

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY  
OHIO E.P.A.

*A. Lenway* 05-065

MAY - 8 2000

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

Trois Amis, Inc.  
d.b.a. Kirtland City Tavern  
10015 Chillicothe Road  
Kirtland, Ohio 44094

**Director's Final Findings  
and Orders**

Respondent

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.

**PREAMBLE**

It is agreed by the Parties hereto as follows:

By: *Michael A. Shapiro* Date: 5/8/08

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Trois Amis, Inc., d.b.a. Kirtland City Tavern, ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("R.C.") §§ 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 the composition of Respondent, or the owner or operator of the Facility (as defined herein) 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 R.C. Chapter 6111. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has made the following findings:

1. Respondent, an active corporation for profit, is incorporated in the State of Ohio under Charter/Registration Number 1016084.
2. The Kirtland City Tavern ("Facility"), located at 10015 Chillicothe Road, Kirtland, Lake County, is owned and operated by Respondent as a bar/restaurant with occupancy for 65 people.
3. On April 21, 2000, Respondent was issued Ohio NPDES Permit Number 3PR00238\*AD ("NPDES Permit") to discharge from the Facility's wastewater treatment works to an unnamed tributary of the East Branch of the Chagrin River, a waters of the state, in accordance with the terms and conditions therein.

4. The NPDES Permit was effective on June 1, 2000 and expired in May, 2005. A renewal application, received on February 22, 2005, is pending before Ohio EPA.
5. The Facility's wastewater treatment works consists of a grease trap and extended aeration plant with an aeration tank and settling tank. The average daily design flow of the system is 2100 gallons per day.
6. Ohio Administrative Code ("OAC") Rule 3745-1-22 classifies the East Branch of the Chagrin River and its tributaries as coldwater habitat, state resource water.
7. The NPDES Permit contains the following compliance schedule for the upgrade of the wastewater treatment works:
  - a. Submit detail plans for plant improvements as soon as possible, but no later than 2 months after the [June 1, 2000] effective date of the permit;
  - b. Commence construction as soon as possible, but not later than 4 months after the effective date of the permit;
  - c. Complete construction as soon as possible, but not later than 5 months after the effective date of the permit; and
  - d. Attain operational level of treatment works and meet final effluent limitations as soon as possible, but not later than 6 months after the effective date of the permit.
8. A permit to install ("PTI") application and detailed plans for the wastewater treatment works upgrade were submitted to Ohio EPA on April 26, 2000. PTI Application Number 02-13982 was issued on August 4, 2000. PTI Application Number 02-13982 expired on February 4, 2002, as, Respondent did not, within eighteen months of the effective date of PTI Application Number 02-13982, undertaken a continuing program of installation or modification nor entered into a binding contractual obligation to undertake and complete, within a reasonable time, a continuing program of installation or modification, as is required in OAC Rule 3745-42-02(D).
9. Respondent submitted PTI Application Number 02-17466 to Ohio EPA on December 31, 2002, with PTI Application Number 02-17466 issued on January 30, 2003. The upgrades proposed includes the construction of a grease trap, flow equalization tank, dosing chamber, surface sand filter, chlorine contact tank with dechlorination, and a sludge holding tank. Only the grease trap was constructed.
10. Respondent has exceeded the NPDES Permit final effluent limitations numerous times since its issuance. A listing of the NPDES Permit final effluent limitations exceedances is set forth in Appendix A, which is attached hereto and incorporated herewith, as if fully rewritten herein.

11. R.C. § 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 NPDES permit issued by the Director.
12. R.C. § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by R.C. §§ 6111.01 to 6111.08, or violating any order, rule, or term or condition of a permit issued by the Director pursuant to those sections. Each day of violation represents a separate violation.
13. Respondent has violated R.C. § 6111.07(A).
14. 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 purpose of R.C. Chapter 6111.

#### ORDERS

1. Respondent shall comply with the requirements of R.C. Chapter 6111, the rules adopted under that Chapter, and the terms and conditions of its NPDES permit, and any renewals or modifications thereof, in accordance with the following schedule:
  - a. Respondent shall, within thirty (30) days after the effective date of these Orders, submit a complete and approvable permit to install application and detail plans for construction of wastewater treatment works improvements to include surface sand filters, disinfection unit, flow equalization tank, dosing chamber and sludge holding tank.
  - b. Respondent shall, within five (5) months of the effective date of these Orders, complete construction of the disinfection unit of the wastewater treatment works improvements.
  - c. Respondent shall, within twelve (12) months of the effective date of these Orders, complete construction of the surface sand filters and dosing chamber of the wastewater treatment works improvements.
  - d. Respondent shall, within twenty-three (23) months of the effective date of these Orders, complete construction of any remaining wastewater treatment works improvements.
  - e. Respondent shall, within twenty-four (24) months of the effective date of these Orders, achieve compliance with the final effluent limitations established in its NPDES Permit.

2. Respondent shall pay the amount of one thousand dollars (\$1,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to R.C. Chapter 6111. Within thirty (30) days of 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 one thousand dollars (\$1,000.00). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and the Facility, to:

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

A photocopy of the check shall be sent to the Ohio EPA Northeast District Office, in accordance with Section X of 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 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 as defined in OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility.

#### **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 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 to:

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

#### **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.

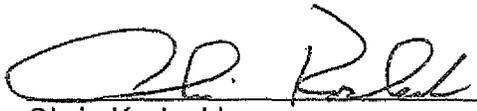
#### **XIII. EFFECTIVE DATE**

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

**XIV. SIGNATORY AUTHORITY**

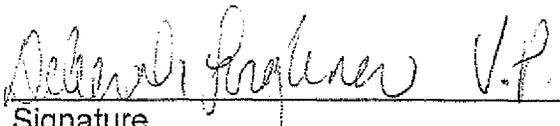
Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

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

  
\_\_\_\_\_  
Chris Korleski  
Director

5/8/08  
\_\_\_\_\_  
Date

**IT IS SO AGREED:  
Trois Amis, Inc.,  
d.b.a. Kirtland City Tavern**

  
\_\_\_\_\_  
Signature  
Deborah Loughnee  
\_\_\_\_\_  
Printed or Typed Name  
Pice - President  
\_\_\_\_\_  
Title

4/8/08  
\_\_\_\_\_  
Date

## Appendix A

### Table of Effluent Limitation Violations

Station	Reporting Code	Parameter	Limit Type	Limit	Reported Value	Violation Date
001	80082	CBOD 5 day	30D Conc	10	13.	6/1/2004
001	80082	CBOD 5 day	30D Qty	0.08	.10333	6/1/2004
001	80082	CBOD 5 day	30D Conc	10	18.	3/1/2005
001	80082	CBOD 5 day	30D Qty	0.08	.14307	3/1/2005
001	80082	CBOD 5 day	7D Conc	15	18.	3/22/2005
001	80082	CBOD 5 day	7D Qty	0.12	.14307	3/22/2005
001	00300	Dissolved Oxygen	1D Conc	6.0	5.	3/14/2003
001	00300	Dissolved Oxygen	1D Conc	6.0	2.3	6/14/2004
001	00610	Nitrogen, Ammonia (NH3)	30D Conc	1.0	9.24	6/1/2004
001	00610	Nitrogen, Ammonia (NH3)	30D Qty	0.01	.07344	6/1/2004
001	00610	Nitrogen, Ammonia (NH3)	7D Conc	1.5	9.24	6/8/2004
001	00610	Nitrogen, Ammonia (NH3)	7D Qty	0.01	.07344	6/8/2004
001	00610	Nitrogen, Ammonia (NH3)	30D Conc	1.0	1.19	8/1/2004
001	00610	Nitrogen, Ammonia (NH3)	30D Conc	3.0	7.85	12/1/2004
001	00610	Nitrogen, Ammonia (NH3)	30D Qty	0.02	.0624	12/1/2004
001	00610	Nitrogen, Ammonia (NH3)	7D Conc	4.5	7.85	12/22/2004
001	00610	Nitrogen, Ammonia (NH3)	7D Qty	0.04	.0624	12/22/2004
001	00530	Total Suspended Solids	30D Conc	12	19.	3/1/2004
001	00530	Total Suspended Solids	30D Qty	0.10	.15102	3/1/2004
001	00530	Total Suspended Solids	7D Conc	18	19.	3/8/2004
001	00530	Total Suspended Solids	7D Qty	0.14	.15102	3/8/2004
001	00530	Total Suspended Solids	30D Conc	12	26.	6/1/2004
001	00530	Total Suspended Solids	30D Qty	0.10	.20666	6/1/2004
001	00530	Total Suspended Solids	7D Conc	18	26.	6/8/2004
001	00530	Total Suspended Solids	7D Qty	0.14	.20666	6/8/2004
001	00530	Total Suspended Solids	30D Conc	12	14.	12/1/2004
001	00530	Total Suspended Solids	30D Qty	0.10	.11128	12/1/2004
001	00530	Total Suspended Solids	30D Conc	12	232.	3/1/2005
001	00530	Total Suspended Solids	30D Qty	0.10	1.84405	3/1/2005
001	00530	Total Suspended Solids	7D Conc	18	232.	3/22/2005
001	00530	Total Suspended Solids	7D Qty	0.14	1.84405	3/22/2005
001	00530	Total Suspended Solids	30D Conc	12	19.	6/1/2005
001	00530	Total Suspended Solids	7D Conc	18	19.	6/1/2005
001	00530	Total Suspended Solids	30D Qty	0.10	.15102	6/1/2005
001	00530	Total Suspended Solids	7D Qty	0.14	.15102	6/1/2005
001	00530	Total Suspended Solids	30D Conc	12	22.	8/1/2005
001	00530	Total Suspended Solids	30D Qty	0.10	.17487	8/1/2005
001	00530	Total Suspended Solids	7D Conc	18	22.	8/8/2005
001	00530	Total Suspended Solids	7D Qty	0.14	.17487	8/8/2005

\* Note: Units for seven day concentration (7D Conc) and thirty day concentration (30D Conc) values are mg/l.  
 Units for seven day quantity (7DQty) and thirty day quantity (30D Qty) values are kg/day.