

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

Sonny Kuzmick
Sonny's Family Restaurant
6211 Youngstown-Kingsville Rd.
Cortland, Ohio 44410

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:
:

Director's Final Findings
and Orders

Respondent

OHIO EPA
MAY 23 2014
FILED IN THE PUBLIC JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Finding and Orders ("Orders") are issued to Sonny Kuzmick ("Respondent") doing business as Sonny's Family Restaurant 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 his successor in interest liable under Ohio law.

III. DEFINITIONS

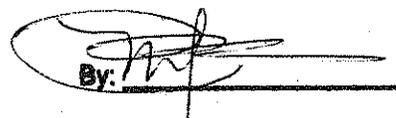
Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent operates Sonny's Family Restaurant, a restaurant located at 6211 Youngstown-Kingsville Rd. in Cortland, Trumbull County, Ohio ("the Site"). The Site is currently served by a wastewater treatment plant ("WWTP") that discharges final effluent to an unnamed tributary of Berry Creek. The unnamed tributary and Berry Creek are considered "waters of the state" as defined by ORC Section 6111.01.

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: 5.23.2014

2. Respondent held National Pollutant Discharge Elimination System ("NPDES") permit number 3PR00216*BD for the discharges from the WWTP, effective May 1, 2006. The permit expired on April 30, 2011.
3. A renewal application was not received six months prior to the expiration of Permit 3PR00216*BD for the continued discharge from the WWTP. The Site was discharging without a valid NPDES permit until a new NPDES permit was issued in February 2013, with an effective date of March 1, 2013.
4. Respondent has violated the final effluent and monitoring frequency limits of its NPDES permit, on numerous occasions. The effluent and frequency violations are set forth in Notice of Violation ("NOV") letters on the following dates: November 5, 2012; April 8, 2011; April 8, 2008. Each violation cited constitutes a separate violation of ORC §§ 6111.04 and 6111.07.
5. Respondent has failed to submit monthly Electronic Discharge Monitoring Reports ("eDMRs") for a majority of the months in 2008 and submitted no eDMRs until 2013.
6. Respondent also failed to staff the WWTP with an appropriate state-certified operator as required by the NPDES permit.
7. 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 of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
8. Pursuant to ORC section 6111.04(A), 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. Such an action is prohibited under ORC section 6111.04(A) and is declared to be a public nuisance unless the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in ORC sections 6111.01 to 6111.08 or if the person's application for renewal of such a permit is pending.
9. Pursuant to ORC § 6111.04(C), 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 the permissive discharges specified under an existing permit.
10. 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 Ohio Administrative Code ("OAC") Chapter 3745-42.

11. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
12. 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

The Director hereby issues the following Orders:

1. Within thirty (30) days from the effective date of these Orders, Respondent shall have a Class A State certified operator supervising the treatment works and also submit an Operator of Record Form to Ohio EPA.
2. Respondent shall pay a total amount of three thousand dollars (\$3,000.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within three (3) months 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" in the amount of \$500.00. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent, to:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to 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

Thereafter, Respondent shall make a subsequent payment of \$500.00 within six (6) months from the effective date of these Orders, a third payment of \$500.00 within nine (9) months from the effective date of these Orders, a fourth payment

of \$500.00 within twelve (12) months from the effective date of these Orders, a fifth payment of \$500.00 within fifteen (15) months from the effective date of these Orders, and a final payment of \$500.00 within eighteen (18) months from the effective date of these Orders, for a total of \$3,000.00.

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 Respondent. For purposes of these Orders, a responsible official is 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 activities occurring on or at 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

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

Ohio Environmental Protection Agency
Northeast District Office
Division of Surface Water
ATTN: DSW Enforcement Unit Supervisor
2110 East Aurora Road
Twinsburg, Ohio 44087

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
ATTN: Manager, Storm water and Enforcement Section
50 West Town Street, Suite 700 [P.O. Box 1049]
Columbus, Ohio 43215 [43216-1049]

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, 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



Craig W. Butler
Interim Director

5/22/14

Date

IT IS SO AGREED:

Sonny Kuzmick



By

Sonny Kuzmick

Print Name

Owner

Title

2/22/14

Date