

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
DEC - 4, 2002
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

City of Cleveland
Department of Port Control
Cleveland Hopkins International Airport
5300 Riverside Drive
Cleveland, Ohio 44135

Director's Final Findings
and Orders

Respondent.

PREAMBLE

These Director's Final Findings and Orders ("Orders") are hereby issued to the City of Cleveland ("Respondent") pursuant to the authority granted to the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 6111.03 and 3745.01.

PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its assigns and successors in interest liable under Ohio law. No change in ownership relating to the Airport facility shall in any way alter Respondent's obligations under these Orders. Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

FINDINGS OF FACT

All of the findings of fact necessary for the issuance of these Orders pursuant to ORC Sections 6111.03 and 3745.01 have been made and are outlined below. Nothing in the findings of fact shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings of fact:

1. Respondent owns and operates the Cleveland Hopkins International Airport ("Airport facility") and is a "person" as defined under ORC Section 6111.01(I).
2. Respondent discharges storm water from the Airport facility via outfalls which are identified by the following numbers: 001, 002, 003, 004, 005, 006, 007, 008, and 009. Outfalls 001 and 002 discharge directly to Silver Creek, outfalls 004, 005, and

I certify this to be a true and accurate copy of the
official documents as filed in the records of the Ohio
Environmental Protection Agency.

By Zona L. Clements Date 12/4/02

009 discharge directly to an unnamed tributary of Abram Creek, outfalls 003 and 006 discharge directly to Abram Creek, and outfalls 007 and 008 discharge directly to the Rocky River.

3. The unnamed tributary of Abram Creek, Abram Creek, Silver Creek, and the Rocky River are "waters of the state" as that term is defined under ORC Section 6111.01(H).
4. On at least the following dates and at the following locations, Respondent discharged to waters of the state storm water containing slag leachate, resulting from human activity at the Airport facility, which settled to form putrescent or otherwise objectionable sludge deposits and/or produced color or odor in such a degree as to create a nuisance:

<u>Date</u>	<u>Outfall(s)</u>
July 18, 2001	005
July 19, 2001	005
August 7, 2001	005
August 8, 2001	005, 006
August 13, 2001	005, 006, 007
August 23, 2001	005, 006
August 30, 2001	006, 007
October 2, 2001	006
October 4, 2001	006, 007

5. On July 25, 2001, August 17, 2001, and September 6, 2001, Ohio EPA sent to Respondent Notices of Violation regarding the unpermitted discharges of discolored and hydrogen sulfide-containing water into the unnamed tributary of Abram Creek, Abram Creek, and/or the Rocky River and the resulting violations of ORC Section 6111.04.
6. On at least September 29 and 30, 2001, and October 2, 3, 4, and 6, 2001, Respondent discharged to Abram Creek slag leachate impacted water from the temporary detention basin at the Airport facility in violation of ORC Section 6111.04.
7. The discharge by Respondent into the unnamed tributary of Abram Creek, Abram Creek, and the Rocky River without a valid, unexpired permit, or in violation of a valid, unexpired permit, is a violation of ORC Sections 6111.04 and 6111.07.
8. The discharge by Respondent into the unnamed tributary of Abram Creek, Abram

Creek, and the Rocky River resulted in the violation of OAC Rule 3745-1-04 and ORC Section 6111.07.

9. Sampling performed by Ohio EPA of effluent discharging from outfall 005 to the unnamed tributary of Abram Creek on October 4, 2001, detected 11,000 colonies/100 ml of fecal coliform bacteria and 16,000 colonies/100 ml of *E. coli* bacteria. The presence of these bacteria at the levels detected is indicative of the presence of sewage, as that term is defined in ORC Section 6111.01(B), in the effluent of outfall 005, although raw sewage was not visually present in the discharge.
10. The discharge by Respondent of fecal coliform bacteria and *E. coli* bacteria, in amounts exceeding naturally occurring background levels, to the unnamed tributary of Abram Creek is a violation of ORC Sections 6111.04 and 6111.07.
11. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions expected to result from compliance with these Orders, and its relation to the benefits to the people of the state to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

ORDERS

1. Respondent shall immediately cease all unpermitted discharges from the Airport facility to waters of the state and the discharge to waters of the state of substances and/or materials that cause or result in the violation of Ohio's Water Quality Standards set forth in OAC Chapter 3745-1.
2. In addition to the parameters required to be analyzed by NPDES permit No. 3II00179*AD, Respondent shall immediately begin monitoring the discharge from outfalls 005, 006, and 007 for the following parameters, using the sampling method listed after the parameter, once per week:
 - a. hydrogen sulfide (grab),
 - b. sulfate (composite),
 - c. magnesium (composite),
 - d. calcium (composite),
 - e. aluminum (composite).

Sampling of all parameters, except hydrogen sulfide, shall comply with 40 CFR Part 136. Respondent shall report the monitoring results to Ohio EPA within thirty (30) days after the date the sample was taken. Respondent shall continue this monitoring through August 31, 2002.

3. Within thirty (30) days after receipt of the results for the August 2002 monitoring performed in accordance with Order No. 2, Respondent shall submit to Ohio EPA all of the raw data from the monitoring and a raw data summary. If the Director determines that the data shows that there continues to be slag leachate discharges from an outfall(s), the Director shall notify Respondent. Upon receipt of the Director's notice, Respondent shall immediately begin sampling at the particular outfall(s) in accordance with Order No. 2. Within thirty (30) days of receipt of the Director's notice, Respondent shall submit to Ohio EPA for approval a remediation plan, with schedule, to address the continuing discharge of slag leachate.
4. Within fifteen (15) days of the approval of the plan required by Order No. 3, Respondent shall begin implementation of the plan in accordance with the approved schedule.
5. Respondent shall monitor the discharge from the Airport facility outfalls for fecal coliform bacteria and *E. coli* bacteria for a period of three (3) months. The samples shall be taken using grab samples and shall be taken once per week and at least once within twenty-four hours after a storm event. Respondent shall report the monitoring results to Ohio EPA.
6. No later than seven (7) days after the issuance date of these Orders, Respondent shall submit to Ohio EPA for approval a plan for the evaluation of the storm water collection system at the Airport facility to determine if sewage is infiltrating or being discharged into the storm water collection system. The plan shall outline sampling and analytical methodologies to be used, and shall describe what efforts will be taken to identify any points within the Airport facility where sewage is either infiltrating or being discharged into the storm water collection system, as indicated by sampling results that exceed the primary contact recreational use standard for either fecal coliform bacteria or *E. coli* bacteria as set forth in Table 7-14 of OAC Rule 3745-1-07. The plan shall include a schedule to complete all evaluation activities within six (6) months of approval.
7. Within fifteen (15) days of the approval of the plan required by Order No. 6, Respondent shall begin implementation of the plan in accordance with the approved schedule.
8. Within forty-five (45) days of the completion of the evaluation required in Order No.

- 7, Respondent shall submit for approval a remedial action plan for the isolation of any sources of sewage found to be entering into the storm water collection system. The remedial action plan shall include a schedule of implementation that can be completed within one hundred eighty (180) days of approval.
9. Upon approval of the remedial action plan required by Order No. 8, Respondent shall implement the plan in accordance with the approved schedule.
10. For the plans required by Order Nos. 3, 6, and 8, Respondent shall address any deficiencies within seven (7) days of receiving written notice from Ohio EPA. The Director may approve the plans as submitted or with conditions.
11. Respondent shall submit all documents required by Order Nos. 2, 3, 5, 6, and 8 to Ohio EPA's Northeast District Office at the following address:

Ohio Environmental Protection Agency
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
ATTN: DSW Enforcement Group Leader.

OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be taken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Respondent and its operations.

RESERVATION OF RIGHTS

These Orders do not prevent Ohio EPA from enforcing the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate or necessary, including seeking penalties against Respondent for the violations cited herein or for non-compliance with these Orders. These Orders are not, and shall not be construed to be, a permit, plan approval or other authorization issued pursuant to any statute or regulation. These Orders do not prevent Ohio EPA from exercising its authority to require Respondent to perform additional activities pursuant to Chapter 6111. of the Ohio Revised Code or any other applicable law in the future. These

Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

TERMINATION

The Respondent's obligations under these Orders shall be satisfied and terminated when the Respondent demonstrates in writing and certifies to the satisfaction of the Ohio EPA that it has satisfied all its obligations under these Orders, and the Chief of Ohio EPA's Division of Surface Water acknowledges the termination of these orders in writing.

This certification shall be submitted by the Respondent to the Northeast District Office (attention: DSW Enforcement Supervisor) and shall be signed by a responsible official of the Respondent. A responsible official is as defined in OAC Rule 3745-33-03(D)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole proprietorship, and OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility. The certification shall contain the following attestation:

"I certify under the penalty of law that I have personally examined and am familiar with the information contained in or accompanying this certification, and based on inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent agrees to comply with these Orders, Respondent agrees that these Orders are lawful and reasonable, and Respondent agrees that the times provided for compliance herein are reasonable. Compliance with these Orders shall be a full accord and satisfaction of Respondent's liability for the violations specifically cited herein. Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph of these Orders.

Respondent hereby waives the right to appeal the issuance, terms and service of these Orders, and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent agrees to continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

SIGNATORY AUTHORITY

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO AGREED:

City of Cleveland

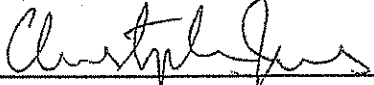
By: 

Date: 10/24/02

Name and Title: DIRECTOR, DEPT. OF PORT CONTROL

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Date: 11-21-02

Christopher Jones
Director