

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

SEP 29 2010

In the Matter of:

Kenneth Weber  
120 Adams Street  
Berea, OH 44017

Respondent

ENTERED DIRECTOR'S JOURNAL  
**Director's Final Findings  
and Orders**

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:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Kenneth Weber ("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, its heirs, assigns and successors in interest liable under Ohio law. No change in the ownership or operation of the disposal system as defined below 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 adopted thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

***Background***

1. Respondent owns a park model recreational vehicle ("RV"), that is a semi-permanent installation, as a weekend and vacation residence at the October Hill Camplot Owners Association, located in Knox Township, Holmes County.
2. On September 26, 2008, Respondent installed on a platform under the RV, an auxiliary holding tank of approximately 300 gallons capacity ("holding tank").
3. In a November 4, 2008 letter, Ohio EPA informed Respondent that then effective OAC Rule 3745-42-11 provided that "no person shall cause, permit, or allow the installation of a holding tank or cause, permit or allow the modification of a holding

tank without first obtaining a permit to install from the director as required by rule 3745-42-02 of the Ohio Administrative Code." The letter stated that the installation of the holding tank was in violation of the above rule and that the holding tank must be removed within 30 days and its contents hauled by a licensed septage hauler to a municipal sewage treatment plant for disposal.

4. The holding tank continues to function as a disposal system for the RV.

#### ***Law and Rules***

5. A holding tank is a disposal system, as defined in ORC § 6111.01.
6. Ohio Administrative Code ("OAC") Rule 3745-42-02 requires the Director's issuance of a permit to install prior to the installation of a new "disposal system," or the modification of a "disposal system."
7. Previous OAC Rule 3745-42-11(A), effective until September 1, 2009, provided that:

No person shall cause, permit or allow the installation of a holding tank or cause, permit or allow the modification of a holding tank without first obtaining a permit to install from the director as required by rule 3745-42-02 of the Administrative Code.

8. Unless excluded or exempted, current OAC Rule 3745-42-11(E)(1)(a) provides that "no person shall cause, permit or allow the installation or modification of a holding tank without first obtaining a permit to install from the director."
9. Respondent's installation of the holding tank is not excluded or exempted from regulation, and Respondent has not applied for, nor received, a permit to install for its installation.
10. Under the criteria established in OAC Rule 3745-42-11, Respondent does not qualify for the issuance of a permit to install for its holding tank.
11. ORC § 6111.07(A) prohibits any person from violation of, or failing to perform, any duty imposed by, ORC §§ 6111.01 to 6111.08, or violating any rule adopted by the Director pursuant to those sections, including OAC Rules 3745-42-02 and 3745-42-11.
12. Respondent is in violation of ORC § 6111.07(A).

#### **V. ORDERS**

1. Within forty-five (45) days of the date a public sewer becomes accessible and available, or such lesser time as may be required by the Holmes County General Health District, Respondent shall connect to said sewer and properly decommission

the holding tank in a manner satisfactory to Ohio EPA. If a public sewer does not become accessible and available within two (2) years after the effective date of these Orders, Respondent shall either:

- a. Continue to use the holding tank until such time as a public sewer becomes accessible and available, and at such time, within the time limits set forth in Order No 1, connect to said sewer and properly decommission the holding tank in a manner satisfactory to Ohio EPA. Should Respondent continue to use the holding tank, Respondent shall provide monthly notice of such use to Ohio EPA in accordance to Section X, of these Orders and the pay the penalty set forth in Order No. 6. The monthly notice and penalty payment shall continue until such time as the holding tank is not used and is properly decommissioned in a manner satisfactory to Ohio EPA, OR
  - b. Properly decommission the holding tank in a manner satisfactory to Ohio EPA and use a portable 30 gallon plastic tote, similar in kind to the manufacturer's issued tote which originally came with the RV.
2. As used herein, a properly decommissioned holding tank includes, at a minimum, the removal and proper disposal of any sludge or wastewater stored or contained in the tank, disconnecting of piping between the RV and the tank, and any other activities as may be required by Ohio EPA.
  3. Within seven (7) days of the decommissioning of the holding tank, Respondent shall provide written notice to Ohio EPA, Northeast District Office, in accordance with Section X. of these Orders, of such decommissioning, the manner in which the tank was decommissioned and the current location of the tank.
  4. Respondent shall not install sewerage or treatment works for sewage disposal or new disposal systems, including holding tanks, at any location in Ohio without first receiving prior approval from the Director as required by law.
  5. Respondent shall pay the amount of one thousand dollars (\$1,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111, pursuant to the following schedule: Within sixty (60) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for the amount of five hundred dollars (\$500.00). Within one hundred eighty (180) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for the amount of five hundred dollars (\$500.00). The official checks shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

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

A photocopy of the checks shall be sent to Ohio EPA, Northeast District Office, in accordance with Section X of these Orders and 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

6. In addition to the civil penalty assessed under Order No. 5, should Respondent use the holding tank pursuant to Order No 1.a., Respondent shall pay, pursuant to the procedure set forth in Order No. 5, a penalty of one hundred dollars (\$100.00) per month, for every month or part thereof in which the holding tank is used as a disposal option pursuant to these Orders and until such time as the holding tank is properly decommissioned in a manner satisfactory to Ohio EPA.

#### **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 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 responsible officials of Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03.

#### **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 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, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

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

### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent 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.


### **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**

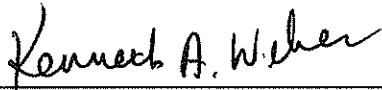
Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these orders.

**IT IS SO ORDERED AND AGREED:  
Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Chris Korleski  
Director

9/27/10  
Date

**IT IS SO AGREED:  
Kenneth Weber**

  
\_\_\_\_\_  
By  
Kenneth A. Weber  
Printed or Typed Name  
Owner  
Title

9/14/10  
Date