

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.

OHIO E.P.A.

APR 14 2011

ENTERED DIRECTOR'S JOURNAL

Don Kasser Date: 4-14-11 BEFORE THE

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the matter of:

**Birds Nest Resort** : **Director's Final Findings and**  
**1371 Langram Road** : **Orders**  
**Put-In-Bay, Ohio 43456** :

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Birds Nest Resort ("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 Respondent, or of the Site owned by 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 OF FACT**

1. Respondent owns and operates a wastewater treatment plant ("WWTP") located at 1371 Langram Road, Put-In-Bay, Ohio 43456.
2. Respondent holds a valid, unexpired National Pollutant Discharge Elimination System ("NPDES") permit, number 2PR00208\*BD, for the discharges from the WWTP.
3. Respondent discharges to "waters of the state" as defined by ORC Section 6111.01.

RECEIVED  
APR 14 2011 9:53  
DIVISION OF INSPECTION

SJE

4. This document does not modify NPDES Permit No. 2PR00208\*BD. The purpose of this document is to correct a condition of noncompliance with NPDES Permit No. 2PR00208\*BD and not to alter said permit.
5. Ohio Administrative Code ("OAC") Rule 3745-7-02 requires each person owning or operating a treatment works to designate one or more operators of record to oversee the technical operation of the treatment works and supply notification on a form acceptable to the Director.
6. OAC Rule 3745-33-08 (A)(9) requires the Respondent provide adequately trained and qualified personnel as required in Chapter 3745-7 of the Administrative Code to operate such wastewater treatment facilities
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. On August 27, 2010, Ohio EPA sent the Respondent a letter stating the operator of record notification form had not been received as required by OAC 3745-7-02.
9. On October 1, 2010, Ohio EPA sent the Respondent a Notice of Violation Letter ("NOV") in an effort to address the failure to supply the operator of record notification form identified in Finding #5 above. Attachment I is Respondent's NOV letter. Attachment I is hereby incorporated into these Findings and Orders as if fully stated herein.
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 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 supply the Operator of Record form under Chapter 3745-7-02 (A)(2) of the Ohio Administrative Code within fourteen (14) days after the effective date of these Findings and Orders to the following address: Ohio EPA, Division of Surface Water, P.O. Box 1049, Columbus, Ohio 43216-1049 attn. Daniel A. Kopec.
2. Respondent shall pay to the Ohio EPA the amount of one thousand dollars (\$1,000) in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to Chapter 6111 of the Ohio Revised Code. Within thirty (30) days 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" for \$500.00 of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

S J e

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

Thereafter, Respondent shall make a subsequent payment of \$500.00 within sixty (60) days from the effective date of these Orders, for a total of \$1,000.00.

**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 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 principal 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 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. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

SJE

**XI. 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 of 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 comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

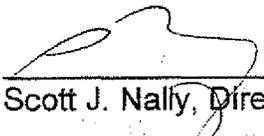
**XII. EFFECTIVE DATE**

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

**XIII. SIGNATORY AUTHORITY**

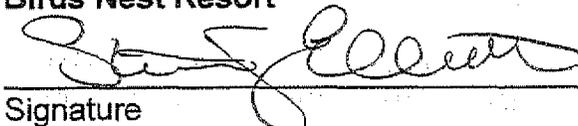
Each undersigned representative or party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

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

  
\_\_\_\_\_  
Scott J. Nally, Director

4/14/11  
\_\_\_\_\_  
Date

**IT IS SO AGREED:  
Birds Nest Resort**

  
\_\_\_\_\_  
Signature

3-14-11  
\_\_\_\_\_  
Date

STEVE ELLIOTT  
\_\_\_\_\_  
Printed or Typed Name

VP  
\_\_\_\_\_  
Title

596