 2005.

26. By a letter dated February 2, 2005, Respondent replied to HCDES's January 24, 2005 NOV. In this letter, Respondent denied the violations of OAC Rule 3745-19-03(A) that were cited in the NOV. Further, Respondent submitted no compliance plan as requested by HCDES's January 24, 2005 NOV.

27. On April 18, 2005, HCDES submitted an Enforcement Action Request to Ohio EPA, Division of Air Pollution Control to pursue further enforcement action against Respondent for above-referenced violations.

28. The above-mentioned open burning incidences also constitute a violation of ORC § 3704.05(G).

29. Ohio EPA's civil penalty policy for open burning violations at non-residential facilities is one thousand dollars (\$1,000) per incidence.

30. In April and October 2007, Respondent submitted financial documents to support its inability-to-pay argument for Ohio EPA's proposed civil penalty of \$2,000. Ohio EPA has reviewed these documents and determined that Respondent is able to pay only a portion of the proposed penalty amount.

31. 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. Within fourteen (14) days after the effective date of these Orders, Respondent shall submit to Ohio EPA a written commitment to prevent any future open burning on its above-referenced property and comply with OAC Chapter 3745-19.

2. Respondent shall pay the amount of six hundred dollars (\$600) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 3704.06. Respondent shall pay to Ohio EPA the amount of six hundred dollars (\$600) in twelve (12) equal monthly installments of fifty dollars (\$50), beginning within thirty (30) days after the effective date of these Orders, and each subsequent payment due within thirty (30) days thereafter. Payments shall be made by official checks made payable to "Treasurer, State of Ohio." Each official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

3. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official check required by Section V of these Orders.

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 operation of Respondent's facility.

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

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

Hamilton County Department of Environmental Services
Air Quality Management Division
250 William Howard Taft Road
Cincinnati, Ohio 45219
Attention: Kerri Castlen

and to:

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

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 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.

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.

**Director's Final Findings and Orders
R.W. Long Lumber and Box Co., Inc.
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IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

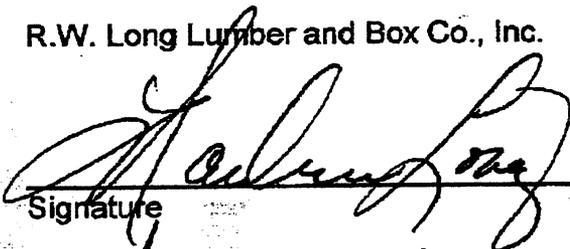


Chris Korleski
Director

12/31/07
Date

IT IS SO AGREED:

R.W. Long Lumber and Box Co., Inc.



Signature

11-16-07
Date

MARLENE LONG
Printed or Typed Name

Pres.
Title