

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE AND HAZARDOUS MATERIALS DIVISION

In the matter of administrative proceedings
against Biewer of Lansing, L.L.C., a limited liability
company organized under the laws of the State
of Michigan, and doing business as Biewer Lumber
Company, at 6111 West Mount Hope Highway,
Lansing, Eaton County, State of Michigan

WHMD Fast Track Order No. 111-03-08

Site ID No. MIR 000 046 664

CONSENT ORDER

This proceeding results from allegations specified in Letters of Warning ("LOWs") dated September 12, 2002, March 24, 2003, and July 9, 2004, by staff of the Department of Environmental Quality ("DEQ"), Waste and Hazardous Materials Division ("WHMD"). The DEQ alleges that Biewer of Lansing, L.L.C. (the "Respondent"), a Michigan limited liability company, doing business as Biewer Lumber Company, 6111 West Mount Hope Highway, Lansing, Eaton County, Michigan ("Facility"), is in violation of Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended ("NREPA"), Michigan Compiled Laws ("MCL") 324 11101 *et seq.*; the corresponding federal provisions under the federal Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), Title 42 of the United States Code ("U.S.C."), Section 6928, and the administrative rules promulgated thereunder. The Respondent and the DEQ agree to resolve the alleged violations set forth in the LOWs by entry of this Consent Order.

I. STIPULATIONS

The Respondent and the DEQ stipulate as follows:

- 1 1 Pursuant to its authority under Part 111 and MCL 324.105, the DEQ has promulgated administrative rules pertinent to the identification, generation, treatment, storage,

disposal, and transportation of hazardous wastes in Michigan. These rules are set forth in the 2008 *Michigan Register* 5, R 299 9101 *et seq*

- 1.2 On October 30, 1986, the State of Michigan was granted final authorization by the Administrator of the U.S. Environmental Protection Agency ("U.S. EPA"), pursuant to Section 3006(b) of the RCRA, 42 U.S.C., Section 6926(b), to administer a hazardous waste program in Michigan in lieu of the federal program, Title 40 of the Code of Federal Regulations ("CFR"), Part 272, Subpart X, 51 *Federal Register* 36804 (October 16, 1986). This authorization is periodically updated to maintain authorization. Section 3008 of the RCRA, 42 U.S.C., Section 6928, provides that the U.S. EPA may enforce state regulations in those states authorized to administer a hazardous waste program.
- 1.3 The Respondent is a person as defined by MCL 324.301(h) and R 299.9106(i). The Respondent owns and operates a facility at 6111 West Mount Hope Highway, Lansing, Eaton County, Michigan, where wood products were treated with wood preservative products containing chromated copper arsenate and stored at an outside storage yard during the normal course of business. Biewer's drip pad, together with equipment and secondary containment structures that are associated with the wood treatment process, are entirely enclosed within buildings at this location. Biewer is a Michigan limited liability company with a registered office at 812 South Riverside, St. Clair, Michigan.
- 1.4 On June 5, 2000, Biewer filed a notification of hazardous waste activity for the Facility with the U.S. EPA pursuant to Section 3010 of the RCRA for its hazardous waste generator activities. The Respondent's Site ID No. is MIR 000 046 664.
- 1.5 The Director of the DEQ is authorized by MCL 324.11151(1) to issue orders to comply. Accordingly, the Director has authority to issue and enter into this Consent Order with the Respondent.
- 1.6 The Respondent stipulates to the issuance and entry of this Consent Order and that entry of the Consent Order is proper and acceptable. This Consent Order shall be considered a final order of the DEQ and shall become effective on the date it is signed by the Chief of the WHMD, delegee of the Director, pursuant to MCL 324.301(b)

- 1.7 The Respondent agrees to fully and strictly comply with all provisions of Part 111, the administrative rules promulgated pursuant to Part 111 ("Part 111 Rules"), and all other applicable state and federal statutes.
- 1.8 The Respondent and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Respondent of the allegations contained in the DEQ's LOWs dated September 12, 2002, March 24, 2003, and July 9, 2004, or that the law has been violated.

II DEQ APPROVAL OF SUBMITTALS

- 2.1 The Respondent shall assure that any document required to be submitted by this Consent Order will be complete and technically adequate such that the document meets any applicable statutory and regulatory requirements and the specific terms of this Consent Order when initially submitted. For any document that is required to be submitted by the Respondent to the DEQ by this Consent Order, the following process and terms of approval shall apply. The DEQ may approve, disapprove, or approve with specified modifications, any required document. Upon DEQ approval, or approval with modifications, of a document, such document shall become a part of this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order. In the event that the DEQ approves a document with modifications, the DEQ shall state each specific modification and the basis for each modification in writing. In the event that the DEQ disapproves a document, the DEQ shall notify the Respondent of the specific reasons for the disapproval in writing. Within ten (10) business days of receipt of the DEQ's disapproval letter, the Respondent shall amend and submit a revised document that addresses the reasons for the DEQ's disapproval unless the notice of disapproval specifies a longer period. Failure by the Respondent to submit an approvable document within the ten (10) business day schedule shall subject the Respondent to the enforcement provisions of this Consent Order, including, but not limited to, the imposition of additional civil penalties. Any delays caused by the Respondent's failure to submit an approvable document shall in no way affect the Respondent's responsibility to comply with any deadlines specified in this Consent Order.

III. COMPLIANCE PROGRAM

3.1 The Respondent shall achieve and maintain compliance with the requirements specified below in accordance with the following schedule:

3.1.1 Liquid Industrial Wastes

Within thirty (30) days after entry of this Consent Order, Biewer must submit documentation to this office demonstrating that Biewer's management practices for the storage, handling, and disposal of liquid industrial wastes, such as wastewaters from treated lumber power washing, fully comply with the requirements of Part 121, Liquid Industrial Wastes, of the NREPA, including MCL 324.12113(1) and MCL 324.12113(2).

3.1.2 Hazardous Waste Training

Within thirty (30) days after entry of this Consent Order, Biewer must submit documentation to this office showing that Facility staff has received hazardous waste training and is thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal Facility operations as required by R 299.9306(d) of the Part 111 Rules and 40 CFR, Section 265.16. This documentation must include, at a minimum, the following:

- a. Staff names, position titles, signatures, and dates
- b. A brief description of each position title's responsibilities for waste management activities at the Facility.
- c. A written copy of the hazardous waste training that demonstrates adequate training was provided.

- d. Documentation of annual refresher training for each staff person meeting these requirements shall be maintained at the Facility as required by R 299.9306(d) of the Part 111 Rules and 40 CFR, Section 265.16.

3.1.3 Hazardous Wastes

Within thirty (30) days after entry of this Consent Order, Biewer must:

- a. Submit all records pertaining to waste characterization results and evaluation documentation to the Lansing District Office, WHMD, in accordance with R 299.9307(1), (2), (5), and (6) of the Part 111 Rules.
- b. Provide a written statement verifying that Biewer is storing and disposing of hazardous wastes in accordance with R 299.9303, R 299.9304, R 299.9305, and R 299.9306 of the Part 111 Rules.

IV. REPORTING

- 4.1 The Respondent shall submit all items required in Section III to Mr. Lee Carter, Lansing District Supervisor, WHMD, DEQ, P.O. Box 30242, Lansing, Michigan 48909-7742. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

V. RETENTION OF RECORDS

- 5.1 Upon request by an authorized representative of the DEQ, the Respondent shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to the Part 111 Rules. All such documents shall be retained at the Facility for at least a period of three (3) years from the date of generation of the record, unless a longer period of record retention is required by Part 111, the RCRA, or their rules.

VI. RIGHT OF ENTRY

- 6.1 The Respondent shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the Facility at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Order. This paragraph in no way limits the authority of the DEQ to conduct tests and inspections pursuant to the NREPA, its rules, or any other applicable statutory provision.

VII. FINES AND PENALTIES

- 7.1 By no later than thirty (30) days of the DEQ Director's designated representative's signature on this Consent Order, the Respondent shall pay the sum of \$36,000 to the General Fund of the State of Michigan, by check made payable to the "State of Michigan" and delivered to the DEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the DEQ, Revenue Control Unit, 525 West Allegan Street, 5th Floor, South Tower, Lansing, Michigan 48933. This payment shall be in settlement of the DEQ's claim for a civil fine arising from the violations alleged in the above-referenced LOW. To ensure proper credit, all payments made pursuant to this Consent Order must include Payment Identification Number WHM 1079.
- 7.2 To ensure timely payment of the civil fine set forth in Paragraph 7.1, above, the Respondent shall pay an interest penalty to the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(6), using the full increment of amount due as principal and calculated from the due date for the payment until the delinquent payment is finally made in full. Payment of an interest penalty by the Respondent shall be made to the "State of Michigan" in accordance with Paragraph 7.1, above.
- 7.3 The Respondent agrees not to contest the legality of the civil fine or any interest paid pursuant to Paragraphs 7.1 and 7.2, above.

VIII. GENERAL PROVISIONS

- 8.1 With respect to any violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Respondent to comply with the requirements of the NREPA and its rules.
- 8.2 Notwithstanding any other provision of this Consent Order, an enforcement action may be brought by the DEQ pursuant to Part 111 or other statutory authority where the generation, storage, transportation, treatment, or disposal of hazardous waste at the Respondent's Facility may present an imminent and substantial hazard to the health of persons or to the natural resources or is endangering or causing damage to public health or the environment.
- 8.3 The DEQ and the Respondent consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 111, MCL 324.11101 *et seq.*
- 8.4 This Consent Order in no way affects the Respondent's responsibility to comply with any other applicable local, state, or federal laws or regulations, including, without limitation, any corrective action or similar requirements applicable to the Respondent's Facility pursuant to Part 111, the RCRA, and their rules.
- 8.5 Nothing in this Consent Order is or shall be considered to affect any liability the Respondent may have for natural resource damages caused by the Respondent's ownership and/or operation of the Facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources
- 8.6 The provisions of this Consent Order shall apply to and be binding upon the Respondent, the DEQ, and their successors and assigns. The Respondent shall give notice of this Consent Order to any prospective successor in interest prior to transfer of ownership and shall notify the DEQ of such proposed sale or transfer.

IX. TERMINATION

9.1 This Consent Order shall remain in full force and effect until expressly terminated by a written Notice of Termination issued by the Chief of the WHMD. The Respondent may request that the Chief of the WHMD issue a written Notice of Termination at any time after achieving compliance with this Consent Order. Such a request shall consist of a written certification that the Respondent has fully complied with all of the requirements of this Consent Order and payment of any fines and penalties required in this Consent Order. Specifically, this certification shall include:

- a. the date of compliance with each provision of the Compliance Program in Section III and the date that any fines or penalties were paid;
- b. a statement that all required information has been reported to the District Supervisor; and
- c. confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the Facility.

Additional relevant information may also be requested by the Chief of the WHMD

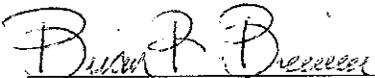
SIGNATORIES

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it

Biewer of Lansing, L.L.C.

Department of Environmental Quality

Steven E. Chester
Director

By: 
Brian R. Biewer
Member

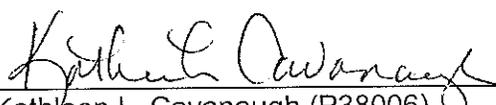
By: 
George W. Bruchmann, Chief
Waste and Hazardous Materials
Division

Date: 9/12/08

Date: 9-18-08

APPROVED AS TO FORM:

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Date: 9-17-08