

A. Conway

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

OCT 18 2005

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Ponderosa Park Resort, Inc.
9362 S. Salem Warren Road
Salem, Ohio 44460

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 Ponderosa Park Resort, Inc. ("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 the ownership or composition of Respondent or the ownership or operation of the campground and/or WWTP, 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 OF FACT

The Director has determined the following findings:

1. Respondent owns and operates Ponderosa Park Resort ("campground") and an associated wastewater treatment plant, ("WWTP"), located at 9362 S. Salem Warren Road, Mahoning County, Ohio.
2. Respondent currently holds unexpired National Pollutant Discharge Elimination System ("NPDES") permit, No. 3PS00012*BD (OH00117587) for the discharge of wastewater from the WWTP to Meander Creek via Dunn Eden Lake.

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 10/18/05

3. Meander Creek, a drinking water source for several hundred thousand people in the Youngstown area, and Dunn Eden Lake constitute "waters of the state" as defined by ORC § 6111.01.
4. The WWTP was installed in 1985 and consisted of two independent 40,000 gpd aeration tanks and clarifiers, for a total capacity of 80,000 gpd. One aeration tank was "floated" out of the ground in March, 2003, due to high ground water levels, rendering the tank unstable and inoperative. This limited the WWTP to one 40,000 gpd aeration tank and caused a reduction of available campground sites serviced by the WWTP from 800 to 220.
5. Ohio EPA inspections of the WWTP on September 12, 2002, August 18, 2003, July 31, 2003, May 16, 2003, April 23, 2003, March 14, 2003 and August 19, 2004, revealed that the WWTP was not in good operational order and lacked proper maintenance, as is evidenced below:
 - a. Damaged baffles in the up-flow clarifier;
 - b. Weeds and deteriorating walls in the sand filter;
 - c. A tire floating in the aeration tank;
 - d. Lack of a de-chlorination system;
 - e. Noncalibration of a flow meter;
 - f. Thirty NPDES permit violations from May through October 2003, which violations are set forth in Attachment I, which is attached hereto and incorporated into this finding as if fully written herein;
 - g. May, 2004 NPDES permit violation for chlorine, total residue, and July, 2004 NPDES permit violations for fecal coliform;
 - h. Sludge and debris in the aeration tank clarifier and required cleaning and pumping of the up-flow clarifier; and
 - i. Lack of replacement or repair of the floated tank.
6. In a May 13, 2004 visit to the campground, Ohio EPA observed that the sand filter and up-flow clarifier were not properly maintained.

7. During the May 13, 2004 visit, Respondent stated that contracts were entered into for the installation of a de-chlorination system and to provide costs for repairing the "floated" aeration tank. Regarding the latter, the options to be evaluated were to either excavate and replace the existing tank, or to excavate and remove the existing tank, to be replaced with a flow equalization tank.
8. During the August 19, 2004 inspection, Respondent stated that the "floated" aeration tank will be removed and replaced with an equalization tank. During that inspection Ohio EPA observed that the walls of the sand filter were repaired.
9. Respondent's failure to properly operate and maintain the WWTP and Respondent's noncompliance with NPDES permit effluent limitations and conditions are violations of its NPDES permit and ORC §§ 6111.04 and 6111.07.
10. Respondent maintains a dam that is used to form Dunn Eden Lake, both of which are situated on its property. The dam structure includes a lake drain for the discharge of bottom water (which is to enable the lake to drain) from the lake to Meander Creek.
11. On September 12, 2002, Ohio EPA, responded to a complaint of an odorous black substance or material ("substance") entering Meander Creek, with the source of entry to Meander Creek traced to the Dunn Eden Lake dam.
12. The substance, which entered Meander Creek from the dam's lake drain was anaerobic water that forms at the bottom of the lake during warm weather conditions. Such conditions stratifies the lake and causes the bottom water to become deficient of oxygen and turn anoxic. The resulting substance includes ammonia-N and hydrogen sulfide, and the heavy metals iron and manganese. Both ammonia-N and hydrogen sulfide are toxic to aquatic life at low concentrations and hydrogen sulfide produces a "rotten-egg" odor. The metals iron and manganese can contribute color to waters, orange color associated with iron, black color with manganese. These chemicals can significantly impair fish and benthic macroinvertebrate populations in stream waters below lake dams, where bottom water from the anoxic hypolimnion in summer enters.
13. ORC Rule 3745-1-04 provides that:

The following general water quality criteria shall apply to all surface waters of the state including mixing zones. To every extent practical and possible as determined by the director, these waters shall be:

- (A) Free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life;

* * *

- (C) Free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance; and
- (D) 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.

14. Observations made during the September 12, 2002 inspection showed that the ingress of the substance into Meander Creek caused the Creek to turn black, be odoriferous and provided for the growth of filamentous bacteria, constituting a violation of OAC Rules 3745-1-04(A), (C), and (D).
15. In letters dated October 15, 2002, March 31, 2003, September 19, 2003, and August 5, 2003, Respondent was notified that the lake drain was faulty and must be replaced or repaired, so as to prevent the ingress of the substance into Meander Creek.
16. On May 13, 2004, Ohio EPA met with Respondent and was informed that no activity regarding the repair or replacement of the lake drain was scheduled.
17. Respondent has informed Ohio EPA that a 2005 visual inspection of the lake drain did not evidence a failure, and that the odor referred to above may be originating from its treatment system.
18. Respondent's conclusion regarding the odor's origin may be in doubt. Septic water observed in Meander Creek several years ago by Ohio EPA was downstream of the dam, approximately 1000 ft from the treatment system. This may have resulted from the dam failing and septic water entering Meander Creek near the lake drain outlet.
19. Respondent has filed in the United States Bankruptcy Court, Northern District of Ohio, Case No 00-040901, an involuntary petition for reorganization under Chapter 11 of the Bankruptcy Code.

20. These 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 requirements of OAC Chapter 3745-42.
21. These Orders do not modify Respondent's NPDES permit.
22. 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 ninety (90) days of the effective date of these Orders, Respondent shall submit a permit to install application in accordance with OAC Rule 3745-42 for the installation of a new flow equalization tank. Said application shall demonstrate that the proposed equalization tank is designed in accordance with Ohio EPA guidance manual "Sewage Collection, Treatment and Disposal where Public Sewers are not Available" (1993) and shall also include the proposed installation of a second blower for the remaining aeration tank. The proposed flow equalization tank shall replace the "floating" aeration tank and the associated clarifier and flow equalization tanks, which shall be removed from the premises and properly disposed. The new flow equalization tank shall be placed in service, fully operational and in good working order, and all provisions of this condition complied with, within two hundred seventy (270) days of the effective date of these Orders.
2. Within ninety (90) days of the effective date of these Orders, Respondent shall replace the baffles in the up-flow clarifier.
3.
 - a. Within ninety (90) days of the effective date of these Orders, Respondent shall submit to Ohio EPA for approval, a plan to address the odor problem in Meander Creek, described in the above Findings. The plan, as approved or amended by Ohio EPA, shall be implemented and completed by June 6, 2006.
 - b. At the same time said plan is submitted to Ohio EPA, the plan shall also be submitted for review and approval, as is applicable, to the Ohio Department of Natural Resources, Division of Water, Dam Safety Section, at the following address:

Ohio Department of Natural Resources
Division of Water
Dam Safety Engineering Program
1939 Fountain Square, Building E-3
Columbus, Ohio 43224-1336

4. Respondent shall report any noncompliance with these Orders in accordance with Part III, Paragraph 12 of its NPDES permit.
5. Within seven (7) days of any milestone established in Orders Nos. 1 and 2, and 3.b, Respondent shall submit written verification of compliance to Ohio EPA.
6. All documents, copies thereof, applications, submittals and notifications required under these Orders, unless specified otherwise, shall be submitted to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Surface Water
Attn: DSW Enforcement Group Leader
2110 E. 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 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 a corporate officer who is in charge of a principle business function of Respondent.

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 operation of 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. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondents for violations specifically cited in these Orders. Ohio EPA and Respondents each reserve all other 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Except for the right to seek civil or administrative penalties against Respondents for violations specifically cited in these Orders, which right Ohio EPA does not waive, compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

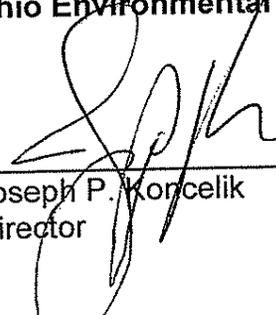
XII. EFFECTIVE DATE

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 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.

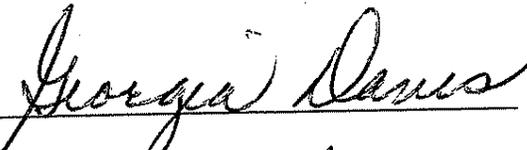
IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency



Joseph P. Korcelik
Director

10/17/05
Date

IT IS SO AGREED:
Ponderosa Park Resort, Inc.



By
GEORGIA DAVIS
Print Name
Resort Manager
Title

10-13-05
Date

Attachment I

Table of Effluent Limitation Violations

<u>Month</u>	<u>Outfall</u>	<u>Parameter Violated</u>	<u>Type</u>	<u>Permit Limitation</u>	<u>Value Reported</u>	<u>Violation Date</u>
May 2003	001	Total Suspended Solids	7D Conc	18	27.	5/1/2003
May 2003	001	Total Suspended Solids	30D Conc	12	12.5	5/1/2003
May 2003	001	Nitrogen, Ammonia (NH3)	7D Conc	1.5	9.41	5/1/2003
May 2003	001	Nitrogen, Ammonia (NH3)	30D Conc	1.0	4.705	5/1/2003
June 2003	001	Fecal Coliform	30D Conc	200	1400.	6/1/2003
June 2003	001	Fecal Coliform	7D Conc	400	1400.	6/22/2003
July 2003	001	Dissolved Oxygen	1D Conc	6.0	3.5	7/9/2003
July 2003	001	Fecal Coliform	30D Conc	200	1400.	7/1/2003
July 2003	001	Fecal Coliform	7D Conc	400	1400.	7/1/2003
July 2003	001	Chlorine, Total Residu	1D Conc	0.5	.62	7/1/2003
July 2003	001	Chlorine, Total Residu	1D Conc	0.5	.61	7/15/2003
July 2003	001	CBOD 5 day	7D Conc	15	23.	7/15/2003
August 2003	001	pH	1D Conc	9.0	9.1	8/25/2003
August 2003	001	Nitrogen, Ammonia (NH3)	30D Conc	1.0	2.405	8/1/2003
August 2003	001	Nitrogen, Ammonia (NH3)	7D Conc	1.5	4.81	8/22/2003
August 2003	001	Fecal Coliform	30D Conc	200	3700.	8/1/2003
August 2003	001	Fecal Coliform	7D Conc	400	3700.	8/1/2003
August 2003	001	Chlorine, Total Residu	1D Conc	0.5	.53	8/5/2003
August 2003	001	Chlorine, Total Residu	1D Conc	0.5	.67	8/24/2003
August 2003	001	Chlorine, Total Residu	1D Conc	0.5	.69	8/25/2003
September 2003	001	Chlorine, Total Residu	1D Conc	0.5	.57	9/3/2003
September 2003	001	Chlorine, Total Residu	1D Conc	0.5	.52	9/17/2003
September 2003	001	Chlorine, Total Residu	1D Conc	0.5	.82	9/19/2003
September 2003	001	Chlorine, Total Residu	1D Conc	0.5	.79	9/22/2003
September 2003	001	Chlorine, Total Residu	1D Conc	0.5	.6	9/23/2003
September 2003	001	CBOD 5 day	7D Conc	15	17.	9/15/2003
October 2003	001	Chlorine, Total Residu	1D Conc	0.5	.56	10/7/2003
October 2003	001	Chlorine, Total Residu	1D Conc	0.5	.57	10/8/2003
October 2003	001	Chlorine, Total Residu	1D Conc	0.5	.58	10/9/2003
October 2003	001	Chlorine, Total Residu	1D Conc	0.5	.51	10/30/2003