

JAN 11 2010

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the matter of:

Hickory Hills Lakes, Inc.  
7103 State Route 66  
Fort Loramie, Ohio 45845

: 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 Hickory Hills Lakes, 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, 6111.46 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors 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 there under.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner of Hickory Hill Lake Campground (the Campground) located at 7103 State Route 66, Fort Loramie, Ohio 45845.

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: W. T. Hill Date: 1/11/10

2. At one time, the campground was a recreational vehicle park with an approved health department license for 128 permanent sites with water and electrical hook-ups. Historically, sewage from the individual campsites as well as a shower house facility and dump station were conveyed via sanitary sewers to a 12,500 gallon treatment lagoon system with an overflow to the Miami-Erie Canal. The lagoon was originally permitted by the Ohio Department of Health. Because of the size of the lagoon, discharges from the lagoon were only intermittent. Respondent has never held an NPDES permit for a discharge from their system.
3. The Miami and Erie Canal is a "water of the state" as defined by ORC Section 6111.01.
4. Respondent hosts "The Country Concert in the Hills" which is a four day concert that takes place in July each year. Attendance peaks at around 14,000 people each day on Friday and Saturday of the concert.
5. ORC Section 6111.04(A)(1) states that "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."
6. OAC Rule 3745-33-02(A) states that "No person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit in accordance with the requirements of this chapter."
7. ORC Section 6111.07(A) states that "No person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violate any order, rule, or term or condition of a permit issued or adopted by the director of environmental protection pursuant to those sections. Each day of violation is a separate offense.
8. The discharge from Respondent's system is not authorized by an NPDES permit in violation of ORC Section 6111.04, OAC Rule Chapter 3745-33-02(A) and ORC Section and 6111.07.
9. OAC Rule 3745-42-02(A)(1)(a) provides that "no person shall cause, permit or allow the installation of a new disposal system or cause, permit or allow the modification of a disposal system without first obtaining an individual permit to install, a general permit to install or plan approval in accordance with this chapter and all other applicable rules and laws.
10. During the summer of 2007, Respondent installed sewer lines to serve six additional camp sites. The sewer lines are a "disposal system" as defined by Ohio Revised Code Section 6111.01(G).

11. Respondent failed to obtain a permit in violation of OAC Rule 3745-42-02(A)(1)(a) and ORC Section 6111.07 prior to initiating construction.
12. Respondent submitted an after the fact Permit to Install (PTI) application (No. 654977) for the sewer line referenced in Finding 10 on April 30, 2008. This PTI application was later withdrawn on November 13, 2008.
13. Respondent contemplated further expansion of the facility that included the addition of 70 temporary sites. The additional wastewater flow that would be generated by these sites would require the wastewater treatment system to be upgraded and expanded.
14. On May 7, 2008, Respondent submitted an NPDES permit application. On July 7, 2008, Ohio EPA public noticed a draft NPDES permit No. 1PX00068\*AD which would have authorized a discharge and required an upgrade to the existing wastewater treatment system.
15. In a letter dated August 14, 2008, Michael Barhorst, owner of Hickory Hill Lakes Campground requested an 90 day extension of the public notice period of NPDES permit 1PX00068\*AD.
16. On September 17, 2008, Paul Barhorst, representative of the Respondent, informed the Shelby County Health Department that that he intended to change the status of the park from a recreational vehicle park to a temporary camp. Respondent indicated an intention to abandon the existing lagoon and sewer collection system and handle all wastewater with temporary units during the concert.
17. On September 19, 2008, Joe Miller of Ohio EPA's SWDO sent Respondent some guidance on the lagoon closure. Based on this, Respondent, by letter dated September 26, 2008, informed Ohio EPA of their proposal to close the existing unpermitted wastewater disposal system on the property. Respondent indicated an intention to pump the lagoon liquid, at a slow controlled rate, into the canal after the sewer line is sealed and then mix in lime to the "residual mixture". Last, Respondent indicated an intention to scarify the bottom of the lagoon to break up the clay liner.
18. On October 1, 2008, Joe Miller of Ohio EPA's SWDO informed Respondent by email that because Respondent did not have a permit to discharge from the lagoon, the Ohio EPA cannot authorize the discharge to the canal. Mr. Miller recommended having a septage hauler pump out the lagoon and take the wastewater and sludge to a permitted wastewater facility.
19. Through subsequent phone conversations between Mr. Steinke and Mr. Miller, it was revealed that wastewater from the lagoon was pumped to the canal.

- Because Respondent does not hold a permit for said discharge, it is a violation of ORC Section 6111.04 and 6111.07.
20. On December 24, 2008, draft NPDES permit 1PX00068\*AD for Hickory Hill Lakes Campground was revoked.
  21. On November 24, 2008, Ohio EPA inspected the site. The area where the lagoon was formally located was filled and now serves as a large parking lot. According to a representative of Respondent, after the wastewater was discharged down they allowed the sludge in the lagoon to dry until it cracked. Respondent then scarified what remained and filled the area with native soil, compacted the entire area before adding the gravel layer for the parking lot.
  22. 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.
  23. Compliance with the ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
  24. Ohio EPA 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 pay the amount of ten thousand dollars (\$10,000.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. 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 \$8,000.00 of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent to:

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

A photocopy of the check shall be sent to Ohio EPA's Southwest District Office at:

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

2. In lieu of paying the remaining \$2,000.00 of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a supplemental environmental project (SEP) by making a contribution in the amount of \$2,000.00 to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check and a cover letter identifying the Respondent shall be submitted to Brenda Case, or her successor at:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

A copy of the check shall be sent to Mark Mann, Enforcement 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

3. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 2, Respondent shall immediately pay to Ohio EPA the remaining \$2,000.00 of the civil penalty in accordance with the procedures in Order No. 1.

## **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(E)(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 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  
Southwest District Office  
Division of Surface Water  
Attn: DSW Enforcement Unit Supervisor  
401 E. Fifth Street,  
Dayton, Ohio 45402

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

#### **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.

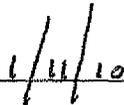
**XIV. SIGNATORY AUTHORITY**

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:**

**Ohio Environmental Protection Agency**

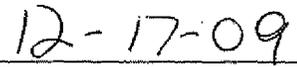
  
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Chris Korleski  
Director

  
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Date

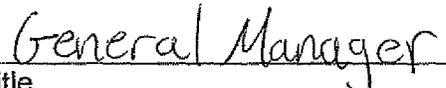
**IT IS SO AGREED:**

**Hickory Hills Lakes, Inc.**

  
\_\_\_\_\_  
By

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Title