



# *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Gerard Seeley, Jr.  
Regional Director

**WASTE MANAGEMENT BOARD  
ENFORCEMENT ACTION  
ORDER BY CONSENT  
ISSUED TO  
LOUISIANA LAND & LUMBER, LLC  
EPA ID No. VAD139372239**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and Louisiana Land & Lumber, LLC., for the purpose of resolving certain alleged violations of the Virginia Waste Management Act and the Virginia Hazardous Waste Management Regulations.

**SECTION B: Definitions**

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

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
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.
5. “Order” means this document, also known as a Consent Order.

6. “Louisiana Land and Lumber” means Louisiana Land & Lumber, LLC, a limited liability company certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Property” means the +/- 20.46-acre combination of Parcels 6, 7, and 8 that contains the former lumber treatment plant, as described in “Exhibit A”, recorded in the Clerk’s Office of the Circuit Court of King and Queen County, Virginia on Deed Book 117 Page 301. The property is located at 8480 Richmond Highway in King and Queen County, Virginia.
8. “Mr. Walker” means Mr. Carroll Lee Walker, the President of Louisiana Land & Lumber, LLC.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “VHWMR” means the Virginia Hazardous Waste Management Regulations 9 VAC 20-60-12 *et seq.*

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Southern Treating Company acquired the Property in 1985. The company built a lumber treatment facility on the Property and treated lumber using chromated copper arsenate (“CCA”) from the fall of 1986 until December 1989.
2. In December 1989, the property was sold to Southern International Company LP. Southern International Company LP continued lumber treatment using CCA until October 1990, when its parent company was apparently forced into Chapter 7 Bankruptcy by creditors.
3. During bankruptcy proceedings, the lumber treatment plant sat in a state of abandonment. Approximately 80,000 gallons of <2% CCA solution in seven aboveground holding tanks remained inside the main process building and seven 55-gallon drums labeled as containing arsenic remained outside the building during this period. Excess stormwater accumulated in the main process building and lifted the holding tanks off of the floor. As a result, the chemical supply lines were broken and a release of CCA occurred. CCA-contaminated stormwater spilled onto the concrete drip pads and onto bare soil along the sides of the main process building.
4. From July 1992 through April 1993, the U.S. Environmental Protection Agency (“EPA”) conducted a removal of the CCA-contaminated stormwater, CCA from the chemical storage tanks, CCA-contaminated soils, and CCA-contaminated sludges under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”). This removal mitigated immediate risks to human health and the environment but did not constitute closure as required by the VHWMR.

5. The site has remained inactive since October 1990, due to the inability to reopen the lumber treating business cost effectively. The Property is currently owned by Louisiana Land & Lumber, LLC, which acquired the Property in 2004.
6. On March 25, 2005, DEQ staff conducted an inspection of the Property, and noted the following violations:
  - a. The design and maintenance of the drip pad does not meet current standards found in 40 CFR §265.443.
  - b. The CCA storage tanks do not meet requirements for tank systems found in 40 CFR §265.190 *et seq.* (Subpart J – Tank Systems).
  - c. The integrity of neither the drip pad nor the tank systems has been certified by a professional engineer, as required by 40 CFR §265.441 and §265.191, respectively.
  - d. A financial assurance instrument was not in place for the drip pad and tanks, as required by 40 CFR §265.140 *et seq.* (Subpart H – Financial Requirements).
  - e. The biennial report indicating a change in ownership was not received, as required by 40 CFR §262.41.
  - f. The re-accumulated stormwater is considered a “solid waste” pursuant to 9 VAC 20-80-10 and is not exempt under 9 VAC 20-80-60.E.6(b). The facility has not been issued a permit by the Director for the disposal or management of solid waste on the site, as required by VAC 20-80-90.A(2).
  - g. Louisiana Land and Lumber does not have a closure plan and has not implemented closure as required by 40 CFR §265 Subparts J and W.
7. DEQ issued a Notice of Violation on September 18, 2005 for the violations identified in Paragraph 6.
8. The facility is a “generator” of hazardous waste, as that term is defined in 40 CFR §260.10 and 9 VAC 20-80-60.
9. The current owner, Louisiana Land and Lumber, LLC, has proposed to permanently close the treating facility and may convert the Property into another industrial use.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders Louisiana Land and Lumber, LLC, and Louisiana Land and Lumber, LLC agrees, to perform the actions described in Appendix A of this Order.

## **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Louisiana Land and Lumber, LLC for good cause shown by Louisiana Land and Lumber, LLC, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Louisiana Land and Lumber, LLC by DEQ on September 19, 2005. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. Solely for purposes of this Order and subsequent actions by DEQ with respect to this Order, Louisiana Land and Lumber, LLC admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Louisiana Land and Lumber, LLC 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. Louisiana Land and Lumber, LLC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the 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 enforce this Order.
6. Failure by Louisiana Land and Lumber, LLC 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. Louisiana Land and Lumber, LLC 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, vandalism or other criminal act of a third party not in privity with Louisiana Land and Lumber, LLC

or such other occurrence. Louisiana Land and Lumber, LLC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Louisiana Land and Lumber, LLC shall notify the DEQ Regional Director in writing 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.

Notice shall satisfy this requirement if made to the DEQ representative designated herein by telephone, facsimile or electronic mail, followed by written notice within three business days. Failure to give notice by telephone, facsimile or electronic mail within 24 hours 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, their 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 Louisiana Land and Lumber, LLC. Notwithstanding the foregoing, Louisiana Land and Lumber, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Louisiana Land and Lumber, LLC. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Louisiana Land and Lumber, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Louisiana Land and Lumber, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10<sup>th</sup> day of APRIL, 2006.

David K. Paylor  
David K. Paylor, Director  
Department of Environmental Quality

Louisiana Land and Lumber, LLC voluntarily agrees to the issuance of this Order.

Date: 2-10-06

By: Carroll Lee Walker  
Carroll Lee Walker, ~~President~~ Managing Member

State of Virginia  
City/County of Kings Queen

The foregoing document was signed and acknowledged before me this 10<sup>th</sup> day of February, 2006, by Carroll Lee Walker, who is  
(Name)

Managing Member of Louisiana Land and Lumber, LLC, on behalf of the  
Corporation. L.L.C.  
(Title)

Mary S. Moore  
Notary Public

My commission expires: 1/31/10

## APPENDIX A

1. Louisiana Land and Lumber shall perform closure and post-closure care for the facility in accordance with 40 CFR §265.197 and §265.445.
2. **No later than 15 days after the effective date of this order**, Louisiana Land and Lumber shall submit an updated EPA 8700-12 form to indicate the current owner and operator of the site.
3. **No later than 30 days after the effective date of this order**, Louisiana Land and Lumber shall take all practicable steps to eliminate imminent danger to human health and the environment on the property. Such actions shall include, but may not be limited to: removal of all CCA-contaminated stormwater; redirection of stormwater away from the drip pad and chemical process building using diversion dikes, downspouts, or other appropriate measures; and securing the site to prevent all unauthorized access.
  - a. Louisiana Land and Lumber shall inspect the site and maintain or implement new measures to eliminate imminent danger to human health and the environment at least once every 30 days thereafter, until the closure plan is implemented. Records of all site evaluations and activities shall be maintained and shall be made available to DEQ upon request.
4. Louisiana Land and Lumber shall have the option to provide certification by a professional engineer that the tank and drip pad secondary containment systems meet the requirements found in 40 CFR §265.193 (b) through (f) and §265.443(b)(1), respectively. If Louisiana Land and Lumber elects to utilize this option, documentation of such certification shall be provided to DEQ no later than 60 days after the effective date of this Order.
  - a. If such certification is submitted and approved by DEQ, the facility shall provide the closure plan, closure activities, cost estimates for closure, and financial responsibility in accordance with 40 CFR §265.197(a), §265.445(a), §265.110 *et seq.* (Subpart G), and §265.140 *et seq.* (Subpart H), as applicable, **no later than 60 days after DEQ approval of the certification.**
  - b. If such certification is submitted and is *not* approved by DEQ, the facility shall provide the closure plan, contingent post-closure plan, cost estimates, and financial assurance in accordance with 40 CFR §265.197(c) and §265.445(c) **no later than 60 days after DEQ disapproval of the certification.**
  - c. If such certification is not provided, the facility shall provide the closure plan, contingent post-closure plan, cost estimates, and financial assurance in accordance with 40 CFR §265.197(c) and §265.445(c) **no later than 120 days after the effective date of this Order.**

5. **No later than 90 days after** DEQ approval of the submittals required by Number 4 above, the facility shall initiate the closure plan, and shall abide by the terms and schedule therein.
6. **No later than 90 days after** a determination by DEQ or the facility that the tanks or drip pad cannot practicably be decontaminated or all contaminated subsoils or other media cannot be removed, the facility shall initiate the approved contingent closure and contingent post-closure plans, and shall abide by the terms and schedules therein, in order to close the facility in accordance with 40 CFR §265.197(b) and/or 40 CFR §265.445(b).
7. **No later than 180 days after** the determination that the tanks or drip pad cannot practicably be decontaminated or all contaminated subsoils or other media cannot be removed, the owner shall submit a permit application to address post-closure care and groundwater monitoring requirements, in accordance with 9 VAC 20-60-265.B.18 of the VHWMR. The permit application shall include the permit application fee as required by 9 VAC 20-60-1285 of the VHWMR.
8. All requirements of Appendix A of this Order shall be submitted to:

Allison C. Dunaway  
Enforcement Specialist, Sr.  
VA DEQ – Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060  
Phone: (804) 527-5015  
Fax: (804) 527-5106