

OHIO E.P.A.

JAN 17 2009

ENTERED DIRECTOR'S JOURNAL



**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Ohio Department of Natural Resources :
2045 Morse Road :
Columbus, Ohio 43229 :

Director's Final Findings
and Orders

Respondent. :

PREAMBLE

Respondent Ohio Department of Natural Resources ("Respondent") and the Director of the Ohio Environmental Protection Agency ("the Director") agree as follows:

I. JURISDICTION

These Final Findings and Orders ("Orders") are issued by the Director to Respondent pursuant to the authority vested in the Director under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

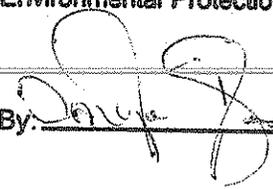
II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law.

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.

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.

By:  Date: 1-17-08

IV. FINDINGS

The Director makes the following findings:

1. Respondent owns and operates a public shooting range that is part of the Deer Creek Wildlife Area in Fayette County near Mt. Sterling, Ohio.
2. The shooting range is located east of, and near to, State Route 207 on the north side of Cook-Yankeetown Road. The range is divided into two sections, a shotgun (low-velocity shell) range and a rifle/pistol (high-velocity shell) range. The shotgun range faces north and guns are discharged in that direction, with spent pellets falling to earth in a large fan-shaped area similar in shape to a baseball field with the shooting area at home plate. The rifle/pistol range is east of the shotgun range and also faces north. This range is separated by earthen embankments into three separate sub-ranges of 100 yards, 50 yards and 25 feet in length. Targets are placed in front of 10- to 15-foot high embankments that form the north end of the range. The target end of each sub-range is further protected by umbrella-like structures called "Eyebrows," which catch fragments and ricochets.
3. An unnamed tributary to Deer Creek ("the tributary") flows east into Deer Creek. Deer Creek runs roughly parallel to the rifle/pistol range, about 70 yards to the east. This tributary is relatively small and may even be intermittent, completely lacking flow during dry periods. The tributary is bordered on both sides by roughly 30-foot strips of trees, brush and vegetative ground cover. The stream channel appeared to have been channelized and showed signs of erosion with steeply cut, exposed banks. This tributary is currently not designated with a particular aquatic use under Ohio rules. Behind the tributary is a fallow field, which is managed for wildlife by ODNR. The field is planted in rotation with corn, soybean and timothy grass and is disked every sixth year.
4. The tributary lies to the north of the shotgun range and runs behind the embankments of the rifle/pistol range, at the target end. The tributary bisects the fan-shaped shotgun range, about 350 feet north of the shooting stations. The majority of spent pellets fired from shotguns falls onto land on the near and far sides of the tributary, but some pellets also fall into the tributary.
5. On or about March 6, 2006, a resident living near the range, James Hoyle, sent to Ohio EPA a verified complaint regarding the shooting range. Mr. Hoyle alleged that lead shot from the shotgun range and lead fragments from the pistol/rifle range fall into and contaminate the tributary. He further alleges that

waterfowl use the area; especially during high water periods when waterfowl are migrating through in spring and winter, and that they dabble in the flood plain of the stream and may consume lead shot. In addition, he claims that his family and other citizens who recreate near the shooting range are at risk of lead contamination. He further alleged that Respondent is in violation of the Clean Water Act and Chapter 6111 of the Ohio Revised Code, and OAC ' 3745-1-04, including paragraph (D) of that rule, which provides: "All Ohio waters shall be free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone."

6. The spent lead shotgun pellets that are discharged from the guns and into the tributary are other wastes, as defined in ORC ' 6111.01(D). The tributary is a "water of the state" as defined in ORC ' 6111.01(H). Placement of this waste into waters of the state constitutes pollution, as defined in ORC ' 6111.01(A). The Ohio EPA did not detect lead in samples of the water from the tributary.
7. Pursuant to ORC ' 6111.04(A), no person 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 without a valid, unexpired permit.
8. Respondent has caused to be placed in to a water of the state, the tributary, other wastes, the spent pellets. Respondent does not hold a valid, unexpired permit authorizing it to discharge or allow the discharge of the lead pellets or other lead fragments and pellets into the tributary. Respondent is in violation of O.R.C. 6111.04(A).
9. 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 pursuant to those sections. Each day of violation is a separate offense.
10. 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 their 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 ninety (90) days after the effective date of these Orders, Respondent shall submit a plan for preventing spent shot from falling into the tributary. The plan may provide for relocation of the tributary, in accordance with law. The plan should provide for development of a program for collection of shot fall within the shotgun range. The plan shall also contain a schedule for implementation. In developing an implementation schedule, the schedule may account for time taken for review by the U.S. Army Corps of Engineers of any application submitted to the Corps and may account for time taken for review by the Director of any application submitted to the Director in accordance with section 401 of the Clean Water Act; provided that Respondent acts expeditiously to any requests by the Corps or the Director for information or revisions of the 404 or 401 applications or other approvals. As an example, the schedule may provide for submittal to the Corps of a 404 application within so many days of an earlier milestone, and then provide for the next milestone within so many days after the Corps approves a 404 application.
2. Prior to approval of the plan by Ohio EPA, and within thirty (30) days of receipt of any written comments from Ohio EPA regarding the plan required under Order No. 1 above, Respondent shall make any requested changes or modifications necessary to make the plan effective in preventing spent shot from falling into the tributary.
3. Within one hundred twenty (120) days after approval by the Director of Ohio EPA of the plan submitted by Respondent pursuant to Order No. 1 of these Findings and Orders, Respondent shall begin implementation of the plan.
4. Every one hundred twenty (120) days starting with approval by the Director of Ohio EPA of the plan submitted by Respondent pursuant to Order No. 1 of these Findings and Orders, Respondent shall submit written reports to Ohio EPA on the progress Respondent has made implementing the plan.

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: 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(E)(4) for a state agency.

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 violations alleged in these Orders.

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.

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
Attn: DSW Enforcement Unit Supervisor
122 South Front St.
Columbus, Ohio 43215

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, 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, the 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:

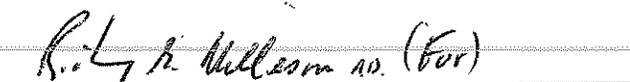
Ohio Environmental Protection Agency


Chris Korleski
Director

1/14/08
Date

IT IS SO AGREED:

Ohio Department of Natural Resources


Sean D. Logan
Director

11/29/07
Date

