State of Ohio Environmental Protection Agency

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Travis D. Kerzee
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5630 Old Delphos Road
Delphos, Ohio 45833

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.

By: _____ Date: 2-21-08

RE: Verified Complaint No. SW-05-002
Siefker Sawmill, Allen County

Dear Mr. and Ms. Kerzee:

This concerns the Verified Complaint ("Complaint") that you filed with the Ohio Environmental Protection Agency ("Ohio EPA"). The Complaint, which was filed on September 16, 2005, alleged that activities conducted on property owned by Siefker Sawmill resulted in violations of numerous Ohio statutes and rules. Specifically, the Complaint alleged violations of Ohio Revised Code ("ORC") Section 1531.29, Ohio Administrative Code ("OAC") Rule 1301:7-7-03(R)(1) FM-318.1 [*sic*], ORC Section 1503.07, OAC Rule 3745-27-23(BB), and ORC Section 1521.18. Also, the Complaint alleged that the wood chips and shredded tree material deposited at the site are compost product and/or solid waste and deposition of such amounts to violations of Ohio open dumping laws.

Upon receipt of your Complaint, Ohio EPA noted that most of the alleged violations involved statutes or rules that Ohio EPA does not administer and has no juridiction over. For example, Ohio EPA does not have jurisdiction over ORC Sections 1531.29, 1503.07, or 1521.18 or OAC Rule 1301:7-7-03. Therefore, Ohio EPA cannot pursue action against Siefker Sawmill based upon those Code sections. Instead, Ohio Department of Natural Resources ("ODNR") Division of Wildlife is the regulatory authority for ORC Section 1531.29.

Likewise, the State Fire Marshall has regulatory authority over OAC Rule 1301:7-7-03, ODNR Division of Forestry has regulatory authority over ORC Section 1503.07, and ODNR Division of Water has regulatory authority over ORC Section 1521.18. Compliance with county resolutions with respect to the National Flood Insurance Program may apply. This program is administered locally by the Allen County Regional Planning Commission.

Because Ohio EPA has no jurisdiction over these statutes and rules, Ohio EPA forwarded copies of your Complaint to the appropriate agencies for review. To the

extent that you have not spoken to these agencies about your Complaint, Ohio EPA recommends that you direct any concerns regarding those Code sections to the respective agencies as they have been delegated the regulatory authority to assist you.

With regard to the laws Ohio EPA has jurisdiction over, Ohio EPA's Northwest District Office, Division of Solid and Infectious Waste Management ("NWDO-DSIWM") conducted an investigation into the allegations and has continued to monitor the property. Ohio EPA's findings and conclusions are as follows:

- Siefker Sawmill manages the wood chips at the property as a recyclable material, not as a solid waste. Furthermore, Siefker Sawmill has not collected the wood chips at the property for the purpose of disposal or composting, but for recycling. Thus, the wood chips are not a "compost product," "composting" is not taking place there, and the property owned by Siefker Sawmill is not a "composting facility" as these terms are defined in OAC Rule 3745-27-01(C)(3),(C)(4), and (C)(5).

- Also, Siefker Sawmill is not storing the wood chips and shredded tree material indefinitely, but instead is temporarily storing the material. The wood chips are either recycled into mulch or the chips are used as a bulking agent for mortality composting at local hog farms. As a result, Siefker Sawmill is not depositing the wood chips and shredded tree material for the purposes of disposal in violation of Ohio open dumping laws.

- Additionally, Siefker Sawmill is managing the wood chips and shredded tree material in such a way so as to not create a nuisance or threat to public health or the environment. Therefore, Siefker Sawmill is in compliance with OAC Rule 3745-27-03(A)(2).

- Finally, Siefker Sawmill is not a solid waste transfer facility that accepts exclusively yard waste, and, thus, OAC Rule 3745-27-23(BB) does not apply. Therefore, Siefker Sawmill is not required to post instructions for using the site.

Although the Complaint does not allege violations of water pollution laws under ORC Chapter 6111., Ohio EPA, NWDO, Division of Surface Water ("NWDO-DSW") visited the site on April 20, 2005 and June 28, 2005 to investigate possible violations under that statute. Ohio EPA, NWDO-DSW did not find water quality impacts occurring during the visits. Although the wood chips are in the flood plain, and there is some potential for the wood chips to enter the river during flood events, it is unlikely that any water quality impacts would occur or could be documented with sampling during flood events.

ORC Section 3745.08(A) states that "any person who is or will be aggrieved or adversely affected by a violation that has occurred, is occurring, or will occur may file a complaint ... with the director of environmental protection ... alleging that another ... person has violated, is violating, or will violate any law, rule, standard, or order relating to air pollution, water pollution, solid waste, infectious wastes, construction and demolition debris, public water supply, hazardous waste, products that contain mercury, or cessation of chemical handling operations, or, if the person is in possession of a valid license, permit, variance, or plan approval relating to air pollution, water pollution, solid waste, infectious wastes, construction and demolition debris, public water supply, or hazardous waste, that the person has violated, is violating, or will violate the conditions of the license, permit, variance, or plan approval[.]"

In addition, ORC Section 3745.08(B) states that "If the director [of the Ohio EPA] does not determine that a violation, as alleged, has occurred, is occurring, or will occur, the director shall dismiss the complaint." Based on the results of the investigation outlined above, Ohio EPA did not find violations of ORC Chapters 3734. or 6111. Therefore, pursuant to ORC Section 3745.08(B), the Complaint is hereby dismissed.

You are hereby notified that this action of the Director is final and may be appealed by you to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The Environmental Review Appeals Commission is located at 309 South Fourth Street, Room 222, Columbus, OH 43215.

The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Environmental Review Appeals Commission within thirty (30) days after notice of the Director's action. A copy of the appeal must be served upon the Director of the Ohio EPA within three (3) days of filing with the Environmental Review Appeals Commission.

If you have any questions, please contact Jeremy Scoles in our Northwest District Office at (419) 373-3079 or Melinda Berry in our Division of Solid and Infectious Waste Management, Compliance Monitoring and Enforcement Unit at (614) 728-5339.

Sincerely,

Chris Korleski
Director

cc: Sharon Gbur, Assistant Chief, DSIWM
Andrea Smoktonowicz, Legal