

OHIO E.P.A.

NOV - 1 2005

BEFORE THE

ENTERED IN DIRECTOR'S JOURNAL OHIO ENVIRONMENTAL PROTECTION AGENCY



In the Matter of:

Burch Hydro, Inc.
17860 Ankenytown Road
P.O. Box 230
Fredericktown, Ohio 43019-0230

Respondent

**Director's Final Findings
and Orders**

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Burch Hydro, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code (ORC) §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Facility shall in any way alter the Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is registered, in good standing status, with the Ohio Secretary of State as a Corporation For Profit, under the name of Burch Hydro, Inc.

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

By Danya R. Vasquez date 11-1-05

2. In January and February, 2004, Respondent land applied liquid non-exceptional quality sewage sludge to land application site 9707-19 under contract with the City of Columbus.
3. On February 3, 2004, the Ohio Department of Natural Resources, Division of Wildlife Officer for the Fayette County area, received a telephone call from the Fayette County Engineers Office that Paint Creek was discolored. Investigation by the Division of Wildlife verified the discoloration of Paint Creek. The discoloration was followed upstream, via Paint Creek and roadside ditches, to a sewage sludge land application site that was posted with a sign that indicated sewage sludge generated by the City of Columbus, Franklin County, Ohio (Columbus), had been applied to the field, site 9707-19. The Division of Wildlife reported the discharge, from the sewage sludge land application site via ditches to Paint Creek, to the Ohio EPA's Spill Hotline. Ditches tributary to Paint Creek, and Paint Creek, constitute "waters of the state" as defined by ORC Section 6111.01.
4. The National Weather Service recorded rain and/or snow in the area throughout January and into February, 2004. In addition, temperature records indicate temperatures rose above freezing on occasion, allowing a "thaw" of the sewage sludge/ice on top of the fields.
5. On February 4, 2004, staff from Ohio EPA, including staff from the Division of Emergency and Remedial Response, and the Respondent met at the sewage sludge land application site. Sewage sludge continued to discharge from the site. Ohio EPA staff instructed Respondent's personnel to stop the discharge from the site utilizing compost berms or entrenched silt fencing backed with straw bales.
6. Ohio EPA contacted the City of Washington, which has a raw water intake on Paint Creek downstream of the sewage sludge land application site, and recommended the City of Washington cease using the Paint Creek raw water intake.
7. Ohio EPA staff inspected the site on February 5, 2004, and found the discharge was being collected and applied on another site, site 9707-18. Respondent was requested to dispose of the collected discharge at a wastewater treatment plant.
8. Ohio EPA staff inspected the site on February 6, 2004, and again on February 9, 2004. Field tiles had been blocked, entrenched silt fences backed with straw bales were in place, samples of the discharge were being collected by Respondent for analysis, and the discharge was being collected in tank trucks and hauled to the Jackson Pike WWTP.
9. Pursuant to OAC Rule 3745-40-04(K), no person shall land apply bulk sewage sludge to land that is frozen or snow-covered so that the bulk sewage sludge enters waters of the state except as provided in a permit issued pursuant to ORC Chapter 6111.
10. Pursuant to ORC Section 6111.04(C), no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit. The above mentioned

NPDES permit does not establish permissive discharges of sewage sludge to ditches tributary to Paint Creek, or to Paint Creek.

11. Pursuant to ORC Section 6111.04(C), no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit. The above mentioned NPDES permit does not establish permissive discharges of sewage sludge to ditches tributary to Paint Creek, or to Paint Creek.
12. Pursuant to ORC Section 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC Sections 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
13. 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 calculated 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.

V. ORDERS

1. Respondent shall pay Ohio EPA the amount of twenty thousand dollars (\$20,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made in eight equal installments of two thousand five hundred dollars (\$2,500), the first payment being made February 1, 2006, and each subsequent payment being made quarterly thereafter on the first day of the first month of the quarter, with the eighth and last payment being made November 1, 2007. Each installment payment shall be made by an official check made payable to "Treasurer, State of Ohio". The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the Facility. A copy of the check should be sent to the Ohio EPA, Central District Office at the following address:

Ohio EPA, Central District Office
Attn: DSW Enforcement Unit Supervisor
3232 Alum Creek Drive
Columbus, Ohio 43207-3417

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official check required by Order No. 1 of these Orders.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the Respondent's activities at land application site 9707-19.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to the Respondent.

IX. MODIFICATIONS

These Orders may be modified by the agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio EPA, Central District Office
Attn: DSW Enforcement Unit Supervisor
3232 Alum Creek Drive
Columbus, Ohio 43207-3417

and to:

Ohio EPA, Division of Surface Water
Attn: DSW Enforcement Coordinator
P.O. Box 1049
Columbus, Ohio 43216-1049

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. 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 those violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

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

Notwithstanding the preceding, Ohio EPA and Respondent agree that if 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 shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

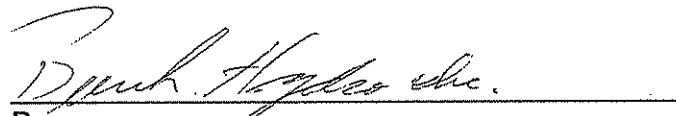
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

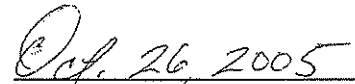
XIV. SIGNATORY AUTHORITY

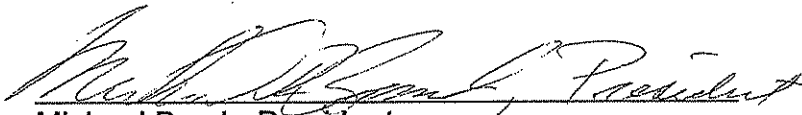
Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO AGREED:

Burch Hydro, Inc.

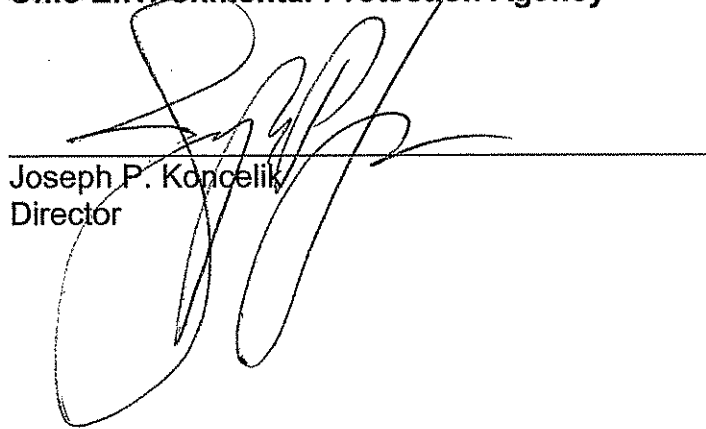

By _____

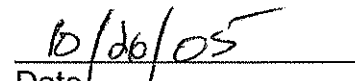

Date _____


Michael Burch, President

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency


Joseph P. Konecny
Director


Date _____