COMMONWEALTH of VIRGINIA

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VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
AMERICAN WOOD FIBERS, INC.
FOR AN
Unpermitted Facility at 1762 Stoney Battery Road, Marion, VA
Incident Report (IR) No. 2013-S-1635

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and American Wood Fibers, Inc., regarding an Unpermitted Facility at 1762 Stoney Battery Road, Marion, VA for the purpose of resolving violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "AWF" means American Wood Fibers, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. American Wood Fibers, Inc. is a "person" within the meaning of Va. Code § 10.1-1400.

2. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" means the unpermitted site, located at 1762 Stoney Battery Road, Marion, in Smyth County. The property is leased and operated by American Wood Fibers, Inc.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

7. "Order" means this document, also known as a "Consent Order" or "Order by Consent."

8. "Permit" means a Solid Waste Permit (SWP) or Permit by Rule (PBR), which is issued under the Virginia Waste Management Act and the Regulations.

9. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.

10. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*

11. "Va. Code" means the Code of Virginia (1950), as amended.

12. "VAC" means the Virginia Administrative Code.

13. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. On January 28, 2013, DEQ staff investigated a complaint regarding a large sawdust pile near the edge of a stream in the Stoney Battery area of Smyth County, alleged to be material used by American Wood Fibers, Inc. (AWF) in manufacturing processes at its plant located at 514 Lee Highway, Marion, Virginia.

2. DEQ staff confirmed the existence of a large sawdust/wood material pile, located at 1762 Stoney Battery Road, Marion, in Smyth County, Virginia. The pile is located near a stream, identified by DEQ staff as East Fork Hopkins Branch. Contact was made with AWF. AWF's consultant confirmed that the wood material pile in question does belong to AWF and that the property at 1762 Stoney Battery Road is leased by AWF. The wood material pile was identified as kiln dried material normally used as "feedstock" for production of wood pellets.

3. On February 6, 2013, Department staff met with AWF's consultant, who acknowledged the existence of leachate at the toe of the wood material pile. Multiple fordings of the stream, hauling wood material to the site, was also discussed. A remediation plan, submitted by AWF's consultant February 13, 2013, estimated that 4,655 tons of wood material is contained in the pile. Dimensions of the pile, as provided to DEQ by AWF's consultant, were 320 feet long, 45 feet wide and 16 feet high.

4. Based on the investigation and follow-up information, Department staff made the following observations:

a. Operations at the Facility located at 1762 Stoney Battery Road, Marion, in Smyth County, Virginia are not conditionally exempt, due in part to the fact that leachate has been produced and the height restriction in the regulation was exceeded.
b. AWF does not have any type of permit for disposal, treatment or storage of solid waste at the Facility.

5. Regulation 9 VAC 20-81-95(D)(13) states "Storage in piles of land-clearing debris including stumps and brush, clean wood wastes, log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose, are exempt from this chapter if they meet the following conditions at a minimum: a. The wastes are managed in the following manner: (1) They do not cause discharges of leachate, or attract vectors ... c. No more than a total of 1/3 acre of waste material is stored onsite and the waste pile does not exceed 15 feet in height above base grade. d. Siting provisions ... (4) No waste material may be stored closer than 50 feet to any regularly flowing surface water body or river, floodplain, or wetland; and ... f. Waste piles that do not meet these provisions are required to obtain a permit in accordance with the permitting provisions in Part V (9VAC20-81-400 et seq.) of this chapter and meet all of the applicable waste pile requirements in Part IV (9VAC20-81-300 et seq.) of this chapter. Facilities that do not comply with the provisions of this subsection and fail to obtain a permit are subject to the provisions of 9VAC20-81-40.

6. Regulation 9 VAC 20-81-40 states "A. No person shall operate any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste without a permit from the director. B. No person shall allow waste to be disposed of or otherwise managed on his property except in accordance with this chapter. C. It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner. D. Any person who violates subsection A, B, or C of this section shall immediately cease the activity of improper management and the treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place.

7. On February 19, 2013, based on the investigation and follow-up information, the Department issued Notice of Violation No. NOV-001-0213-SW to AWF for the violations described in paragraphs C(1) through C(4), above.

8. On March 4, 2013, AWF submitted an electronic response to the NOV. This response noted that AWF does not disagree with the field findings and the interpretation of the regulations used to support the conclusion of noncompliance.

9. Based on the results of the January 28, 2013 investigation, meetings with AWF's consultant on February 6, 2013 and AWF officials and the consultant on February 21, 2013, and documentation submitted on February 13, 2013, March 1, 2013 and March 4, 2013, the Board concludes that AWF has violated Regulation 9 VAC 20-81-95(D)(13), Regulation 20-81-400 *et seq.* and Regulation 9 VAC 20-81-40, as described in paragraphs C(1) through C(4), above.

10. In order for AWF to complete its return to compliance, DEQ staff and representatives of AWF have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders American Wood Fibers, Inc., and American Wood Fibers, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $7,500.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

American Wood Fibers, Inc. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, American Wood Fibers, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of AWF for good cause shown by AWF, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. NOV-001-0213-SW, dated February 19, 2013. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, AWF admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. AWF consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. AWF declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by AWF to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. AWF shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. AWF shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. AWF shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

   a. the reasons for the delay or noncompliance;

   b. the projected duration of any such delay or noncompliance;

   c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

   d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

   Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and AWF. Nevertheless, AWF agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after AWF has completed all of the requirements of the Order;

    b. AWF petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

    c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to AWF.

    Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve AWF from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by AWF and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of AWF certifies that he or she is a responsible officer authorized to enter into the terms and conditions of this Order and to execute and legally bind AWF to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of AWF.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, AWF voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of July, 2013.

Allen J. Newman, P.E., Regional Director
Department of Environmental Quality

American Wood Fibers, Inc. voluntarily agrees to the issuance of this Order.

Date: 5-23-13 By: Marvin Lumford, VP
(Person) (Title)
American Wood Fibers, Inc.

Commonwealth of Virginia
City/County of Smyth

The foregoing document was signed and acknowledged before me this 23 day of May, 2013, by Marvin Lumford who is VP of American Wood Fibers, Inc. on behalf of the corporation.

Robin W. Meadows
Notary Public

7248503
Registration No.

My commission expires: 11/30/2013

Notary seal:

ROBIN F. MEADOWS
Notary Public
Commonwealth of Virginia
Reg. No. 7248503
My Commission Expires Nov 30, 2013

APPENDIX A
SCHEDULE OF COMPLIANCE

1. American Wood Fibers, Inc. shall not store, treat, or dispose of any additional solid waste at 1762 Stoney Battery Road, Marion, Virginia without a permit from the Director in accordance with Va. Code § 10.1-1408.1.

2. By April 1, 2013, American Wood Fibers, Inc. shall begin removal of all solid waste in the existing wood material pile located at 1762 Stoney Battery Road, Marion, Virginia.

3. Until all wood/material pile removal operations are complete, American Wood Fibers, Inc. will utilize the newly constructed bridge for ingress/egress, and shall maintain all temporary erosion and sediment controls, the leachate collection trench and the clean water diversion. The stormwater/leachate collection pond shall also be maintained such that no discharge from the pond occurs and liquids removed from the pond are properly disposed of.

4. By October 31, 2013, American Wood Fibers, Inc. shall remove all solid waste in the existing wood material pile located at 1762 Stoney Battery Road, Marion, Virginia. All solid waste shall be transported to the American Wood Fibers, Inc. plant located at 514 Lee Highway, Marion, Virginia and used in production of wood pellets, sold for use as boiler fuel or otherwise properly disposed of.

5. Within 10 days of completing the disposal required under Item No. 4, American Wood Fibers, Inc. shall provide appropriate documentation demonstrating both complete removal, and use or disposal, of all solid waste in the wood material pile. Documentation may include pictures, receipts, bill of landings, manifests, or other similar documentation.

6. Unless otherwise specified in this Order, American Wood Fibers, Inc. shall submit all requirements of Appendix A of this Order to:

   Ruby Scott
   Compliance Auditor
   VA DEQ –Southwest Regional Office
   355-A Deadmore Street
   Abingdon, Virginia 24210
   (276) 676-4882
   (276) 676-4899
   ruby.scott@deq.virginia.gov