

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
AMERITIES WEST, LLC,) MUTUAL AGREEMENT
a Delaware limited liability company.) AND FINAL ORDER
No. AQ/AC-ER-16-067

WHEREAS:

1. AmeriTies West, LLC, a Delaware limited liability company (AmeriTies), owns and operates a wood preserving facility at 100 Tie Plant Road, The Dalles, Oregon (the Facility). The wood preserving process at the Facility includes two boilers, three cyclones and five retorts (wood treating cylinders) to preserve railroad ties. Creosote is used as a wood preservative in the process and has the ability to emit strong odors.

2. Residents of The Dalles, or those in close proximity, have periodically complained to DEQ that strong odors emanate from the Facility. On February 1, 2015, the Department of Environmental Quality (DEQ)'s Nuisance Strategy was triggered due to the number and description of the odor complaints DEQ received concerning the Facility. As a result, DEQ staff have been conducting odor surveys in The Dalles area and have documented that creosote-type odors are often present in the community.

3. On March 24, 2015, DEQ renewed and re-issued AmeriTies' Standard Air Contaminant Discharge Permit No. 33-0003-ST-01 (Permit). The Permit authorizes AmeriTies to discharge exhaust gases containing air contaminants in accordance with the requirements, limitations and conditions of the Permit. Condition 6.3 of the Permit requires AmeriTies to evaluate potential sources of odors at the Facility and to take measures to reduce odors by developing a plan for additional odor minimization best work practices.

4. To date, AmeriTies has implemented multiple odor control measures at the Facility shown in the AmeriTies West Odor Action Plan (Table 1), attached hereto and incorporated herein by reference.

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1 5. This Mutual Agreement and Order (MAO) is being entered into voluntarily by
2 AmeriTies and DEQ to memorialize AmeriTies' commitment to implement best work practices
3 to minimize odors and to develop enforceable milestones that will enable the implementation of
4 odor control measures in an expeditious manner.

5 6. By entering into this MAO, AmeriTies neither admits nor denies the allegations
6 related to or arising from any of the matters in this MAO.

7 NOW THEREFORE, it is stipulated and agreed that:

8 7. In accordance with OAR 340-208-0320(1), sources may voluntarily enter into an
9 agreement with DEQ to implement specific practices to abate suspected nuisance conditions,
10 including odors. Compliance with this MAO and the DEQ-approved Odor Action Plan (Table 1
11 and any DEQ-approved updates) in Paragraphs 7A (1) and (2) constitutes implementation of best
12 work practices and compliance with OAR 340-208-0300 while this MAO is in effect.

13 8. The Environmental Quality Commission shall issue a final order:

14 A. Requiring AmeriTies to implement best work practices to mitigate odors
15 by complying with the following schedule and conditions:

16 (1) Implement and comply with the odor reduction actions in Table 1
17 of the Odor Action Plan consistent with the schedules identified therein;

18 (2) Upon issuance of this MAO, AmeriTies must evaluate each odor
19 reduction action in Table 1 that AmeriTies has implemented for at least 60 days, and submit an
20 evaluation report to DEQ within 60 days of date of this MAO. The evaluation report must
21 include a description of each implemented action, long term feasibility of implementing the
22 action, date the action was implemented, and the Facility's observations of the effectiveness of
23 the action.

24 (3) For each action from Table 1 that AmeriTies has not implemented
25 for 60 days as of the date of this MAO, or for each new action that AmeriTies implements as part
26 or any DEQ-approved plan update, AmeriTies must evaluate the newly-implemented action for
27 60 days after implementation of the action and submit a report to DEQ within 90 days of

1 implementation of the action that includes a description of the action, date the action was
 2 implemented, and the Facility's observations of the effectiveness of the action.

3 (4) DEQ will independently assess the effectiveness of AmeriTies'
 4 odor reduction actions by conducting odor surveys in The Dalles area. Beginning January 1,
 5 2017, if more than 10% of the average odor survey readings over any rolling 90-day period
 6 equals or exceeds a value of "6" on the Intensity/Offensiveness scale below, or if more than 5%
 7 of the average odor survey readings over any rolling 90-day period equals or exceeds a value of
 8 "9" on the Intensity/Offensiveness scale below, then DEQ will notify AmeriTies that it must
 9 evaluate whether additional odor reduction actions are reasonably achievable. For the purposes
 10 of this MAO, a valid rolling 90-day odor survey/data set encompasses, at a minimum, 30 separate
 11 DEQ readings.

12 **Intensity/Offensiveness Scale**

13 I/O Score

14	Very Strong (5)	6A	8A	10A	12
15	Strong (4)	5A	7A	9A	11
16	Moderate (3)	4A	6B	8B	10B
17	Noticeable (2)	3	5B	7B	9B
18	Trace (1)	2	4B	6C	8C
19	No odor (0)	Not unpleasant (1)	Unpleasant (3)	Offensive (5)	Highly offensive (7)
20					
21					

22 **Offensiveness**

23 (5) No later than 90 days after receiving written notice from DEQ of
 24 the need to assess whether additional odor reduction actions are reasonably achievable,
 25 AmeriTies must submit to DEQ for review and approval, an updated plan identifying any
 26 additional possible actions and a schedule for implementation of each additional reasonably
 27 achievable action. If any

1 possible actions are identified as not being reasonably achievable, AmeriTies must provide an
2 explanation and documentation to support that finding.

3 (6) If DEQ and AmeriTies disagree as to whether additional possible
4 actions are reasonably achievable, they shall meet to discuss their opinions and to seek a
5 reasonable resolution, which may include but is not limited to, a mutual agreement on alternative
6 odor reduction actions, or to amend or terminate this MAO. If DEQ and AmeriTies cannot reach
7 resolution and agree to terminate the MAO, those actions required under this MAO at the time
8 AmeriTies is informed of the need for the additional action assessment will be incorporated into
9 AmeriTies' Air Contaminant Discharge Permit by DEQ-initiated permit modification or upon
10 permit renewal. .

11 (7) Once DEQ approves updates to the Odor Action Plan in writing,
12 AmeriTies must begin implementation of the approved plan updates consistent with the schedule
13 presented in the updated plan.

14 9. If any event occurs that is beyond AmeriTies' reasonable control and that
15 causes or may cause a delay or deviation in performance of the requirements of this MAO,
16 AmeriTies will immediately notify DEQ verbally of the cause of delay or deviation and its
17 anticipated duration, the measures that have been or will be taken to prevent or minimize the
18 delay or deviation, and the timetable by which AmeriTies proposes to carry out such measures.
19 AmeriTies shall confirm in writing this information within five (5) working days of the onset of
20 the event. It is AmeriTies' responsibility in the written notification to demonstrate to DEQ's
21 satisfaction that the delay or deviation has been or will be caused by circumstances beyond the
22 control and despite due diligence of AmeriTies. If AmeriTies so demonstrates, DEQ will extend
23 times of performance of related activities under this MAO as appropriate. Circumstances or
24 events beyond AmeriTies' control include, but are not limited to, acts of nature, unforeseen
25 strikes, work stoppages, fires, explosion, riot, sabotage, or war. Increased cost of performance or
26 consultant's failure to provide timely reports may not be considered circumstances beyond
27 AmeriTies' control.

1 10. DEQ and AmeriTies may amend the terms of this MAO by mutual written
2 agreement.

3 11. DEQ may amend the schedule and conditions in this MAO upon finding that such
4 modification is necessary to protect public health. DEQ will provide AmeriTies a minimum of
5 thirty (30) days written notice prior to issuing an Amended MAO modifying any schedules or
6 conditions, and the conditions will be immediately effective. If AmeriTies contests the Amended
7 MAO the applicable procedures for conduct of contested cases in such matters will apply (ORS
8 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700).

9 12. AmeriTies agrees that this MAO shall be binding on AmeriTies and its respective
10 successors, agents, and assigns. The undersigned representative of AmeriTies certifies that he or she
11 is fully authorized to execute and bind AmeriTies to this MAO. No change in ownership or
12 corporate or partnership status relating to the Facility will, in any way, alter AmeriTies'
13 obligation under this MAO, unless otherwise approved in writing by DEQ.

14 13. All reports, notices and other communications required under or relating to this
15 MAO should be sent to: Frank Messina, Oregon DEQ, 475 NE Bellevue Drive, Suite 110, Bend,
16 Oregon 97701, or at: messina.frank@deq.state.or.us.

17 14. AmeriTies acknowledges that it has actual notice of the contents and requirements
18 of this MAO and that failure to fulfill any of the requirements hereof would constitute a violation
19 of this MAO and subject AmeriTies to potential enforcement under OAR 340, Division 12.

20 15. This MAO will terminate when the Odor Action Plan is incorporated into
21 AmeriTies' Air Contaminant Discharge Permit upon DEQ-initiated permit modification or
22 permit renewal.

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AMERITIES WEST, LLC

April 8, 2016
Date

Jeffrey L. Thompson
Signature

Jeffrey L. Thompson
Name (print)

Vice President
Title (print)

DEPARTMENT OF ENVIRONMENTAL QUALITY

April 8, 2016
Date

Leah K. Feldon for
Leah K. Feldon, Manager
Office of Compliance and Enforcement

FINAL ORDER

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

April 8, 2016
Date

Leah K. Feldon for
Leah K. Feldon, Manager
Office of Compliance and Enforcement
on behalf of DEQ pursuant to OAR 340-012-0170
and OAR 340-208-0320(1)
on behalf of the EQC pursuant to OAR 340-011-0505

Table 1: AmeriTies West Odor Action Plan

Strategy ID	Potential Odor Source or Operation	Odor Reduction Action	Planned Completion Date	AmeriTies Completeness Sign-Off
A.1	Railroad tie yard	Modify material stacking procedures to reduce exposed surface area	Completed 10/31/2015 and continually being evaluated for improvement	_____
B.1	Retort vacuum operation on ties	B.1.i. Stagger retort operation B.1.ii. post treatment cycle cylinder purge	Started 1/1/2014, currently in use and is a continuing action Started 1/1/2015, currently in use and is a continuing action	_____
C.1	Process exhaust scrubber evaluation	C.1.i. Formulate an evaluation plan for the existing process air scrubber (oil) C.1.ii. Complete evaluation of existing air scrubber (oil) control efficiency and submit action plan	Submitted to DEQ 9/25/2015. DEQ is evaluating plan Upon approval of the evaluation plan - implement within 90 days of DEQ approval	_____
D.1	Drip pad treated material air release	D.1.i. Stagger retort operation	Started 1/1/2014, currently in use and is a continuing action	_____
E.1	Hot-treat preservative solution options	E.1.i. Explore options for changing preservative formulation to reduce odors E.1.ii. Implement full or partial use of revised formulations. E.1.iii Implement use of Copper Naphthenate preservative system	Currently in discussion with suppliers and customers-- Status updates to DEQ on 6/1/2016 & 12/1/2016. Status updates to DEQ on implementing feasible options identified in E.1.i on 3/1/2017 & 6/1/2017 Started 11/15/2015, currently in use and is a continuing action.	_____
F.1	Tank car unloading operation for hot-treat solution	Control and/or reduce emissions from tank unloading operation	Started 12/31/15, currently in use and is a continuing action	_____

Agreement Notes:

N.1) AmeriTies will submit a written request to DEQ before any element of the Odor Action Plan is discontinued. It is understood approval will be evaluated by DEQ on a case by case basis.

N.2) AmeriTies will submit a written request to DEQ prior to missing a planned action date. It is understood that date extensions will be evaluated by DEQ on a case by case basis.

AmeriTies Inc.

Date