

OHIO E.P.A.

MAY 18 2001

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:
Royster-Clark, Inc.
111 Moore Road
Hillsboro, Ohio 45133

:
:

**Director's Final Findings
and Orders**

PREAMBLE

Pursuant to Ohio Revised Code Section 6111.03(H), the Director of the Ohio Environmental Protection Agency hereby makes the following Findings of Fact and issues the following Orders:

PARTIES BOUND

These Orders shall apply to and be binding upon Royster-Clark, Inc., hereinafter "Respondent," its assigns and successors in interest. No change in ownership of the "Facility" as hereinafter defined, will in any way alter Respondent's responsibilities under these Orders. Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

FINDINGS OF FACT

1. Respondent owns and operates the Facility, a wholesale farm fertilizer and agricultural products sales office located at 111 Moore Road in Hillsboro, Highland County, Ohio.
2. On March 6, 2000, Respondent reported an accidental release of an estimated 25,000 gallons of 28% Urea Ammonium Nitrate solution which resulted in a discharge of pollutants to an unnamed tributary of Moberly Branch, tributary to Clear Creek, which is tributary to Rocky Fork Lake, and subsequently, Rocky Fork Creek. Each of these water bodies constitute "waters of the state" as defined by Ohio Revised Code Section 6111.01.
3. The March 6, 2000 release resulted in a fish and wildlife kill of at least 14,762 animals in over 6 stream miles affected, as documented by Ohio Department of Natural Resources, Division of Wildlife.

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: Zona L. Clement Date: 5-18-01

4. Respondent has not applied for and does not hold an effective National Pollutant Discharge Elimination System (NPDES) Permit for the aforementioned discharge.
5. These unpermitted discharges of pollutants to waters of the state are a violation of Ohio Revised Code Sections 6111.04 and 6111.07.
6. The discharge caused by Respondent resulted in violations of Ohio's Water Quality Standards as found in Ohio Administrative Code Section 3745-1-04 (d) and (e) and OAC 3745 1-07 for ammonia-nitrogen measured downstream on Clear Creek at the confluence of Clear Creek and Moberly Branch. The recorded value of >10 mg/l as documented by staff of Ohio Department of Natural Resources, Division of Wildlife is in exceedence of the Water Quality Standard of 9.6 for this parameter, given the recorded values for PH and temperature at the time of sampling.
7. Inspections by Ohio EPA staff conducted on March 10, 2000 and March 23, 2000 revealed that, prior to the spill event, Respondent had failed to correct cracks found in the concrete spill containment dike and failed to conduct and document visual inspections of this equipment.
8. Subsequent to Ohio EPA's initial inspection, Respondent initiated and completed repairs to the spill containment dike by installing a liner at the cost of \$8,100. These repairs were completed on December 1, 2000.
9. Subsequent to Ohio EPA's inspection, Respondent prepared forty three Storm Water Pollution Prevention Plans, one for each site in Ohio. These plans were prepared and ready for dissemination to all locations by February 2, 2001.
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 Chapters 6111 and 6117 of the revised Code.

ORDERS

1. Within 180 days of the effective date of these Orders, Respondent shall submit to Ohio EPA, and maintain at the facility, a Storm Water Pollution Prevention Plan (SWPPP) for this location. The contents of the SWPPP shall be as outlined in Ohio EPA's General Permit Authorization to Discharge Storm Water Associated with Industrial Activity Under the National Pollutant Discharge Elimination System.
2. Within 180 days of the effective date of these Orders, Respondent shall prepare a Storm Water Pollution Prevention Plan for each of its locations in the State of Ohio

which have the potential to discharge storm water to waters of the state and which store Section 313 Water Priority Chemicals.

3. Within 30 days of the effective date of these Orders, Respondent shall, as a Supplemental Environmental Project (SEP), pay to the Highland Soil and Water Conservation District the amount of thirteen thousand seven hundred and sixty eight dollars (\$13,768) for the purchase and establishment of warm season grasses for erosion control, improved water quality, and wildlife enhancement in the Clear Creek Watershed. A photocopy of the check should be sent to Ohio EPA SWDO at the address listed in Order 6.
4. Within 30 days of the effective date of these Orders, Respondent shall, as a SEP, pay to the Hillsboro Fire Department the amount of twenty eight thousand four hundred and three dollars (\$28,403) for the purchase of confined space rescue equipment, hazardous materials training for ten staff members, and a level A responder suit. A photocopy of the check should be sent to Ohio EPA SWDO at the address listed in Order 6.
5. Respondent shall pay to the Ohio EPA the amount of fifty thousand dollars (\$50,000) in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to Chapter 6111 of the Ohio Revised Code. This payment shall be made by tendering a check payable to the "Treasurer, State of Ohio" for the full amount within thirty (30) days after the effective date of these Findings and Orders to the following address:

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

A photocopy of the check should be sent to Ohio EPA SWDO at the address listed below:

6. Within 7 days of the milestones outlined in Orders 1, 3, 4 and 5 above, Respondent shall send written confirmation to the following address:

Ohio EPA, Southwest District Office
Division of Surface Water
401 E. Fifth Street
Dayton, OH 45402-2911

Attn: Enforcement Supervisor

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. 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's operation of its Facility.

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 and necessary, including seeking penalties against Respondent, for noncompliance with these Orders. 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 all obligations under these Orders have been performed and, subsequent to the completion of the first requirement of these Orders for a period of 12 consecutive months and the Chief of the Ohio EPA, Division of Surface Water, acknowledges the termination of these Orders in writing.

This certification shall be submitted by the Respondent to the Southwest 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. 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, and in lieu of further enforcement action by the Ohio EPA for only the matters addressed in these Orders, Respondent agrees that these Orders are lawful and reasonable, that the schedules provided for compliance herein are reasonable and Respondent 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. Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph 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, the 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 shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

SIGNATORY AUTHORITY

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:
Royster-Clark, Inc.

By: J. Billy Pivkle

Date: 4/30/01

Title: Managing Director, EHS

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency

Christopher Jones
Christopher Jones
Director

Date: 5-14-01