

OHIO E.P.A.

BEFORE THE

SEP -7 2004

OHIO ENVIRONMENTAL PROTECTION AGENCY <sup>ENTERED DIRECTOR'S JOURNAL</sup>

**In the matter of:**

Whitewater Processing Company, Inc.  
10964 Campbell Road  
Harrison, Ohio 45030

**Director's Final Findings  
and Orders**

Respondent,

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Whitewater Processing Company, 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 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 has determined the following findings:

1. Respondent owns and operates a turkey processing facility ("Facility"), which is located in Harrison Township, Hamilton County, Ohio. To manage the process and sanitary wastewater resulting from the commercial operations at the Facility, Respondent owns and operates a wastewater treatment and disposal system comprised of a screening box, clarifier or dry well, sewer, small primary lagoon, a pump, a larger secondary leaching lagoon, and two septic tanks which precede a dry well.

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 Donna Jackson Date 9-7-04

2. Respondent received Ohio Department of Health and Ohio EPA approvals, in 1958, 1971 and 1973, respectively, for the onsite wastewater treatment system that receives the Facility's process wastewater.
3. The lagoons that are part of the wastewater treatment system at the Facility are situated on permeable sand and gravel over the Whitewater River Buried Valley Aquifer. The larger secondary leaching lagoon is located approximately 700 feet from and within the flood plain of the Whitewater River; the lagoons do not have any engineered discharge to the Whitewater River.
4. Respondent slaughters and processes about 6,000 turkeys daily at the Facility, and generates approximately 145,000 gallons per day of process wastewater.
5. The Facility's process wastewater consists of blood letting, feather removal, dressing, washing and cooling rinse waters. The average pollutant concentrations of this wastewater are five day carbonaceous biochemical oxygen demand ("CBOD5") of 1085 milligrams per liter ("mg/l"), suspended solids of 298 mg/l, fats, oil and grease of 63 mg/l, and ammonia of 13 mg/l. Also, fecal coliform has been measured at 64,000 counts/ 100 milliliters ("ml").
6. The blood letting, feather removal, dressing, washing and cooling rinsewaters constitute "sewage," "industrial waste," or "other wastes" as those terms are defined in ORC § 6111.01.
7. The term "pollution," as defined in ORC § 6111.01(A), includes, but is not limited to, the placing of "sewage," "industrial waste," and "other wastes" in any "waters of the state," as those terms are defined in ORC § 6111.01.
8. ORC § 6111.04 prohibits any person from causing pollution or causing any sewerage, industrial waste or other waste to be placed in any location where they cause pollution to waters of the state, except if such discharges occur in accordance with a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in ORC §§ 6111.01 to 6111.08.
9. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any rule issued by the Director pursuant to those sections.
10. The Whitewater River Buried Valley Aquifer constitutes "waters of the state" as defined by ORC § 6111.01.
11. Respondent has discharged "pollution," including "sewage," "industrial waste," and "other wastes," as those terms are defined in ORC § 6111.01, from the lagoons at the Facility to the Whitewater River Buried Valley Aquifer without a valid, unexpired permit for such discharge, in violation of ORC §§ 6111.04 and 6111.07.

12. Respondent employs approximately one hundred and twenty (120) employees twelve (12) months out of the year at the Facility. Respondent currently utilizes two septic tanks that precede a dry well, which are pumped out biannually, for the treatment and disposal of sanitary wastewater generated at the Facility.
13. The dry wells associated with the Facility's septic and processing systems, owned and operated by Respondent, each constitute a "class V" "injection well," as defined by OAC Rules 3745-34-04(E)(9) and 3745-34-01(NN), respectively.

In accordance with OAC Rule 3745-34-07(A), no owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into an underground source of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under OAC Chapter 3745-81 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing these requirements are met.

A visual inspection by Ohio EPA personnel of the class V injection well ("dry well") at the Facility associated with the septic system indicated that Respondent has and is discharging incompletely treated sewage directly into or onto the ground above the Whitewater River Buried Valley Aquifer.

16. Respondent's discharge of incompletely treated sewage and process wastewaters into the class V injection wells at the Facility also represents a discharge of pollutants to "waters of the state" as defined by ORC Chapter 6111.01.

In violation of ORC §§ 6111.04 and 6111.07, Respondent does not hold a valid, unexpired permit for the discharge of pollutants to waters of the state via the class V injection wells at the Facility.

18. In accordance with OAC Rule 3745-34-07(C), if at any time the Director learns that a class V well may cause a violation of primary drinking water regulations under OAC Chapter 3745-81, he shall:
  - A) Require the injector to obtain an individual permit;
  - B) Order the injector to take such actions (including where required closure of the injection well) as may be necessary to prevent the violation; or
  - C) Take enforcement action.
19. In accordance with OAC Rule 3745-34-07(D), whenever the Director learns that a class V well may be otherwise adversely affecting the health of persons, he may prescribe such actions as may be necessary to prevent the adverse effect, including any action authorized under OAC Rule 3745-34-07(C).

In accordance with OAC Rule 3745-34-13(D), the owner or operator of any class V well shall notify the Director of the existence of any well under the owner or operator's control meeting the definition of class V contained within paragraph OAC Rule 3745-34-04(E). The owner or operator of a new class V well shall submit the notification within thirty (30) days of installing the well. Unless the owner or operator has previously submitted inventory information for a class V well to the Director prior to the effective date of this rule, the owner or operator shall submit the following information for each well under the owner or operator's control with the notification:

- A) Facility name, postal address of the well location, and location of each well given by latitude and longitude to the nearest second;
- B) Name and address of legal contact;
- C) Identification of the owner and/or operator of the well;
- D) Nature and type of injection well;
- E) Operating status of injection well;
- F) Date of completion of each well;
- G) Total depth of each well;
- H) Construction narrative;
- I) Nature of the injected fluid;
- J) Maintenance and inspection schedule; and
- K) Average and maximum injection rate.

In violation of OAC Rule 3745-34-13(D), Respondent failed to report the existence of the class V wells at the Facility to Ohio EPA.

On February 25, 2004, Respondent submitted a Class V Well Inventory Form to Ohio EPA, Central Office ("CO"), Division of Drinking and Ground Waters ("DDAGW"), Underground Injection Control Unit ("UIC"), for the two wells at the Facility.

23. These Orders are not, and shall not be construed to be, a permit, plan approval or other authorization issued pursuant to any statute or regulation. These Orders specifically do not authorize the construction of any new disposal system or sewerage or treatment works for sewage disposal at the Facility or any other location. Respondent must obtain all permits, approvals and authorizations as required by law.

24. Each day of violation cited above represents a separate violation of ORC §§ 6111.04 and 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 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 thirty (30) days of the effective date of these Orders, Respondent shall submit to Ohio EPA, Southwest District Office ("SWDO"), Division of Surface Water ("DSW"), at the address listed in Section X of these Orders, for review and comment a maintenance schedule specifying measures necessary to maintain or improve the operation and maximize the effectiveness of the Facility's existing wastewater treatment and disposal system.
2. Within ninety (90) days from the effective date of these Orders, Respondent shall submit an approvable permit to install ("PTI") application to Ohio EPA, SWDO, DSW, for diversion of all of the sanitary flow currently directed to the class V injection well to the existing wastewater treatment and disposal system at the Facility.
3. Within thirty (30) days of issuance of a PTI by the Director, Respondent shall commence with installation of the diversion of all of the sanitary flow currently directed to the class V injection well to the existing wastewater treatment and disposal system at the Facility.
4. Within ninety (90) days from the effective date of these Orders, Respondent shall submit an approvable PTI application to Ohio EPA, SWDO, DSW, for construction of the sand bioreactor or alternative wastewater treatment system demonstration project ("pilot project"), relative to the new wastewater treatment system, to treat at least 1,000 gallons of the wastewater discharge from the Facility. The PTI submittal shall include at a minimum:
  - A) Detailed engineering plans of the pilot project signed and stamped by a professional engineer registered to practice in the state of Ohio;
  - B) Supporting information for the pilot study project;
  - C) Plans to direct the effluent resulting from the pilot project into the primary and secondary lagoons of the existing wastewater treatment and disposal system at the Facility;
  - D) An influent and effluent monitoring plan for the pilot project, which includes the submission of quarterly reports to Ohio EPA, SWDO, DSW; and

- E) The following Ohio EPA PTI Forms: A, B2, and B4, including any applicable supporting Forms from B4-1 to B4-8.
5. Within ninety (90) days of the effective date of these Orders, in lieu of submission of a PTI application for construction of a pilot project, Respondent may submit a PTI application for the construction of a sewer connection to the City of Harrison wastewater treatment plant ("Harrison WWTP").
  6. Within sixty (60) days of issuance of a PTI by the Director, Respondent shall commence installation and construction of the pilot project at the Facility.
  7. Within one hundred and fifty (150) days of issuance of a PTI by the Director, Respondent shall complete installation and construction of the pilot project at the Facility.
  8. Ohio EPA, DSW, SWDO shall be provided with written notification:
    - A) Within fourteen (14) days of the date of completion of the diversion of all of the sanitary flow currently directed to the class V injection well to the existing wastewater treatment and disposal system at the Facility;
    - B) Thirty (30) days prior to the anticipated completion date of the pilot project construction; and
    - C) Of the date of commencement of the operation of the pilot project (diversion of wastewater from the Facility's existing wastewater treatment and disposal system to the pilot project).
  9. Within forty-five (45) days of the issuance of a PTI by the Ohio EPA to Respondent for the diversion of all of the sanitary flow from the Class V well to the existing wastewater treatment and disposal system at the Facility, Respondent shall submit a written closure plan for closure of the two class V wells ("Closure Plan") to Ohio EPA, CO, DDAGW, UIC, for approval in accordance with OAC Rules 3745-34-07(C)(2) and 3745-34-13(F). The Closure Plan shall describe the procedures for removal of the two class V injection wells associated with sanitary and process wastewater at the Facility. This plan shall at a minimum include:
    - A) Procedures for disposing or managing any soil, gravel, sludge, liquids or other materials removed from or adjacent to the wells in accordance with applicable federal, state, or local regulations and requirements;
    - B) Notification of Ohio EPA, CO, DDAGW, UIC, of the intent to close the dry wells at least thirty (30) days prior to commencing closure of the wells; and
    - C) Procedures for closing the dry wells, including removal or abandonment of the dry wells, specifications of the material that may be used as backfill during closure, and the sealing off of the connection of the dry well to the septic tanks.

10. Within one hundred and eighty (180) days of completion of the construction associated with the diversion of the sanitary flow from the class V injection well to the existing wastewater treatment and disposal system at the Facility, and Ohio EPA approval of the Closure Plan, Respondent shall complete, in accordance with the Ohio EPA approved Closure Plan, the closure of the class V well associated with the sanitary wastewater.
11. Within two hundred and ten (210) days of the completion of the construction associated with the diversion of the sanitary flow from the class V injection well to the existing wastewater treatment and disposal system at the Facility, Respondent shall submit written verification to Ohio EPA, CO, DDAGW, UIC of the completed closure of the class V well related to the sanitary wastewater in accordance with the Ohio EPA approved Closure Plan. If any additional class V closure activities were undertaken, Respondent shall also provide a written report detailing such activities.
12. Within twenty (20) months of commencement of operation of the pilot project, Respondent shall submit to Ohio EPA, SWDO, DSW, a PTI and a National Pollutant Discharge Elimination System ("NPDES") permit application for the construction and operation of a sand bioreactor or alternative wastewater treatment and disposal system, or, alternatively, a PTI for the construction of a sewer connection to the Harrison WWTP. These submittals shall address any modifications to or abandonment of the Facility's existing wastewater treatment system, including, but not limited to, the sanitary septic tanks.
13. Within one (1) year from the issuance of a PTI by the Director pursuant to Order No.12, Respondent shall complete the construction and commence operation of a sand bioreactor or alternative wastewater treatment and disposal system at the Facility, or, alternatively, complete the construction of a sewer connection to the Harrison WWTP.
14. Within one (1) year from the issuance of a PTI by the Director pursuant to Order No. 12, Respondent shall complete, in accordance with the Ohio EPA approved Closure Plan, the closure of the class V well associated with the process wastewaters from the Facility's existing wastewater treatment system.
15. In the event Respondent pursues and fails to timely complete the construction and operation of a sand bioreactor or alternative wastewater treatment and disposal system in accordance with a PTI issued by the Director, or should the operation of the sand bioreactor or alternative wastewater treatment and disposal system fail to substantially comply with the requirements and effluent limitations contained in Respondent's NPDES permit within one (1) year of commencement of operation, Respondent shall submit, within sixty (60) days of receipt of written notification from Ohio EPA that construction and operation has not been timely completed or that operation of the sand bioreactor or alternative system fails to substantially comply with the NPDES permit, and such noncompliance has not been timely cured by the Respondent, a PTI for the construction of a sewer connection to the Harrison WWTP.

16. Respondent has expressed concern the compliance deadlines contained in Order Nos. 6 and 13 may be delayed as a result of problems stemming from weather conditions, as well as local zoning, building, and tap-in approvals. Upon request by Respondent, the Director may, at his sole discretion, extend in writing the periods contained in Order Nos. 6 and 13.
17. Within thirty (30) 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.

## **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 DSW 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 as 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 the operation of Respondent's 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 as indicated in each Order to:

Ohio Environmental Protection Agency  
Southwest District Office, Division of Surface Water  
401 East Fifth Street  
Dayton, Ohio 45402  
Attn: Enforcement Unit Supervisor

**or**

Ohio Environmental Protection Agency  
Central Office, Division of Drinking and Ground Waters  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216  
Attn: Underground Injection Control Unit

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

## **XI. RESERVATION OF RIGHTS**

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. Ohio EPA and Respondent each reserve all other 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. Except for the right to seek civil or administrative penalties against Respondent 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 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**

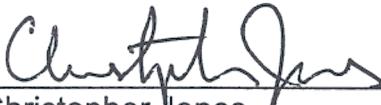
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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:**

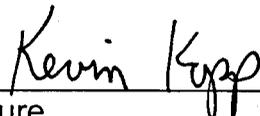
**Ohio Environmental Protection Agency**

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

SEP 7 2004  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Whitewater Processing Company, Inc.**

  
\_\_\_\_\_  
Signature

AUG 9-04  
\_\_\_\_\_  
Date

Kevin Kopp, President  
\_\_\_\_\_  
Printed or Typed Name and Title