

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The Ohio Turnpike Commission	:	<u>Director's Final Findings</u>
682 Prospect Street	:	<u>and Orders</u>
Berea, Ohio 44017	:	

Respondent

PREAMBLE

These Director's Final Findings and Orders ("Orders") are hereby issued to the Ohio Turnpike Commission pursuant to the authority granted to the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Chapter 6111. and ORC Section 3745.01.

PARTIES BOUND

These Orders shall apply to and be binding upon Respondent, its agents, assigns and successors in interest. No change in ownership of Respondent will in any way alter Respondent's obligations under these Orders. Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

DEFINITIONS

Unless otherwise expressly provided herein, the terms used in these Orders shall have the same meaning as in ORC Chapter 6111. Whenever the terms listed below are used in these Orders, the following definitions shall apply:

1. "Bridge Area" shall mean the area located on the east side of the northbound lane of Interstate 77 under the Ohio Turnpike bridge which crosses over Interstate 77. The Bridge Area is depicted in the map attached hereto and incorporated herein as Attachment 1 to these Orders.
2. "Existing Leachate Control Measures" shall mean the discharge pipes, collection

ditches, collection ponds, collection tanks and other measures Respondent has installed at Leachate Area 1, Leachate Area 2, and the Bridge Area.

3. "Leachate" shall mean liquid that has come into contact with or been released from bedding material used by Respondent in the construction of the Ohio Turnpike.
4. "Leachate Area 1" shall mean the area located north of the Ohio Turnpike on the westbound lane west of Interstate 77, as depicted more fully in Attachment 1.
5. "Leachate Area 2" shall mean the area located north of the Ohio Turnpike on the westbound lane west of Interstate 77, and located east of an unnamed tributary of Furnace Run, as depicted more fully in Attachment 1.
6. "Ohio Turnpike" shall mean the limited access highway under the jurisdiction of Respondent that is within the borders of the State of Ohio.
7. "Respondent" shall mean the Ohio Turnpike Commission.

FINDINGS OF FACT

1. The Ohio Turnpike Commission owns and operates the Ohio Turnpike and is a "person" as defined under ORC Section 6111.01(I).
2. On November 8, 2000, sampling performed by Envisage Environmental at a sampling station described as "Outlet of Culvert 1A (Before Metroparks)" detected the presence of pollution in an unnamed tributary of Furnace Run in violation of Ohio's Water Quality Standards as set forth in Ohio Administrative Code ("O.A.C.") Chapter 3745-1. Envisage Environmental's sample results revealed Specific Conductivity at 4524 umhos/cm (Water Quality Standard 2400 umhos/cm) and Dissolved Oxygen at 2.69 mg/l (Water Quality Standard 5.0 mg/l minimum).
3. On December 4, 2000, Ohio EPA performed an inspection of the unnamed tributary of Furnace Run. Ohio EPA's inspection revealed that the source of the pollution of the unnamed tributary of Furnace Run was the discharge of Leachate from construction activities being undertaken by Respondent at the new Interstate 77 turnpike interchange.
4. Ohio EPA contacted Respondent on December 6, 2000, regarding the discharge or release of Leachate from Respondent's construction activities into the unnamed tributary Furnace Run. During December of 2000, Respondent installed the Existing Leachate Control Measures in an attempt to abate the discharge or release of Leachate to waters of the state.

5. Ohio EPA conducted follow-up inspections on December 5, 2000, December 6, 2000, December 8, 2000, December 19, 2000, December 21, 2000, January 11, 2001, January 19, 2001, and January 24, 2001. During these inspections, Ohio EPA observed and took photographs of the presence of Leachate in the unnamed tributary of Furnace Run.
6. Ohio EPA performed sampling of the unnamed tributary of Furnace Run at a foot bridge in the Furnace Run MetroPark on February 23, 2001, and February 28, 2001. Sample results revealed respectively Specific Conductivity at 3515 umhos/cm and 2595 umhos/cm in violation of Ohio's Water Quality Standard of 2400 umhos/cm.
7. On March 2, 2001, Ohio EPA sent a Notice of Violation to Respondent regarding the unpermitted discharge or release of Leachate into the unnamed tributary of Furnace Run and violation of Ohio's water quality criteria.
8. Leachate is an "industrial waste" or "other waste" as defined under ORC Section 6111.01(C) and (D) respectively.
9. The unnamed tributary of Furnace Run and Furnace Run are "waters of the state," as defined under ORC Section 6111.01(H).
10. Respondent does not hold a valid, unexpired permit to discharge or release Leachate into the unnamed tributary of Furnace Run or Furnace Run.
11. The discharge or release of Leachate by Respondent into the unnamed tributary of Furnace Run and Furnace Run without a valid, unexpired permit is a violation of ORC Section 6111.04.
12. The discharge or release of Leachate by Respondent into the unnamed tributary of Furnace Run has resulted in the violation of O.A.C. Rules 3745-1-04 and 3745-1-07.
13. 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 expected 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.

ORDERS

1. Respondent shall maintain the Existing Leachate Control Measures at Leachate Area 1, Leachate Area 2, and the Bridge Area. Respondent shall collect and dispose of all Leachate collected from these three Areas in accordance with

applicable law.

2. Within ten (10) days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval a Monitoring Plan to detect pollution in the unnamed tributary of Furnace Run and Furnace Run. Within five (5) days after the receipt of any comments on the Monitoring Plan from Ohio EPA, Respondent shall incorporate Ohio EPA's comments into the Monitoring Plan and resubmit the Monitoring Plan to Ohio EPA for approval. Ohio EPA may modify the Monitoring Plan and approve the Monitoring Plan as modified. Upon approval of the Monitoring Plan by Ohio EPA, Respondent shall implement the Monitoring Plan.

The Monitoring Plan shall include, but not be limited to, the following:

- a. A plan for visually detecting Leachate in the unnamed tributary of Furnace Run and Furnace Run; and
 - b. A sampling and analysis plan designed to detect constituents found in Respondent's Leachate including but not limited to the following parameters: Specific Conductivity, Dissolved Oxygen, Biochemical Oxygen 5 Day, Sulfate, and Chemical Oxygen Demand.
3. Unless otherwise directed by Ohio EPA, Respondent shall submit a written monthly report to Ohio EPA by the fifth (5) day of every month. At a minimum, the monthly report shall contain the following information concerning the previous month:
 - a. The results of all sampling performed pursuant to Order No. 2 of these Orders;
 - b. The quantity of Leachate collected and disposed in accordance with Order No. 1 of these Orders, including the disposal dates and locations; and
 - c. A description of any difficulties in performing the work required by these Orders encountered during the previous month and actions taken to rectify such difficulties.
 4. In the event that the sampling and analysis performed by Respondent pursuant to Order No. 2 of these Orders reveals continued downstream impacts resulting in violations of Ohio Water Quality Standards as set forth in O.A.C. Chapter 3745-1, Respondent shall immediately notify Ohio EPA of such results in writing. In addition, Respondent shall within ten (10) days after learning of such results, submit to Ohio EPA for review and approval an Additional Control Measures Plan to abate the discharge of Leachate to the unnamed tributary of Furnace Run and Furnace Run. Within five (5) days of receipt of any comments on the Additional Control Measures Plan by Ohio EPA, Respondent shall incorporate Ohio EPA's comments and resubmit the Plan to Ohio EPA for approval. Ohio EPA may modify the

Additional Control Measures Plan and approve the Plan as modified. Upon approval of the Additional Control Measures Plan by Ohio EPA, Respondent shall implement the Additional Control Measures Plan.

OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be taken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Respondent and its operations.

NOTICE

Monthly reports and all other documents required to be submitted to Ohio EPA under these Orders shall be sent by certified mail return receipt requested, or equivalent, to the following address:

Ohio Environmental Protection Agency
Northeast District Office, Division of Surface Water
2110 East Aurora Road
Twinsburg, Ohio 44087
ATTN: Bill Zawiski

RESERVATION OF RIGHTS

These Orders do not prevent Ohio EPA from enforcing the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate or necessary, including seeking penalties against Respondent, for non-compliance with these Orders. 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 do not prevent Ohio EPA from exercising its authority to require Respondent to perform additional activities pursuant to Chapter 6111. of the Ohio Revised Code or any other applicable law in the future. These Orders do not restrict the right of Respondent to raise any administrative, legal or equitable claim or defense for any additional activities that Ohio EPA may seek to require of Respondent. These Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

TERMINATION

The Respondent's obligations under these Orders shall be satisfied and terminated when the Respondent demonstrates in writing and certifies to the satisfaction of the Ohio EPA that it has satisfied all its obligations under these Orders, and the Chief of Ohio EPA's Division of Surface Water acknowledges the termination of these orders in writing.

This certification shall be submitted by the Respondent to the Northeast District Office (attention: DSW Enforcement Supervisor) and shall be signed by a responsible official of the Respondent. A responsible official is as defined in OAC Rule 3745-33-03(D)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole proprietorship, and OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility. The certification shall contain the following attestation:

"I certify under the penalty of law that I have personally examined and am familiar with the information contained in or accompanying this certification, and based on inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, Respondent agrees to comply with these Orders, Respondent agrees that these Orders are lawful and reasonable, and Respondent agrees that the time frames provided for compliance herein are reasonable. Ohio EPA expressly does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights section of these Orders.

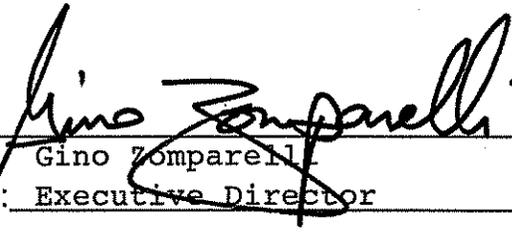
Respondent hereby waives the right to appeal the issuance, terms and service of these Orders, and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that 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 agrees to continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO AGREED:

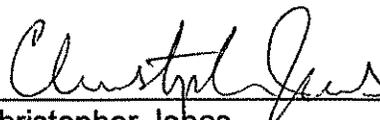
Respondent

By: 
Gino Zomparelli
Title: Executive Director

Date: 4-19-01

APPROVED: 
Commission Counsel

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency


Christopher Jones
Director

Date: 5-2-01

Attachment 1

