

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

OCT -3 2008

ENTERED DIRECTOR'S JOURNAL

In the matter of:

Conley Trucking LLC
195 Slocum Heights Road
Portsmouth, Ohio 45662

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Director's Final Findings
and Orders

Respondent

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By: *Donna Cassida* Date: 10-3-08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Conley Trucking LLC ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03, 6111.46, and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in the ownership of the Site described in Finding No. 1 of these Orders shall in any way alter 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 there under.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent is Conley Trucking LLC. Respondent owns and operates a trucking business including a parking area, maintenance area, refueling station, and truck washing facility located at 195 Slocum Heights Road, Portsmouth, Scioto County, Ohio ("Site").
2. On at least April 12, 2005 and January 7, 2007 Ohio EPA documented discharges of untreated wastewater from Respondent's truck washing facility

through pipes to a wetland area which is an unnamed tributary of Little Scioto River. Ohio EPA also documented the discharge of storm water from the Site through pipes into the wetland area.

3. The Little Scioto River and the wetland area which is an unnamed tributary thereof constitute "waters of the state" as defined by ORC § 6111.01.
4. Pursuant to ORC § 6111.04(A), no person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state. Such an action is prohibited under ORC § 6111.04(A) and is declared to be a public nuisance unless the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds a valid unexpired permit, or renewal of a permit, governing the causing or placement as provided in ORC §§ 6111.01 to 6111.08 or if the person's application for renewal of such a permit is pending.
5. The wastewater discharged from Respondent's Site constitutes "industrial waste" as defined in ORC § 6111.01.
6. The term "pollution" as defined in ORC § 6111.01 includes, but is not limited to, the placing of "industrial waste" in any "waters of the state."
7. Ohio Administrative Code ("OAC") § 3745-33-02 prohibits any person from discharging any pollutant from a point source to waters of the state without applying for and obtaining a National Pollutant Discharge Elimination system ("NPDES") permit. Respondent discharged industrial waste from its Site through a point source as defined in OAC § 3745-33-01.
8. Respondent had not applied for, nor obtained, a permit governing the causing of pollution or placement of industrial waste in waters of the state.
9. The discharge of industrial waste into waters of the state from Respondent's Site, as described in Finding No. 2, was not authorized by or in accordance with a valid, unexpired permit issued by the Director and, therefore, violated ORC §§ 6111.04 and 6111.07.
10. Following an April 12, 2005 inspection of the Site, an inspection letter dated May 17, 2005, sent to Respondent by Ohio EPA advised Respondent to, among other things, connect the discharge pipes at the Site to a holding tank, to pump and haul the contents of the holding tank to a permitted wastewater treatment works, and to submit an application for a permit to install ("PTI") for the holding tank to Ohio EPA.

11. An inspection of the Site was conducted by Ohio EPA on January 7, 2007. Ohio EPA determined that Respondent had not connected the pipes to the holding tank and had not submitted a PTI application for the holding tank.
12. On May 2, 2007, Ohio EPA conducted an inspection of the Site and found that the holding tank had been connected to the discharge. However, Respondent had failed to submit a PTI application for the tank or for any other wastewater treatment works or disposal system as defined in ORC § 6111.01.
13. Following the May 2, 2007 inspection, a letter was sent to Respondent on May 21, 2007, which advised that within thirty (30) days of the date of the letter, Respondent should construct a dike around the fueling station to prevent spilled fuel from being washed into the adjacent wetland area, and submit a PTI application for a truck wash water recycling system, among other things.
14. Respondent failed to submit a PTI application for the holding tank or for a truck wash water treatment system. Respondent has constructed a berm around the fueling station.
15. Respondent has stated that in June 2007, he had stopped washing trucks at the Site. On July 24, 2008, Ohio EPA inspected the Site. Ohio EPA found that the trench drains for the truck washing bays had been sealed with concrete, effectively eliminating the discharge source of wastewater to the holding tank.
16. Pursuant to ORC § 6111.45, no person may install works for the treatment or disposal of industrial waste until the plans therefore have been submitted to and approved by the Director of Ohio EPA.
17. OAC § 3745-42-02 prohibits any person from installing a new "disposal system," as defined in ORC § 6111.01, without first obtaining a PTI from the Director of Ohio EPA. A holding tank is a "disposal system" as defined in ORC § 6111.01.
18. 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.
19. The following Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Any such construction or modification is subject to the PTI requirements of Ohio Administrative Code ("OAC") Chapter 3745-42.

20. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
21. 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 not install or modify a disposal or treatment system at any location in Ohio without first applying for and receiving a PTI or plan approval from the Director as required by OAC Rule 3745-42-02 and ORC § 6111.07(A).
2. As soon as possible, but not later than thirty (30) days after the effective date of these Orders, Respondent shall decommission the tank. At a minimum, Respondent shall remove and properly dispose of any sludge or wastewater stored or contained in the tank and disconnect the piping between the truck wash bays and tank.
3. Respondent shall pay the amount of eleven thousand fifty dollars (\$11,050.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. The penalty shall be paid by tendering official checks made payable to "Treasurer, State of Ohio" in accordance with the schedule below. The official checks shall be submitted to Brenda Case, or her successor, together with letters identifying the Respondent, at the following address:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

- a. Within sixty (60) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of one thousand four hundred forty dollars (\$1,440.00).
- b. Within one hundred twenty (120) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of three thousand seven hundred dollars (\$3,700.00).

- c. Within one hundred eighty (180) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of three thousand seven hundred dollars (\$3,700.00).

Photocopies of the checks shall be sent to the addresses in Section X. of these Orders.

4. In lieu of paying the remaining two thousand two hundred ten dollars (\$2,210.00) of the civil penalty, Respondent shall, within sixty (60) days of the effective date of these Orders, fund a supplemental environmental project (SEP) by making a contribution in the amount of two thousand two hundred ten dollars (\$2,210.00) to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check and a cover letter identifying the Respondent shall be submitted to Brenda Case, or her successor at:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 4, Respondent shall immediately pay to Ohio EPA the remaining two thousand two hundred ten dollars (\$2,210.00) of the civil penalty in accordance with the procedures in Order No. 3.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent

shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of the Respondent. For purposes of these Orders, a responsible official is 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.

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 activities occurring on or at the Site.

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 Respondent.

IX. MODIFICATIONS

These Orders may be modified by 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

Unless otherwise specified herein, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Surface Water
Attn: DSW Enforcement Unit Supervisor
2195 Front Street
Logan, Ohio 43138

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
Attn: Manager, Storm Water and Enforcement Section
50 West Town Street, Suite 700 [P.O. Box 1049]
Columbus, Ohio 43215 [43216-1049]

[For mailings use the post office box number and zip code in brackets.]

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 the 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.

Conley Trucking LLC
Director's Final Findings and Orders
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XIII. EFFECTIVE DATE

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


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OHIO EPA
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LEGAL OFFICE

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 ORDERED AND AGREED:

Ohio Environmental Protection Agency

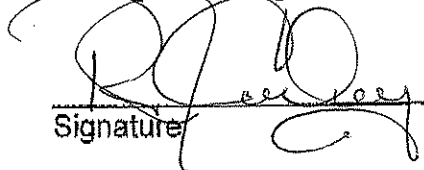


Chris Korleski
Director

10/2/08
Date

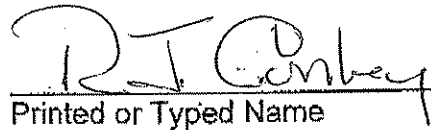
IT IS SO AGREED:

Conley Trucking LLC

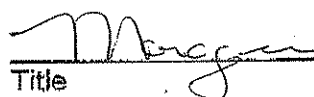


Signature

8-20-08
Date



Printed or Typed Name



Title