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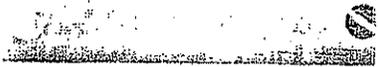
PRO TREE  
OHIO EPA DSW

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OHIO E.P.A.

JUL -2 2009

ENTERED DIRECTOR'S JOURNAL



Effective Date JUL 2 2009

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

In the Matter of:

The Pro Incorporated  
1551 17<sup>th</sup> St.  
Cuyahoga Falls, Ohio 44223

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

By: DMJ Lassiter Date: 7-2-09

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to The Pro Incorporated (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Chapter 6111 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 Respondent's Site described in Finding #1 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

The Director of Ohio EPA (Director) has determined the following findings:

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1. On August 11, 1995, the Ohio EPA, Northeast District Office, Division of Surface Water (NEDO-DSW) received a complaint from the Summit County Health Department regarding a raw sewage discharge at Respondent's property located at 617 West Portage Trail Ext., Cuyahoga Falls, Ohio 44223 (Site). Respondent leases the Site and Respondent's tenant operates the Site as Kelly's Bar and Grille.
2. On August 21, 1995, NEDO-DSW conducted an inspection at the Site. An onsite treatment system was noted to be in existence at the time of the inspection, consisting of a septic tank with a discharge into a ditch at the west side of the property. Raw sewage was observed discharging to the ditch in violation of ORC Chapter 6111.
3. On August 24, 1995, NEDO-DSW sent Respondent an inspection letter outlining the findings. The letter directed Respondent to abandon the septic system and connect to existing sanitary sewers. If connection to sanitary sewers was not feasible, then Respondent was directed to replace the existing system with an extended aeration package plant.
4. On September 14, 1995, Respondent sent a letter to the city of Akron requesting consideration for the connection of the Site to the existing sanitary sewers. This letter referenced the August 21, 1995 NEDO-DSW inspection.
5. On May 3, 2001, NEDO-DSW conducted an inspection at the Site due to a complaint of a failing septic system. Discharge of raw sewage onto the property as well as the neighboring property and drainage ditch was noted to be in existence at the time of the inspection. Raw sewage discharging to the ditch is in violation of ORC Chapter 6111.
6. On May 8, 2001, NEDO-DSW sent Respondent an inspection letter outlining the findings. The letter directed Respondent to abandon the septic system and connect to existing sanitary sewers. If connection to sanitary sewers was not feasible, then Respondent was directed to replace the existing system with an extended aeration package plant. Respondent was also directed to respond in writing regarding intentions for compliance by May 14, 2001.
7. On May 11, 2001, Respondent sent a letter informing NEDO-DSW that contact had been made with the cities of Cuyahoga Falls and Akron requesting sewer availability. The letter also stated that if sewers are not available contact will be made for installation of an extended aeration plant.

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8. On August 17, 2001, NEDO-DSW sent a Notice of Violation (NOV) to Respondent stating that the existing septic system discharge is in violation of ORC Chapter 6111. The NOV directed a response in writing by August 24, 2001 on the Intentions of Respondent regarding compliance.
9. On August 29, 2001, Respondent sent a letter to NEDO-DSW requesting approval for the installation of a new 3,000 gallon holding tank. Respondent explained extenuating circumstances (road widening) as the reason for not installing a new septic system or connecting to sanitary sewers.
10. On August 30, 2001, NEDO-DSW sent a letter to Respondent denying the installation of the requested sewage holding tank. The letter gave Respondent until March 1, 2002 to submit applicable permit applications for connection to a sanitary sewer or installation of an extended aeration package plant. The letter informed Respondent that a PTI was needed in order to construct a package plant and a NPDES permit needed to be obtained to discharge from the package plant. To date, no applications have been received by NEDO-DSW.
11. On December 15, 2006, NEDO-DSW sent Respondent a letter outlining the continued violations of ORC Chapter 6111 and directed Respondent to hire a septic hauler to pump the treatment system weekly. The letter also informed Respondent that this matter would be referred to Ohio EPA's Legal Section.
12. The Summit County Health District conducted inspections of the Site on March 12, 1992, August 8, 1995, February 22, 2005, March 30, 2005, and November 2, 2006. Each inspection documents poor operating conditions on the Non-Mechanical Septic System.
13. On February 11, 2009, NEDO-DSW sent Respondent a letter confirming the understanding that Respondent's tenant will be moving out of the Site by September 30, 2009 and the Kelly's Bar and Grille operations will cease as of that date. NEDO-DSW indicated that Kelly's Bar and Grille could continue to operate at the Site through September 2009, provided the existing, failing treatment system is modified into a temporary holding tank by March 31, 2009, to abate the human health risk and risk to the environment.
14. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC § 6111.01 or violate any order, rule, or term or condition of a permit issued or adopted by the Director pursuant to those sections. Each day of violation is a separate offense.

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15. 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. No later than April 15, 2009, Respondent shall modify the existing wastewater treatment system at the Site into a temporary holding tank which conforms with the requirements of OAC Rule 3745-42-11. These holding tank requirements include, but are not limited to, plugging the tank outlet, verifying the integrity of the existing tank, and installing a high water alarm which is activated when the tank reaches 75% of its storage capacity.
2. No later than April 15, 2009, Respondent shall cease all wastewater discharges to waters of the state from this Site and no further discharges shall occur unless authorized by an effective NPDES permit.
3. From the effective date of these Orders, and continuously until the temporary holding tank is properly abandoned pursuant to Order #5, Respondent shall hire a septic hauler to pump the tank as necessary to prevent any overflows. Respondent shall ensure the pumped wastewater is disposed of at an appropriately permitted wastewater treatment works and shall submit pumping receipts to Ohio EPA-DSW within ten (10) days after each pumping at the address listed in Section X of these Orders.
4. No later than September 30, 2009, the current tenant shall cease operating Kelly's Bar and Grille and shall move out of the Site.
5. No later than October 30, 2009, Respondent shall properly abandon the temporary holding tank by:
  - (a) Pumping and hauling the entire contents of the tank for recycling, treatment or disposal at a facility that has been permitted by the applicable regulatory authority;
  - (b) Cleaning the holding tank and related areas as necessary; and
  - (c) Decommissioning the in-ground holding tank by filling the holding tank with clean sand, soil, or other inert material or remove the holding tank from the ground.

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6. Until such time as a new sewage system is approved and installed at the Site or a connection to sanitary sewer is made, Respondent shall not allow any wastewater to be generated at the Site. Respondent shall obtain the appropriate permits from the Summit County Health Department and/ or Ohio EPA prior to the installation of a replacement sewage system at the Site.
7. Within fourteen (14) days of the deadlines listed in Orders #1, # 4, and #5 Respondent shall submit written notification and documentation of compliance with said Orders to Ohio EPA-DSW at the address listed in Section X of these Orders.
8. Respondent shall provide a copy of these Orders to any prospective or new owners should a sale or transfer of ownership of the Site occur and shall notify Ohio EPA at the address listed in Section X of these Orders at least sixty (60) days prior to any such ownership change.
9. Respondent shall pay the amount of four thousand dollars (\$4,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) days of the effective date of these Orders, payment to Ohio EPA shall be made by official check made payable to "Treasurer, State of Ohio" for four thousand dollars (\$4,000) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

## 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 DSW 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 as defined in OAC Rule 3745-33-03(E).

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### 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 operation of Respondent's PWS or wastewater treatment system.

### 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  
 2110 E. Aurora Road  
 Twinsburg, Ohio 44087-1969  
 Attn: DSW Enforcement Unit Supervisor

Ohio Environmental Protection Agency  
 Lazarus Government Center  
 Division of Surface Water  
 50 West Town Street, Suite 700 [P.O. Box 1049]  
 Columbus, Ohio 43215 [43216-1049]  
 Attn: Manager, Storm Water and Enforcement Section  
 [For mailings use the post office box number and zip code in brackets]

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

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### 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.

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**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:**

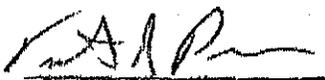
**Ohio Environmental Protection Agency**

  
Chris Korleski, Director

7/1/09  
Date

**IT IS SO AGREED:**

**The Pro Incorporated**

  
Signature

4/20/09  
Date

Vincent G Procaccio  
Printed or Typed Name and Title