OHIO E.P.A.

SEP 23 2004

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

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: [signature] Date: 9/23/04

In the Matter of:

Midwest Terminal Company
3866 Fisher Road
Columbus, Ohio 43228

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 Midwest Terminal Company (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 Respondent or the Facility (as hereinafter defined) 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 thereunder.

IV. FINDINGS

The Director of Ohio EPA (Director) has determined the following findings:

1. Respondent owns and operates a petroleum bulk storage facility, and its associated wastewater treatment plant (WWTP), located at 3866 Fisher Road, Columbus, Ohio, in Franklin County (Facility).

2. Respondent holds an expired National Pollutant Discharge Elimination System (NPDES) permit No. 4IN00056*DD (effective June 1, 1997 to May 28, 2002) for the discharges from its WWTP into Dry Run, a tributary of the Scioto River, via the WWTP's outfall Nos. 4IN00056001 and 4IN00056002.

3. The WWTP discharges "sewage," "industrial waste," and/or "other wastes," as those terms are defined in ORC § 6111.01, to Dry Run, a tributary of the Scioto River. Dry Run and the Scioto River constitute "waters of the state," as defined by ORC § 6111.01.

4. Respondent's WWTP consists of a spill containment system around the storage tank area, an oil/water separator, and an aerated pond.

5. Gasoline products, diesel, and ethanol are housed in the Facility's storage tank area; ethanol is also contained in railroad tank cars located onsite. The ethanol is pumped directly from the railroad tank cars to storage tanks; the gasoline products, diesel, and ethanol are then loaded into tanker trucks on a loading rack and shipped off-site. The loading rack area drains into the WWTP's oil/water separator, and water from the oil/water separator is then released to the aerated pond for additional treatment.

6. Storm water from the railroad tank car area drains directly to the aerated pond; when the pond fills, water is manually discharged to Dry Run via outfall No. 4IN00056001. Storm water within the spill containment system is collected and is discharged manually through outfall No. 4IN00056002.

7. ORC § 6111.04(C) provides that 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 permissive discharges specified under an existing permit without first receiving a permit from the Director to do so.

8. ORC § 6111.07(A) provides that no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director pursuant to those sections. Each day of violation is a separate offense.

9. Ohio Administrative Code (OAC) Rule 3745-1-04(B) provides that all surface waters of the state shall be free from floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or cause degradation.

10. On April 25, 2002, Ohio EPA's Division of Emergency and Remedial Response (DERR) investigated an oil sheen in Dry Run, DERR Spill Incident No. 0204-25-1359. The source of the oil sheen was determined to be from the Facility's spill containment system around the storage tank area; this release constitutes a violation of ORC §§ 6111.04(C) and 6111.07(A), OAC Rule 3745-1-04(B), and Part I, A and Part III, Section 11 of Respondent's NPDES permit.

ORC § 6111.04(A) provides that 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 unless the person holds a valid, unexpired permit, a renewal of a permit, or if the person's application for renewal of such a permit is pending.

12. On June 3, 2002, Respondent released water from outfall 4IN00056001 to Dry Run. DERR investigated an orange/brown discoloration of Dry Run, Spill Incident No. 0206-25-2218, and determined the source of the orange/brown pollutant was the aeration pond discharge. DERR noted that the release had caused distress to fish downstream and documented that fish were swimming on their sides at the surface of Dry Run and gulping air. This release constitutes a violation of ORC §§ 6111.04(A) and 6111.07(A), and OAC Rule 3745-1-04.

13. On November 15, 2002, the Columbus Fire Department and DERR responded to an approximately 83,000 gallon spillage of gasoline from Respondent's storage tank area, Spill Incident No.0211-25-4385. DERR documented that the gasoline began accumulating in Dry Run, despite the spill containment system's manual values to outfalls 4IN00056001 and 4IN00056002 being closed. DERR reported that the gasoline began to leach directly through the soil of the bank of Dry Run. The discharge of gasoline into Dry Run constitutes a violation of ORC §§ 6111.04 and 6111.07, and OAC Rule 3745-1-04.

14. Respondent was required by NPDES permit No. 4IN00056*DD and OAC 3745-33-04(C)(1) to submit a NPDES permit application for renewal (renewal application) to Ohio EPA one hundred and eighty (180) days prior to the permit's expiration date.

In violation of ORC §§ 6111.04 and 6111.07(A), OAC Rule 3745-33-04(C)(1), and Respondent's NPDES permit No. 4IN00056*DD, Respondent failed to submit a NPDES permit renewal application by November 28, 2001 (180 days prior to the permit's expiration date), and continued to discharge wastewater beyond the expiration date of its permit. Subsequently, in April 2004, Respondent submitted an incomplete NPDES permit renewal application to Ohio EPA; a complete renewal application was received in May 2004.

In violation of ORC § 6111.07(A), Respondent violated the Schedule of Compliance within NPDES permit No. 4IN00056*DD by failing to meet specific required deadlines for compliance. The violations of Schedule of Compliance include:

A. The failure to submit to Ohio EPA, by June 1, 1998, a report of the monthly operating report (MOR) data and any additional maintenance procedural changes to support maintaining the existence of outfall No. 4IN00056002;

B. The failure to submit to Ohio EPA, by December 1, 1998, a complete and approvable permit-to-install (PTI) application and detailed plans for achieving final compliance for outfall Nos. 4IN00056001 and 4IN00056002;

C. The failure to initiate construction by June 1, 1999; and

D. The failure to complete construction and attain full compliance with the final effluent limitations for outfall Nos. 4IN00056001 and 4IN00056002 by December 1, 1999.

17. Respondent has violated the final effluent limits of NPDES permit No. 4IN00056*DD on numerous occasions, as cited in Attachments 1 and 2. [Note: though the permit expired May 28, 2002, effluent limitation exceedances have been included subsequent to that date to evidence the continued discharge and the need for improvements at the Facility's WWTP]. Each violation cited in Attachments 1 and 2 constitute separate violations of ORC §§ 6111.04(A) and (C) and 6111.07(A). Attachments 1 and 2 are hereby incorporated into these Orders as if fully rewritten herein.

18. ORC § 6111.07(C) provides that no person knowingly shall submit false information or records or fail to submit information or records pertaining to discharges of sewage, industrial wastes, or other wastes required as a condition of a permit.

19. During a March 25, 2004 inspection by the Division of Surface Water, discrepancies were noted between Respondent's MORs and the "release logs" located at the Facility. Respondent's MORs for April 2000, May 2000, August 2000, September 2000, October 2000, November 2000, December 2000, January 2001, February 2001, April 2001, June 2001, August 2001, September 2001, October 2001, December 2001, and January 2002 indicated that no discharges occurred from the Facility, however, Respondent's "release logs" indicate that releases did occur during these months. These discrepancies constitute violations ORC § 6111.07(A) and (C).

Respondent failed to timely submit to Ohio EPA the MORs listed in Attachment 3 as required by the 15th day of the next month following each reporting month. Respondent also failed to submit to Ohio EPA the MORs listed in Attachment 4. [Note: though the permit expired May 28, 2002, MOR information has been included subsequent to that date to evidence the continued need for Respondent to timely report information to Ohio EPA]. These failures constitute violations of ORC § 6111.07(A) and Part III of NPDES permit No. 4IN00056*DD. Attachments 3 and 4 are hereby incorporated into these Orders as if fully rewritten herein.

Respondent failed to submit notifications of noncompliance to Ohio EPA on numerous occasions, including, but not limited to the Schedule of Compliance in Finding No.16, and these failures to notify constitute violations of Part III, Section 12 of NPDES permit No. 4IN00056*DD and ORC § 6111.07.

22. Respondent was notified of its NPDES permit violations via Ohio EPA notice of violation (NOV) letters dated May 4, 1991, March 19, 1992, May 16, 1994, February 6, 1995, July 18,1995, August 7, 1995, July 12, 1999, June 5, 2003, and June 6, 2003.

23. 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 ORC §§ 6111.44 and 6111.45, and OAC Chapter 3745-42.

24. Compliance with the ORC § 6111 is not contingent upon the availability or receipt of financial assistance.

25. Each violation stated in these Findings constitutes a separate violation of ORC § 6111.07(A).

26. The Director has given consideration to, and based his determination on, evidence relating to the technical feasability 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 purpose of ORC § 6111.

V. ORDERS

1. Within ten (10) days of the effective date of these Orders, Respondent shall submit MORs for each month listed in Attachment 4.

2. Respondent shall achieve compliance with the final effluent limitations of NPDES permit No. 4IN00056*DD, and any successor permit, as expeditiously as practicable, but not later than the following schedule:

   A. Within six (6) months of the effective date of these Orders, Respondent shall submit to Ohio EPA for approval a general plan for WWTP improvements necessary to achieve and maintain compliance with all effluent limitations and conditions in NPDES permit No. 4IN00056*DD and/ or any successor permit;

   B. Within nine (9) months of the effective date of these Orders, if Ohio EPA should indicate that a PTI is necessary for such improvements, Respondent shall submit a complete PTI application, with approvable detail plans for WWTP improvements;

   C. Within twelve (12) months of the effective date of these Orders, Respondent shall initiate construction of the approved WWTP improvements (if any); and

   D. Within thirty (30) months of the effective date of these Orders, Respondent shall complete construction of the approved WWTP improvements (if any) and achieve compliance with the final effluent limitations in NPDES permit No. 4IN00056*DD and/ or any successor permit.

3. Within fourteen (14) days of completing Order Nos. 2(C), and 2(D) Respondent shall submit written verification of such completion to Ohio EPA.

4. From the effective date of these Orders, and until Respondent achieves compliance with NPDES permit No. 4IN00056*DD or any successor permit pursuant to Order No. 2, Respondent shall test pond water and storm water from the diked area of the Facility for all effluent limitations listed in NPDES permit No. 4IN00056*DD or any successor permit.

5. From the effective date of these Orders, and until Respondent achieves compliance with the conditions of NPDES permit No. 4IN00056*DD or any successor permit pursuant to Order No. 2, Respondent shall not discharge aerated pond water or storm water from the spill containment system via outfall Nos. 4IN00056001 and 4IN00056002 unless concentrations of the parameters of these waters are less than the final effluent limitations within NPDES permit No. 4IN00056*DD or any successor permit. If concentrations of the aerated pond water and storm water from the spill containment system exceed the final effluent limitations within NPDES permit No. 4IN00056*DD or any successor permit, Respondent shall haul the aerated pond water and storm water from the spill containment system off-site for proper treatment and disposal.

6. Within fourteen (14) days of receipt of notification from Ohio EPA, Respondent shall provide Ohio EPA with a written response addressing any comments or deficiencies and/ or submit any additional information requested with regard to the any of the submittals required by these Orders.

7. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of eighty thousand two hundred fifty dollars ($80,250.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $80,250.00. 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.

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.

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 Respondent or the activities occurring on or at the Facility.

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

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

Ohio Environmental Protection Agency
Central District Office
Division of Surface Water
3232 Alum Creek Drive
Columbus, Ohio 43207
Attn: Enforcement Supervisor

XI. RESERVATION OF RIGHTS

Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondent for noncompliance with these Orders. Except as provided herein, Respondent reserves any rights it may have to raise any legal or equitable defense in any action brought by Ohio EPA to enforce the terms and conditions of these Orders.

Ohio EPA reserves the right to take any action, including but not limited to any enforcement action, action to recover costs, or action to recover damages to natural resources, pursuant to any available legal authority as a result of past, present, or future violations of state or

federal laws or regulations or the common law, and/or as a result of events or conditions arising from, or related to, the Facility.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, 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 only the ORC Chapter 6111 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:

Midwest Terminal Company

By _____ Date 9.15.04

DAVID J. HOGAN
Chief Operating Officer
Printed Name and Title

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

_____ 9.22.04
Christopher Jones, Director Date

Attachment 1

Table of Violations/ NPDES Permit Effluent Limitation Exceedances
Certified Oil Company Outfall 4IN00056001

Date	Parameter	Reported	Units	Limit
April 23, 2004	BOD_5	45.7	mg/l	45
April 2004	BOD_5	45.7	mg/l	30
February 24, 2004	BOD_5	171	mg/l	45
February 2004	BOD_5	171	mg/l	30
November 19, 2003	BOD_5	106	mg/l	45
November 2003	BOD_5	106	mg/l	30
September 2, 2003	BOD_5	101	mg/l	45
September 2003	BOD_5	101	mg/l	30
August 18, 2003	BOD_5	49.6	mg/l	45
August 2003	BOD_5	45.7	mg/l	30
October 1, 2002	BOD_5	126	mg/l	45
October 28, 2002	BOD_5	52.8	mg/l	45
October 2002	BOD_5	89.4	mg/l	30
July 24, 2002	BOD_5	103	mg/l	45
July 2002	BOD_5	67.1	mg/l	30
June 4, 2002	BOD_5	750	mg/l	45
June 2002	BOD_5	750	mg/l	30
May 2, 2002	BOD_5	820	mg/l	45
May 13, 2002	BOD_5	517	mg/l	45
May 2002	BOD_5	668.5	mg/l	30
April 15, 2002	BOD_5	261.3	mg/l	45
April 2002	BOD_5	261.3	mg/l	30
February 1, 2002	BOD_5	1167	mg/l	45
February 2002	BOD_5	583	mg/l	30

November 27, 2001	BOD_5	57	mg/l	45
November 2001	BOD_5	57	mg/l	30
May 30, 2001	BOD_5	57	mg/l	45
May 2001	BOD_5	57	mg/l	30
March 22, 2001	BOD_5	176	mg/l	45
March 2001	BOD_5	176	mg/l	30

Attachment 2

Table of Violations/ NPDES Permit Effluent Limitation Exceedances
Certified Oil Company Outfall 4IN00056002

Date	Parameter	Reported	Units	Limit
October 1, 2002	pH	9.23	S.U.	9.0 (maximum)
September 26, 2002	pH	9.28	S.U.	9.0 (maximum)
May 2, 2002	BOD_5	300	mg/l	45

Attachment 3

Table of Violations/ Certified Oil Company Late Submittal of MORs

Outfall	Reporting Month	Date of Submittal	Date MOR Due
001	September 2001	June 20, 2002	October 15, 2001
002	September 2001	June 20, 2002	October 15, 2001
001	October 2001	June 20, 2002	November 2001
002	October 2001	June 20, 2002	November 2001
001	November 2001	June 20, 2002	December 2001
002	November 2001	June 20, 2002	December 2001
001	December 2001	June 20, 2002	January 15, 2002
002	December 2001	June 20, 2002	January 15, 2002
001	January 2002	June 20, 2002	February 15, 2002
002	January 2002	June 20, 2002	February 15, 2002
001	February 2002	June 20, 2002	March 15, 2002
002	February 2002	June 20, 2002	March 15, 2002
001	March 2002	June 20, 2002	April 15, 2002
002	March 2002	June 20, 2002	April 15, 2002
001	April 2002	June 20, 2002	May 15, 2002
002	April 2002	June 20, 2002	May 15, 2002
001	June 2002	May 1, 2003	July 15, 2002
002	June 2002	May 1, 2003	July 15, 2002
001	July 2002	May 1, 2003	August 15, 2002
002	July 2002	May 1, 2003	August 15, 2002
001	August 2002	May 1, 2003	September 15, 2002
002	August 2002	May 1, 2003	September 15, 2002
001	September 2002	May 1, 2003	October 15, 2002
002	September 2002	May 1, 2003	October 15, 2002
001	October 2002	May 1, 2003	November 15, 2002
002	October 2002	May 1, 2003	November 15, 2002
001	November 2002	May 1, 2003	December 15, 2002

002	November 2002	May 1, 2003	December 15, 2002
001	December 2002	May 1, 2003	January 15, 2003
002	December 2002	May 1, 2003	January 15, 2003
001	January 2003	May 1, 2003	February 15, 2003
002	January 2003	May 1, 2003	February 15, 2003
001	February 2003	May 1, 2003	March 15, 2003
002	February 2003	May 1, 2003	March 15, 2003
001	April 2003	April 14, 2004	May 15, 2003
002	April 2003	April 14, 2004	May 15, 2003
001	May 2003	April 14, 2004	June 15, 2003
002	May 2003	April 14, 2004	June 15, 2003
001	June 2003	April 14, 2004	July 15, 2003
002	June 2003	April 14, 2004	July 15, 2003
001	July 2003	April 14, 2004	August 15, 2003
002	July 2003	April 14, 2004	August 15, 2003
001	August 2003	April 14, 2004	September 15, 2003
002	August 2003	April 14, 2004	September 15, 2003
001	September 2003	April 14, 2004	October 15, 2003
002	September 2003	April 14, 2004	October 15, 2003
001	October 2003	April 14, 2004	November 15, 2003
002	October 2003	April 14, 2004	November 15, 2003
001	November 2003	April 14, 2004	December 15, 2004
002	November 2003	April 14, 2004	December 15, 2004
001	December 2003	April 14, 2004	January 15, 2004
002	December 2003	April 14, 2004	January 15, 2004
001	January 2004	April 14, 2004	February 15, 2004
002	January 2004	April 14, 2004	February 15, 2004
001	February 2004	April 14, 2004	March 15, 2004
002	February 2004	April 14, 2004	March 15, 2004

Attachment 4

Table of Violations
Certified Oil Company Non-Submittal of MORs

Outfall	Reporting Month
001	May 1999
002	May 1999
001	October 1999
002	October 1999
001	January 2000
002	January 2000
001	June 2000
002	June 2000
001	July 2001
002	July 2001
001	March 2003
002	March 2003
001	March 2004