

BEFORE THE OHIO E.P.A.  
OHIO ENVIRONMENTAL PROTECTION AGENCY FEB 20 2004  
ENTERED DIRECTOR'S JOURNAL

In the Matter of: : Director's Final Findings  
: and Orders  
Seaway Sand & Stone, Inc. :  
11330 Airport Highway :  
Swanton, Ohio 43558 :  
  
Respondent :

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Seaway Sand & Stone, 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 ownership 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 ORC Chapter 6111. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent owned and operated at all times pertinent to these Orders, a quarry ("Facility") located at 11330 Airport Highway, Swanton Township, Lucas County, Ohio.
2. The Facility ceased operation on December 1, 2002.

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.

 \_\_\_\_\_ Date 20 FEB 04

3. Ohio EPA received from the Board of Township Trustees of Swanton Township, a verified complaint dated January 31, 2002, submitted pursuant to ORC § 3745.08 and assigned verified complaint number VC0202W01. The verified complaint alleged that Respondent: 1) discharged wastewater from the Facility through unpermitted outfalls, 2) failed to obtain a permit to install for installation of a treatment works and disposal system, 3) violated water quality standards by discharging industrial waste that altered the natural color and odor of the receiving stream to such a degree as to create a nuisance, 4) violated NPDES permit effluent limitations for total suspended solids, and 5) violated its NPDES permit by discharging industrial waste that altered the natural color and odor of the receiving stream to such a degree as to create a nuisance.
4. On January 18, 1995, Ohio EPA issued to Respondent a National Pollutant Discharge Elimination System ("NPDES") permit No. 2IJ00087\*AD, for the discharge of wastewater from the Facility to an unnamed ditch, and then to Cunningham Ditch and to Wolf Creek. The effective date of NPDES permit No. 2IJ00087\*AD was March 1, 1995 and the expiration date was February 29, 2000. NPDES permit No. 2IJ00087\*AD authorized Respondent to discharge through only one outfall, outfall 001.
5. The unnamed ditch, Cunningham Ditch, and Wolf Creek are "waters of the state," as that term is defined in ORC § 6111.01.
6. The wastewater discharged from the Facility is an "industrial waste" as that term is defined in ORC § 6111.01.
7. Respondent is a "person" as that term is defined in ORC § 6111.01.
8. On June 29, 1999, Ohio EPA sent Respondent a renewal notice for NPDES permit No. 2IJ00087\*AD.
9. On March 27, 2000, Ohio EPA received an application for the renewal of NPDES permit No. 2IJ00087\*AD. Respondent failed to submit its renewal application at least one hundred eighty days prior to the expiration date of its NPDES permit in violation of NPDES permit No. 2IJ00087\*AD and Ohio Administrative Code ("OAC") Rule 3745-33-04(C)(1).
10. NPDES permit No. 2IJ00087\*AD expired at midnight on February 29, 2000.
11. NPDES permit No. 2IJ00087\*AD was renewed as NPDES permit No. 2IJ00087\*BD, with an effective date of April 1, 2003, and an expiration date of July 1, 2003.

12. On August 15, 2003, Respondent was notified by Ohio EPA that NPDES permit No. 2IJ00087\*BD will not be renewed due to cessation of discharge activity at the Facility.
13. From March 1, 2000 to December 1, 2002, Respondent has discharged industrial waste from the Facility at outfall 001 to waters of the state without a valid, unexpired permit in violation of ORC § 6111.04 and OAC Rule 3745-33-02.
14. From April 2000 to September 2001, Respondent discharged industrial waste from the Facility through an outfall ("outfall 002") to McNolton Ditch to Gail Run and to Evergreen Lake. McNolton Ditch, Gail Run and Evergreen Lake are "waters of the state," as that term is defined by ORC § 6111.01.
15. Respondent's discharge from outfall 002 was not authorized by a NPDES permit and therefore was in violation of ORC § 6111.04 and OAC Rule 3745-33-02.
16. From June 2000 to September 2001, Respondent discharged industrial waste from the Facility through an outfall ("outfall 003") to Dreweyer Ditch to Cunningham Ditch and to Wolf Creek. Dreweyer Ditch is "waters of the state," as that term is defined by ORC § 6111.01.
17. Respondent's discharge from outfall 003 was not authorized by a NPDES permit and therefore was in violation of ORC § 6111.04 and OAC Rule 3745-33-02.
18. Respondent installed and modified settling ponds to treat the Facility's industrial waste prior to discharge through outfalls 001, 002, and 003. Each settling pond is a "treatment works" and a "disposal system," as those terms are defined in ORC § 6111.01. Respondent installed and modified the settling ponds without first obtaining a permit to install in violation of ORC § 6111.04 and OAC Rule 3745-31-02(A)(1).
19. By June 1, 2003, Respondent eliminated all settling ponds at the Facility.
20. The final effluent limitation for total suspended solids established in Respondent's NPDES permit for outfall 001 was exceeded during May, 1995, in violation of NPDES permit No. 2IJ00087\*AD and ORC § 6111.04.
21. On March 7, 2000 and September 26, 2000, a discharge from the Facility caused a discoloration of Cunningham Ditch and Wolfe Creek in such a degree as to create a nuisance in violation of the water quality standard set forth in OAC Rule 3745-1-04(C).

22. On March 15, 2001 and April 5, 2001, discharges from the Facility to Cunningham Ditch contained pollutants which produced an odor in such a degree as to create a nuisance in violation of the water quality standard set forth in OAC Rule 3745-1-04(C).
23. Ohio EPA received complaints from the public on March 7, 2000, May 31, 2000, and September 30, 2000, regarding discoloration of waters of the state and odor as a result of discharges from the Facility.
24. Failure to comply with a requirement of an NPDES permit, a duty imposed by ORC §§ 6111.01 through 6111.08, or a rule promulgated under ORC §§ 6111.01 through 6111.08, constitute violations of ORC § 6111.07.
25. 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 expected 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. Respondent shall pay to Ohio EPA fifteen thousand dollars (\$15,000.00) in settlement of Ohio EPA's claims for civil penalties as set forth in these Orders which may be assessed pursuant to ORC Chapter 6111. Within sixty (60) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of ten thousand dollars (\$10,000.00) by tendering an official check made payable to the "**Treasurer of State of Ohio**," together with a letter identifying the Respondent and the Facility, to the following address:

Office of Fiscal Administration  
Ohio Environmental Protection Agency  
Post Office Box 1049  
Columbus, OH 43216-1049

A photo copy of the check shall be sent to the Ohio EPA, Northwest District Office, at:

Ohio Environmental Protection Agency  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
ATTN: DSW Enforcement Group Leader

2. In lieu of payment of the remaining five thousand dollars (\$5,000.00) of the civil penalty amount assessed in Order No. 1, above, Respondent shall implement the following Supplemental Environmental Project ("SEP"):
  - Project location: Fallen Timbers Battlefield and Fort Miami Historic Site Trail
  - Project description: Stone 1263 feet of trail with number 411 stone three inches deep and 10 feet wide.
  - Project purpose: Prevent sedimentation, erosion and run-off.
  - Project time frame: Spring 2004; work time of one month; completion shall be by July, 31, 2004.
3. Should Respondent fail to complete construction of the SEP by July 31, 2004, Respondent shall pay to Ohio EPA five thousand dollars (\$5,000.00) of the civil penalty in accordance with the procedures set forth in Order No. 1, above.

#### **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).

#### **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.

### **IX. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section X 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**

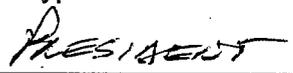
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

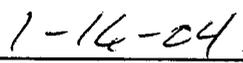
**XIV. SIGNATORY AUTHORITY**

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 AGREED:**

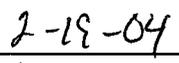
**Seaway Sand & Stone, Inc.**

  
\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Printed or Typed Name  
  
\_\_\_\_\_  
Title

  
\_\_\_\_\_  
Date

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

  
\_\_\_\_\_  
Christopher Jones  
Director

  
\_\_\_\_\_  
Date