

Attn: Joe ~~Huffman~~



west virginia department of environmental protection

Environmental Enforcement
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0470 Fax: (304) 926-0488

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

December 5, 2012

Lowe Products Co. Inc.
John D Lowe III
PO Box S
Shepherdstown, WV 25443

CERTIFIED RETURN RECEIPT REQUESTED

91 7199 9991 7031 5500 3765

**RE: Violation of Chapter 22, Articles 11 and 12
of the WV State Code**

Dear Mr. Lowe:

Enclosed is revised CONSENT ORDER NUMBER 7753 dated December 5, 2012. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to Lowe Products Co. Inc. violating Chapter 22, Article 11 and Chapter 22, Article 12 of the WV State Code at its facility located in Shepherdstown, Jefferson County, West Virginia. This revision is based upon your recent telephone conversation with WVDEP personnel. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,

Michael A. Zeto
Chief Inspector

Enclosure

cc: Scott G. Mandirola, Director, DWWM (via e-mail)
Yogesh Patel, Asst. Director, DWWM/Permits (via e-mail)
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
Laura McGee, Environmental Resources Specialist, EE (via e-mail)
Robin C. Dolly, Environmental Inspector Supervisor, EE/WW (via e-mail)
Michael Kanehl, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)

revised October 2012

Promoting a healthy environment.



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: Lowe Products Co. Inc.
John D Lowe III
PO Box S
Shepherdstown, WV 25443

DATE: December 5, 2012

ORDER NO.: 7753

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. to Lowe Products Co. Inc. (hereinafter "Lowe").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Lowe operates a wood product mulching plant located in Jefferson County, West Virginia. Lowe was reissued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG610218, on February 24, 2011.
2. On April 16, 2012, WVDEP personnel conducted a review of facility records from the time period of 2008 through 2011. During this review, the following deficiencies were observed:
 - a. Eight (8) benchmark exceedances of Lowe's WV/NPDES permit parameters (Section A) were observed and documented (Table One).

Promoting a healthy environment.

- b. Lowe failed to revise its SWPPP within thirty (30) days of finding the previous year's sampling results over the cut-off value. This deficiency is a violation of Section B.7 of Lowe's permit.
 - c. Ten (10) failures by Lowe to report required sample results were observed and documented, a violation of its WV/NPDES Permit (Appendix A.III.2).
3. On August 22, 2012, WVDEP issued Order No. 7709 to Lowe. The Order required Lowe to submit a proposed plan of corrective action and schedule within twenty (20) days of the effective date of the Order.
4. On September 11, 2012, WVDEP Permitting Section received Lowe's plan of corrective action, which outlined action items and completion dates for how and when Lowe would achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. WVDEP Permitting Section subsequently approved the plan of corrective action, including Lowe's revised SWPPP. The plan of corrective action and schedule were incorporated into and became a part of Order No. 7709.
5. On November 26, 2012, Lowe's plan of corrective action was forwarded from WVDEP Permitting Section to WVDEP Environmental Enforcement.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

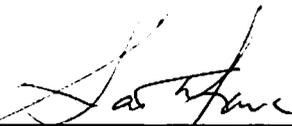
1. Lowe shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Because of Lowe's violations, Lowe shall be assessed a civil administrative penalty of two thousand one hundred twenty-two dollars (\$2,122) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Lowe hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia. Under this Order, Lowe agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Lowe does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Lowe other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Lowe shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Lowe becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Lowe intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Lowe (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Lowe of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Lowe to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Lowe, its successors and assigns.

7. This Order shall terminate upon Lowe's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


~~John D. Lowe III~~ Scott M. Lowe
Lowe Products Co. Inc.

12-13-12
Date

Public Notice begin:

Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

revised September 2011

RECEIVED

DEC 14 2012

ENVIRONMENTAL
ENFORCEMENT

Table One:
 Lowe Benchmark Exceedance Summary

Outlet 001 Benchmark Exceedances - 2008 through 2011							
Date	Parameter	Units	Permitted avg. yearly	Sample 1	Sample 2	Reported avg. yearly	% Exceedance
2009	TSS	mg/L	100	791	123	457	357%
2009	COD	mg/L	120	255	80	167.5	40%
2010	TSS	mg/L	100	447	no sample	447	347%
2010	COD	mg/L	120	340	no sample	340	183%
2011	TSS	mg/L	100	119	106	112.5	13%
2011	COD	mg/L	120	132	129.26	130.63	9%

Outlet 002 Benchmark Exceedances - 2008 through 2011							
Date	Parameter	Units	Permitted avg. yearly	Sample 1	Sample 2	Reported avg. yearly	% Exceedance
2011	TSS	mg/L	100	200	104	152	52%
2011	COD	mg/L	120	181.2	60.9	121.05	1%

**Total = Eight (8)
 Exceedances**

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Lowe Products Co. Inc.

Receiving Stream:

Potomac River basin

Treatment System Design Maximum Flow: 0.0042 MGD

Treatment System Actual Average Flow: MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			2c											
a)	Amount of Pollutant Released	1 to 3	1											
b)	Toxicity of Pollutant	0 to 3	0											
c)	Sensitivity of the Environment	0 to 3	0											
d)	Length of Time	1 to 3	1											
e)	Actual Exposure and Effects thereon	0 to 3	0											
Average Potential for Harm Factor			0.4	No										
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3											

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly , >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$170
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$222		\$222
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$422
Penalty =			\$2,122

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$222
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$222
Comments: Sampling: \$37 each* 6= \$222	

**Lowe Products Co., Inc.
P.O. Box S
Shepherdstown, WV 25443
(304)876-2546**

December 13, 2012

Michael a. Zeto
Environmental Enforcement - Mail Code #031328
WV Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304

Please find enclosed the signed original copy of the revised ORDER 7753 with payment of two thousand, one hundred, twenty-two dollars (\$2122) paid to the West Virginia Department of Environmental Protection. We received this order on December 10th 2012.

As stated in our corrective action plan, after each inspection by the WVDEP, Lowe Products attempted to correct the violations issued; therefore, several best management practices have been put in place. For water quality we added concrete pretreatment sediment basins upstream of existing storm water ponds as well as other BMP measures.

The missed samples were due to the misunderstanding that we only had one outlet or we had no flow when we went to sample. It was our understanding that we were to take samples in February and August.

The benchmark exceeded samples, we took actions to correct by having our pond cleaned out, adding the concrete pretreatment sediment basins, and we purchased a pump to reclaim the water for our own use.

In an effort to improve our compliance, we hired Potesta & Associates, Inc. to aide us in the development of the new Pollution Prevention Plan. With the help of this consultant we better understand the correct procedures to ensure that future samples will be correctly sampled and reported.

Each time we received violations from WV DEP, we responded in a timely fashion with our answers and corrective action plan. We were not aware that any further communication was required. With the help of our consultant, we are committed to improving our communication to the agency in the future.

If you have any questions or comments, please feel free to contact either myself or Stephanie Hilker at (304)876-2546.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Lowe". The signature is fluid and cursive, with the first name "Scott" being the most prominent part.

Scott M. Lowe
Vice President