

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
NOV 20 2007

In the matter of

JT's Carry Out
2614 State Route 93
Dorset, Ohio 44032

ENTERED DIRECTOR'S JOURNAL

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: [Signature] Date: 11-20-07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to JT's Carry Out ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code (R.C.) §§ 6111.03, 6117.34 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 the composition of Respondent 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 R.C. Chapters 6111 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. On May 18, 2004, the Ohio EPA, Northeast District Office, Division of Surface Water ("NEDO-DSW") received a site evaluation request from Respondent to start a business that would be located at the Site. The business would be a convenience store/carryout that would sell prepackaged goods.
2. On May 21, 2004, DSW conducted an inspection at the Site. An onsite treatment system was noted to be in existence at the time of the

inspection, consisting of a septic tank followed by a filter bed with a discharge line to a nearby ditch. The property is approximately 0.38 acres in size.

3. In a letter dated May 25, 2004 to Respondent, NEDO-DSW determined that the existing system did not meet current wastewater treatment design criteria and that the property was not of sufficient size to support an onsite treatment system.
4. On July 8, 2005, NEDO-DSW conducted another inspection of the Site. At the time of the inspection, a 30x40 foot building had been constructed at the Site complete with a restroom with a toilet and sink connected to the existing septic system. The building had been approved by the Ashtabula County Building Department as a pole storage building with no plumbing service.
5. Respondent did not receive a permit-to-install approval from Ohio EPA for the wastewater treatment system at the building prior to construction. This is a violation of ORC 6111.44 and Ohio Adm. Code Chapter 3745-42.
6. On July 25, 2005, NEDO-DSW received a letter from Respondent's consultant, determining that the existing wastewater treatment system at the Site consisted of a 1,500 gallon septic tank connected to a 120 lineal foot tile field that discharged to ditch along Footville-Richmond Road. An August 15, 2005, letter from NEDO-DSW to Respondent again determined that Ohio EPA could not approve this design.
7. On September 12, 2005, NEDO-DSW received a proposed discharging wastewater treatment system design from Respondent's consultant. The design consisted of three peat biofilters to be installed after the 1,500 gallon septic tank and discharging to the roadside ditch.
8. NEDO-DSW received a National Pollutant Discharge Elimination System ("NPDES") permit application from Respondent on November 16, 2005.
9. A permit-to-install application for the proposed wastewater treatment system for the Site was received on March 7, 2006. The design included the use of the existing 1,500 gallon septic tank draining to three peat biofilters to a discharge line to the ditch along Footville-Richmond Road. A deficiency letter was sent from Ohio EPA to Respondent on March 22, 2006.
10. On May 12, 2006, NPDES permit number 3PR00419 was approved for the Site, with an effective date of June 1, 2006. The permit required that

construction of the new treatment system commence on or before November 1, 2006, and complete construction by February 1, 2007.

11. Ohio EPA issued an approval of PTI number 546389 for the Site on May 15, 2006.
12. On June 14, 2006, Respondent appealed the issuance of PTI number 546389 to the Environmental Appeals Review Commission, stating that the Site currently met the requirements for a holding tank pursuant to OAC 3745-42-11.
13. On January 12, 2007, an inspection of the Site by Ohio EPA showed that a new treatment system was not under construction as required by Respondent's NPDES permit.
14. On March 8, 2007, Respondent indicated to Ohio EPA and the Ohio Attorney General's Office that the existing septic tank at the Site had been replaced with another septic tank without notification to Ohio EPA, in anticipation of using the tank as a holding tank.
15. Ohio Administrative Code ("OAC") Rule 3734-42-11 requires the Director's issuance of a permit to install (APTI) prior to the installation of a holding tank.
16. Pursuant to R.C. ' 6111.07(A), no person shall violate or fail to perform any duty imposed by R.C. ' ' 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.
17. 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. Within seven (7) days of the effective date of these Orders, Respondent shall submit to Ohio EPA for approval, a permit to install that meets all of the requirements of OAC 3745-42-11, including the specific design requirements of OAC 3745-42-11(D)(1).
2. Respondent shall provide for and keep records for the holding tank pursuant to the requirements of OAC 3745-42-11(E).

3. Within 30 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand five hundred dollars (\$2,500.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to R.C. Chapter 6111. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for the total amount and 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 Site. A copy of the check shall be sent to the Ohio EPA, Northeast District Office at the following address:

Ohio EPA, Northeast District Office
Attn: DSW Enforcement Unit Supervisor
2110 East Aurora Road
Twinsburg, Ohio 44087

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 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 Respondent. For purposes of these Orders, a responsible official is defined in 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 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 statues 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. RESERVATION OF RIGHTS

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

XI. 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 of 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.

XII. EFFECTIVE DATE

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

XIII. 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 ORDERED AND AGREED:

Ohio Environmental Protection Agency

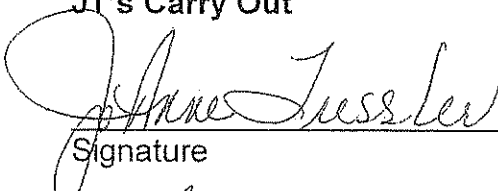


Chris Korleski
Director

11/19/07
Date

IT IS SO AGREED:

JT's Carry Out



Signature

11/13/07
Date

JO ANNE TRESSLER

Printed or Typed Name

Owner

Title