

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
AUG 17 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

EnviroArtscaping, Inc.
dba Garden Ridge Nursery and Organics
28115 Leach Rd., Suite B
Defiance, Ohio 43512

Respondent

Director's Final Findings
and Orders

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:  Date: 8-17-07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to EnviroArtscaping, Inc., dba Garden Ridge Nursery and Organics ("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(H), 6111.46 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 ownership of Respondent or the Site (as hereinafter defined) 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 owns and operates two registered class III composting facilities, as defined in Ohio Administrative Code ("OAC") 3745-27-40(E), located at 05557 State Route 66 North, Defiance, Defiance County, Ohio ("Site").
2. The Site currently consists of the two registered class III composting areas, industrial waste facilities known as Ponds 1 and 4, and the Final Pond, and a wetland area in the southeast corner of the Site.
3. Pond 1 and the Final Pond collect water from the composting areas, the retail area, the parking area, and other areas on the Site.
4. Discharges from the Site to Behrens Ditch and South Branch Behrens Ditch were documented on August 19, 2003, October 29, 2003, June 9, 2004, and February 7, 2007. In addition, a release to a tributary of Mattock Ditch resulting from over application of industrial waste water by Respondent off-site was documented on April 10, 2004. South Branch Behrens Ditch joins Behrens Ditch on the Site. Behrens Ditch flows into Mattock Ditch, which flows into Webb Run and then into the Tiffin River. South Branch Behrens Ditch, Behrens Ditch, Mattock Ditch, Webb Run, and the Tiffin River are "waters of the state," as defined in R.C. § 6111.01.
5. Respondent holds an Ohio National Pollutant Discharge Elimination System ("NPDES") permit, No. 2IN00204*AD. The permit was effective April 1, 2005, and expires March 31, 2010.
6. The NPDES permit, among other things, authorizes Respondent to land apply industrial waste, and to discharge from the Site to Behrens Ditch in limited circumstances in accordance with the terms and conditions in the permit.
7. The terms and conditions in Respondent's NPDES permit include several compliance schedules, sampling requirements, minimum freeboard requirements in the ponds, and restrictions on the land application of industrial waste water from the ponds.
8. During February 2006, Respondent began receiving fly ash at the Site. Fly ash is an "industrial waste" or "other waste," as defined in R.C. § 6111.01. The fly ash remains at the Site, in piles located north of the Final Pond, adjacent to one of the composting areas.
9. Storm water on the Site which comes in contact with the fly ash is collected and

pumped into the Final Pond. Industrial waste water from the Final Pond has been pumped into Pond 1. Therefore, the industrial waste water in both the Final Pond and Pond 1 may contain contaminants from the fly ash.

10. Respondent's NPDES permit does not authorize land application of industrial waste water which has come in contact with fly ash. Respondent was notified of this by letter dated March 24, 2006 from Ohio EPA.
11. On April 10, 2006, Respondent submitted an application for a modification of its NPDES permit to allow receipt of non-toxic fly ash, non-toxic bottom ash, non-toxic foundry sand, Class A biosolids, spent lime, sludge from drinking water processes, foundry slag, steel slag, screw pressed paper sludge, and cardboard recycling waste on Site for blending with Respondent's compost finished products.
12. By letter dated October 6, 2006, Ohio EPA requested additional information about the materials Respondent listed in the NPDES permit modification application, including but not limited to, an initial characterization of the industrial wastes Respondent proposed to receive at the Site.
13. By letter dated February 18, 2007, Respondent responded to the Ohio EPA's request for additional information by asking that the NPDES permit modification application be processed for fly ash only. However, the requested additional information was not provided for fly ash or any of the other materials. Respondent was advised that its permit modification application was still deficient by letter dated March 8, 2007 from Ohio EPA.
14. By letter dated March 12, 2007, Respondent resubmitted to Ohio EPA results of analyses of the fly ash performed in 2004 and 2005 by the generator of the fly ash and previously submitted to Ohio EPA by Respondent on February 2, 2006. This data did not include the additional information requested by Ohio EPA in the October 6, 2006 and March 8, 2007 letters.
15. By letter dated March 25, 2007, Respondent submitted results of analyses on the industrial waste water in Pond 1 and the Final Pond to Ohio EPA. The analyses of the industrial waste water in the ponds did not include most of the contaminants of concern resulting from contact of the storm water with the fly ash, including metals.
16. On March 20, 2007, Ohio EPA took samples of the industrial waste water in

Pond 1 and the Final Pond and had them analyzed for metals, among other parameters.

17. Part I.A. of Respondent's NPDES permit (pages 9 and 17) requires that beginning on August 1, 2005, a minimum of 2.3 feet of freeboard must be maintained in Pond 1 and the Final Pond. Respondent has failed to comply with the freeboard requirements in its NPDES permit. As a result, Respondent has stated that Pond 1 and the Final Pond are at imminent risk of overflowing into waters of the state.
18. Part II.C.1. of Respondent's NPDES permit (page 29) prohibits the discharge, overflow or spill of industrial waste from the Site with certain exceptions. All legal means of disposal of the industrial waste must have been fully implemented before the exceptions apply. Pursuant to Part I.A. of Respondent's NPDES permit (page 4), disposing of industrial waste at an NPDES permitted wastewater treatment plant (Outfall 002) is one of the legal options for disposal of industrial waste described in Part II.C.1. of the NPDES permit.
19. By letters dated February 18, 2007 and March 12, 2007, Respondent stated that it is unable to dispose of the industrial waste water in Pond 1 and the Final Pond by disposing of it at an NPDES permitted wastewater treatment plant due to lack of equipment and financial resources. This was also stated in an email dated March 5, 2007 from Respondent's counsel.
20. 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 an NPDES permit issued by the Director.
21. 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 is a separate offense.
22. In order to prevent the overflow of the industrial waste water from Pond 1 and the Final Pond to waters of the state and based upon the analyses of the samples from Pond 1 and the Final Pond taken on March 20, 2007 by Ohio EPA, the Director is issuing these Orders pursuant to R.C. §§ 6111.03(H) and 6111.46.
23. These Orders do not constitute authorization or approval of the construction of

any physical structure or facilities, or the modification of any existing disposal system. Any such construction or modification is subject to the plan approval and permit to install (PTI) requirements of R.C. §§ 6111.45 and 6111.46 and OAC Chapter 3745-42.

24. 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 R.C. Chapter 6111.

V. ORDERS

1. Within twenty-one (21) days of the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval, in accordance with Section X. of these Orders, a plan describing the proposed method(s) of disposal or utilization of the fly ash on the Site. At a minimum, the plan shall include:
 - a. Analyses of one grab sample from each pile of fly ash on Site for the following pollutants. One grab sample shall be collected from each of the two largest piles of fly ash on Site, and these grab samples shall not be composited. Grab samples from each of the two smaller piles of fly ash on Site may be composited. An analytical method set out in 40 CFR 136 that generates total pollutant results shall be employed. Respondent shall document in the plan from which fly ash pile each sample was taken and how the samples were taken. At least one business day prior to sampling, Respondent shall notify Ohio EPA's Northwest District Office in writing of the date and time sampling will take place so that a representative of Ohio EPA can be present during the sampling.
 - i. Arsenic;
 - ii. Cadmium;
 - iii. Copper;
 - iv. Lead;

- v. Mercury;
 - vi. Nickel;
 - vii. Selenium;
 - ix. Zinc.
- b. Specification of the total cubic yards of fly ash at the Site.
- c. A description of all proposed methods of disposal or utilization of the fly ash.
- d. If Respondent proposes to blend the fly ash with other material(s):
- i. Identification of all material(s) to be blended with the fly ash;
 - ii. Identification of all sources of all material(s) to be blended with the fly ash and how those material(s) will be transported to the blending location(s);
 - iii. Identification of the location(s) where blending will take place;
 - iv. Description of how the blending will be done, including the blending ratio, which shall not exceed fifty percent (50%) total fly ash by volume;
 - v. A proposed schedule for blending the fly ash with the other material(s) to ensure removal of all fly ash and/or fly ash blended with other material(s) (hereinafter "blended material") within ninety (90) days from the effective date of these Orders;
 - vi. A description of measures that will be taken to prevent any discharge to waters of the state and any air emissions during the blending process. Such measures may include covering the fly ash and the blended material or storing the fly ash and the blended material in large plastic "silage" bags.
- e. Identification of all locations where Respondent proposes to store, dispose

of, or utilize the fly ash or the blended material.

- f. A map of the locations where Respondent proposes to store, dispose of, or utilize the fly ash or the blended material, which shows the locations of waters of the state, including both surface waters and ground water wells, and the setbacks which will be maintained around those surface waters and ground water wells.
- g. A description of how the distance between the fly ash or the blended material and surface waters and ground water wells will be maximized. At a minimum, neither the fly ash nor the blended material shall be located within the following isolation distances, except as provided in Orders 1.g.iii. and iv.:
 - i. 100 feet from surface waters;
 - ii. 300 feet from ground water wells.
 - iii. 150 feet isolation distance shall be maintained from blending areas to ground water wells on the Site, provided that all materials in the blending areas shall be covered during any precipitation event.
 - iv. 100 feet isolation distance shall be maintained from the fly ash and the blended material in areas of the Site other than the blending areas to ground water wells on the Site, provided that the fly ash and the blended material shall be covered at all times except during the blending process.
- h. A detailed description of measures that will be taken to prevent any discharge to waters of the state from locations where Respondent proposes to store, dispose of, or utilize the fly ash or the blended material, including a description of how surface water will be managed on site to minimize the generation of leachate and to minimize the volume of storm water coming into contact with the fly ash or the blended material. Such measures may include covering the fly ash and the blended material or storing the fly ash and the blended material in large plastic "silage" bags.
- i. A detailed description of measures that will be taken to prevent any air emissions from locations where Respondent proposes to store, dispose of, or utilize the fly ash or the blended material. Such measures may

include covering the fly ash and the blended material or storing the fly ash and the blended material in large plastic "silage" bags.

- j. These Orders do not require Respondent to identify in the plan customers to which the blended material is sold or the locations off the Site of such customers.
 - k. The fly ash in a pile may not be blended with other material(s) for use as a soil amendment, or for soil blending or land application if the result of the analysis of the fly ash sample from the pile required by Order 1.a. is greater than the following concentrations on a dry weight basis for any pollutant:
 - i. Arsenic 41 mg/kg
 - ii. Cadmium 39 mg/kg
 - iii. Copper 1,500 mg/kg
 - iv. Lead 300 mg/kg
 - v. Mercury 17 mg/kg
 - vi. Nickel 420 mg/kg
 - vii. Selenium 100 mg/kg
 - viii. Zinc 2,800 mg/kg
2. Respondent shall revise the plan required by Order 1. within fourteen (14) days of receipt of written comments or notice of deficiency from Ohio EPA.
 3. The plan required by Order 1. is not required to be submitted if the fly ash is disposed of at a licensed landfill.
 4. Within ninety (90) days of the effective date of these Orders, Respondent shall remove all fly ash from the Site either in accordance with a plan approved under Order 1., or by disposing of it at a licensed landfill or temporarily storing it off the Site until approval of a plan under Order 1., in accordance with applicable laws and regulations.

5. If the fly ash is temporarily stored off the Site, Respondent shall:
 - i. Place the fly ash in piles which are stable;
 - ii. Minimize the footprint of the piles of fly ash;
 - iii. Maximize the distance of the piles of fly ash from all surface waters and ground water wells, at a minimum observing the isolation distances in Order 1.g.;
 - iv. Place the piles of fly ash under a roof or cover them with plastic or other impervious material, or place the fly ash in large plastic "silage" bags, and maintain the roof or cover or bags.
 - v. Respondent shall take all necessary precautions to ensure that the location(s) where the fly ash is placed will not result in an accumulation of leachate or storm water which comes in contact with the fly ash or a discharge to waters of the state, as defined in R.C. § 6111.01, by the fly ash, leachate from the fly ash, or storm water which comes in contact with the fly ash, and will not result in air emissions in violation of R.C. Chapter 3704 and regulations adopted thereunder.
6. Respondent shall not accept on the Site any "industrial waste" or "other waste," as defined in R.C. § 6111.01, except Type A, Type B, and Type C feedstocks, as defined in OAC 3745-27-40(A)(1), (2), and (3), and those additives and bulking agents specifically listed in OAC 3745-27-01(A)(1) and (B)(8), respectively, without first applying for and receiving approval from the Director of an NPDES permit modification which authorizes receipt of such "industrial waste" or "other waste" on the Site.
7. For the purpose of increasing the freeboard in Pond 1 and the Final Pond to a level which will prevent unauthorized overflow of industrial waste water to waters of the state, Respondent shall land apply industrial waste water from Pond 1 and the Final Pond in accordance with these Orders on industrial waste land application sites which have received prior authorization from Ohio EPA Northwest District Office in accordance with Part II.E.1. of Respondent's NPDES permit either prior to or after the effective date of these Orders.

8. Respondent shall prevent the discharge, overflow or spill from industrial waste water land application:
 - a. Beginning on the effective date of this permit there shall be no discharge, overflow or spill of pollutants to waters of the State from land applied industrial waste water except for discharges that are composed of storm water runoff and/or snow melt runoff originating from a land area where industrial waste water has been applied in compliance with this permit.
 - b. If a discharge, overflow or spill of industrial waste water occurs during a land application operation, and reaches waters of the State:
 - i. Respondent shall record the following data:
 - Start time of the release (in military time)
 - End time of the release (in military time)
 - ii. Respondent shall collect and analyze grab samples from each discharge, overflow or spill for the following list of parameters:
 - 00310 - Biochemical Oxygen Demand, 5-Day (BOD5) - mg/L
 - 00610 - Nitrogen, Ammonia (NH3) - mg/L
 - 00665 - Phosphorus, Total (P) - mg/L
 - 00530 - Total Suspended Solids - mg/l
 - iii. Grab samples shall be collected at such times and locations, and in such fashion, as to be representative of the industrial waste water that comprises the discharge, overflow or spill.
 - iv. Respondent shall collect the sample within 30 minutes of the first knowledge of the discharge, overflow or spill, or, if sampling in that period is inappropriate due to dangerous weather conditions, collect the sample as soon as possible after suitable conditions occur, and document the reason for delay.
 - c. Respondent shall report the results of the discharge, overflow or spill sampling to Ohio EPA, Northwest District Office, in accordance with Section VIII. of these Orders, within 14 days of occurrence. The report shall, at a minimum, contain:
 - i. The sample results of the aforementioned parameters;

- ii. A description of the reason for the discharge, overflow or spill;
 - iii. The location, estimate of quantity and duration of the discharge, overflow or spill;
 - iv. The quantity and duration of the rainfall leading up to the event; and
 - v. Any measures taken to clean up and eliminate the discharge, overflow or spill and prevent reoccurrence of the discharge, overflow or spill.
- d. Respondent shall notify Ohio EPA by calling 1-800-282-9378 as soon as possible but no later than 24 hours following the first knowledge of a discharge, overflow or spill of pollutants from land applied industrial waste water that is not composed of storm water runoff and/or snow melt runoff (e.g., tile discharge during dry weather). Timely notification allows Ohio EPA to assist in clean up and remediation efforts and may reduce the magnitude of environmental impact and extent of permit violations.
9. Respondent shall comply with the following general industrial waste water land application rate restrictions:
- a. All industrial waste land application sites shall receive prior authorization from Ohio EPA Northwest District Office. No industrial waste water shall be land applied to sites that have not received prior authorization from Ohio EPA Northwest District Office.
 - b. Prior to land applying industrial waste water, Respondent shall inspect the land application area to determine the suitability of the site for land application (considerations shall include, but are not limited to, evidence of soil cracking, available water capacity of the soil, prior precipitation, forecasted precipitation) and document field conditions at the time of the inspection. Broken tiles or blow out holes shall be repaired prior to land application. A log of all the findings identified by Respondent during the preapplication inspection shall be maintained.
 - c. The industrial waste water application rate shall not exceed the available water capacity in the upper eight inches of the soil for both subsurface and non-subsurface drained sites (using the available water capacity table in

USDA, NRCS Ohio Field Office Technical Guide, available from the Director of Ohio EPA). The application rate shall be adjusted to preclude surface ponding and/or runoff from a land application site.

- d. Land application shall not occur on saturated soils or during rain or runoff events, and shall not occur if the forecast contains a greater than 50% chance of precipitation for any individual hour, for a period extending 24 hours after the commencement of land application.
- e. For land application sites with subsurface tile drainage, Respondent shall visually monitor all field tile outlets before, during and after application of industrial waste water to the site and record the results of that monitoring. Respondent shall have access to or methods/devices to stop or capture subsurface drain flow. If industrial waste water reaches the subsurface drain outlet to waters of the State, the application of industrial waste water shall cease and the flow stopped or captured. If land application has caused industrial waste water to be discharged from a field tile, Ohio EPA shall be notified by calling 1-800-282-9378 as soon as possible, but in no case later than 24 hours following first knowledge of the occurrence.
- f. For the land application of industrial waste water to sites with subsurface tile drainage, the application rate shall be the most restrictive of the following:
 - i. less than or equal to thirteen thousand gallons per acre per day;
 - ii. the available water capacity of the soil;
 - iii. to preclude surface ponding or runoff from the land application site.
- g. For fields that are prone to flooding, floodplains, or floodways, industrial waste water shall be injected or incorporated within 24 hours of application. No industrial waste water application shall occur during periods of expected flooding (using the USDA, NRCS Ohio Field Office Technical Guide, available from the Director of Ohio EPA).
- h. Respondent shall comply with these Orders for land application activities conducted on each site where Respondent, or anyone employed by Respondent, owns, operates, or land applies industrial waste water generated by Respondent, or determines timing and amount of industrial

waste water to be applied on fields not otherwise owned, rented, or leased by Respondent.

- i. Respondent may only land apply industrial waste water during daylight hours.
10. Respondent shall comply with the following Industrial waste water land application rate restrictions when ground is frozen or snow-covered:
- a. Industrial waste water shall be managed in such a manner to prevent land application on frozen or snow covered ground. Every attempt shall be made by Respondent to avoid land application during frozen or snow covered ground conditions because of lack of agronomic benefit and high risk of pollution of surface waters. Other locations for industrial waste water disposal should be investigated prior to the land application (i.e., disposal at a wastewater treatment plant).
 - b. Records shall be maintained for all instances of application on frozen or snow covered ground that include:
 - i. Date;
 - ii. Amount applied;
 - iii. Location and number of acres to which applied;
 - iv. Weather and soil conditions including depth of snow cover and surface residue cover; and
 - v. Reason for applying industrial waste water at that time.
 - c. In addition to the other land application restrictions in these Orders, the following criteria shall also be met for surface industrial waste water application on frozen or snow covered ground:
 - i. The field shall have greater than or equal to ninety percent surface residue cover at the time of application, and vegetation/residue shall not be completely covered by ice and/or snow at the time of application.

- ii. The maximum industrial waste water application rate is five thousand gallons per acre per day.
 - iii. Industrial waste water shall not be applied on more than twenty (20) contiguous acres. Contiguous areas for application are to be separated by a break of at least two hundred (200) feet. Areas used for application are to be the furthest from surface waters and present the least potential for runoff.
 - iv. Setbacks from surface waters and conduits to surface waters (including grassed waterways and surface drains) shall be a minimum of two hundred (200) feet. This setback shall also have at least 90 per cent surface residue cover, and vegetation/residue shall not be completely covered by ice and/or snow at the time of application. This distance may need to be further increased due to local conditions.
 - v. Industrial waste water shall not be applied on slopes greater than six (6) per cent.
- d. If Respondent surface applies industrial waste water on frozen or snow covered ground and runoff from the field discharges to waters of the State, Respondent shall notify Ohio EPA within two hours of detection of the runoff event. Any additional surface application of industrial waste water to frozen and/or snow covered ground is prohibited on the field where the runoff event occurred. Respondent may thereafter only land apply industrial waste water on that field by: (1) incorporation into the soil by means of mixing of the industrial waste water with the surface soil using standard agricultural practices, such as tillage; or (2) injection of the industrial waste water below the land surface in the crop root zone using equipment specifically designed for this purpose.
11. Respondent shall observe the following setback distances for land application of industrial waste water:
- a. Waters of the state - industrial waste water shall not be applied within thirty-three (33) feet of waters of the state (or two hundred (200) feet if the ground is frozen or snow-covered).

- b. Emergency management zone - industrial waste water shall not be applied within the emergency management zone of a public water system using surface water.
- c. Drinking water source protection area for a public water system using ground water - industrial waste water shall not be applied within a drinking water source protection area for a public water system using ground water or wellhead protection area that has been delineated or endorsed by the Director for a public water system using ground water. The isolation distance from a public water system well, where no delineated or endorsed ground water source water assessment and protection area or wellhead protection area exists, shall be one thousand (1,000) feet.
- d. Private water systems - industrial waste water shall not be applied within one hundred (100) feet of a private water system when injection or surface application followed by incorporation within 24 hours is used. Industrial waste water shall not be applied within three hundred (300) feet of a private water system for surface application not followed by incorporation within 24 hours.
- e. UIC class 5 well - industrial waste water shall not be applied within one hundred (100) feet of a UIC class 5 well when injection or surface application followed by incorporation within 24 hours is used. Industrial waste water shall not be applied within three hundred (300) feet of a UIC class 5 well for surface application not followed by incorporation within 24 hours.
- f. Springs - industrial waste water shall not be applied within three hundred (300) feet of a spring.
- g. Medical care facility - industrial waste water shall not be applied within one thousand (1,000) feet of a medical care facility.
- h. Occupied building - industrial waste water shall not be applied within three hundred (300) feet of an occupied building.
- i. Slope - industrial waste water shall not be applied to cropland over fifteen (15) per cent slope or to pasture/hayland over twenty (20) per cent slope unless one of the following precautions is taken:

- i. Immediate incorporation or injection with operations done on the contour, unless the field has 80% ground cover (residue or canopy);
 - ii. Applications are timed during periods of lower runoff and/or rainfall (June 20 to October 30);
 - iii. Split applications are made (separated by rainfall events) with single applications not exceeding five thousand (5,000) gallons per acre; or,
 - iv. The field is established and managed in contour strips with alternating strips in grass or legume.
12. Respondent shall maintain the following industrial waste water land application records for a minimum of three years, and shall make them available for inspection upon request:
 - a. The date(s) industrial waste water is applied to each field;
 - b. Weather conditions at the time of application and for 24 hours prior to and following application;
 - c. Explanation of the basis for determining industrial waste water application rates (including daily log of Respondent's assessed available water capacity at land application sites);
 - d. The method used to apply the industrial waste water; and,
 - e. Date(s) of industrial waste water application equipment inspection.
13. The following definitions shall apply to these Orders:
 - a. "Discharge" means the addition of any pollutant or combination of pollutants to waters of the state from a point source. This definition includes additions of pollutants into waters of the state from: surface water runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned

treatment works.

- b. "Drinking water source protection area for a public water system using ground water" means the surface and subsurface area surrounding a public water supply well(s) which will provide water from an aquifer to the well(s) within five years as delineated or endorsed by the Director under Ohio's wellhead protection and source water assessment and protection programs.
- c. "Emergency management zone" means the surface and subsurface area in the immediate vicinity of a public water system intake as delineated or endorsed by the Director under the source water assessment and protection program within which the public water supply owner/operator has little or no time to respond to potential contamination from a spill, release or weather related event. The standard emergency management zone boundary consists of a semi-circle that extends five hundred feet upstream of the intake and one hundred feet downstream of the intake, except as modified due to local conditions.
- d. "Forecast" means the daily "hour by hour" forecast as presented by The Weather Channel (www.weather.com), or equivalent. More specifically, the forecast for the zip code that represents the land application area/site shall be printed/recorded up to, but not greater than 24 hours prior to each land application event at any site. The percent chance of rain listed under the hour by hour forecast shall be used to determine compliance with this permit.
- e. "Freeboard" means the linear distance in feet from the top of the industrial waste surface measured vertically to the lowest possible overflow elevation of any component of an industrial waste facility.
- f. "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present.
- g. "Industrial waste facility" means any pond, lagoon, depression, storage structure, retention structure, or other structure or container that holds industrial waste.

- h. "Land application" means the placement of industrial waste water within the boundaries of a land application site by: 1) spraying or spreading onto the land surface; 2) injection below the land surface in the crop root zone using equipment specifically designed for this purpose; or 3) incorporation into the soil by means of the mixing of industrial waste water with the surface soil using standard agricultural practices, such as tillage.
- i. "Medical care facility" means "home" as defined in section 3721.01 of the Ohio Revised Code, "hospital" as defined in section 3727.01 of the Ohio Revised Code, "adult care facility" as defined in section 3722.01 of the Ohio Revised Code, "nursing facility" as defined in section 5111.20 of the Ohio Revised Code and similar facilities.
- j. "Occupied building" means a structure, permanent in nature, occupied or capable of being occupied.
- k. "Overflow" means the discharge of industrial waste resulting from the filling of an industrial waste facility beyond the point at which no more industrial waste can be contained by the structures.
- l. "Pollutant", as defined under 40 CFR 122.2, means "dredged spoil, solid waste, incinerator residue, filter back-wash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials..., heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water".
- m. "Private water system" means any water system, other than a public water supply system, for the provision of water for human consumption, if the system has fewer than fifteen service connections and does not regularly serve an average of at least twenty-five individuals daily at least sixty days each year. A private water system includes any well, spring, cistern, pond, or hauled water and any equipment for the collection, distribution, transportation, filtration, disinfection, treatment, or storage of water extending from and including the source of the water to the point of discharge from any pressure tank or other storage vessel; to the point of discharge from the water pump where no pressure tank or other storage vessel is present; to the point where the distribution line enters the foundation of the building or dwelling, where the pressure tank is outside of the building or dwelling; or, in the case of multiple service connections serving more than one dwelling, to the point of discharge from each

service connection where the service connection enters the foundation of the dwelling. A private water system does not include the water service line extending from the point of discharge to a structure.

- n. "Public water system" means a system which provides water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year. Such term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system, and any water supply system serving an agriculture labor camp, as defined in section 3733.41 of the Revised Code. A public water system is either a community water system or a non-community water system. A community water system means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents. A non-community water system means a public water system that is not a community water system. A non-transient non-community water system means a public water system that is not a community water system and that regularly serves at least twenty-five of the same persons over six months per year. A transient non-community water system means a non-community public water system that does not regularly serve at least twenty-five of the same persons over six months of the year.
- o. "Spill" means a discharge, usually (but not exclusively) a small, inadvertent discharge of industrial waste, toxic pollutant or hazardous substance, not caused by weather conditions.
- p. "Storm water" means storm water runoff, snow melt and surface runoff and drainage.
- q. "UIC class 5 well" means a drainage well used to drain surface fluid, primarily storm runoff, into a subsurface formation which may include, but is not limited to, an agricultural or storm water drainage well and an identified unsealed gas/oil well.
- r. "Waters of the state", as defined in Ohio Revised Code 6111.01(H), means "all streams, lakes, ponds, marshes, watercourses, waterways,

wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters".

14. Respondent's NPDES permit remains in effect. To the extent terms and conditions in the permit are inconsistent with these Orders, these Orders control until they terminate in accordance with Section VI. of these Orders.
15. Respondent shall comply with the terms and conditions of its NPDES permit which are not inconsistent with these Orders. After the fly ash has been removed from the Site and these Orders have terminated in accordance with Section VI. of these Orders, Respondent may land apply industrial waste water from the ponds on the Site under the terms and conditions of its NPDES permit.

VI. TERMINATION

These Orders and Respondent's authorization to land apply industrial waste water under these Orders shall terminate when either: (1) the ground is frozen to the extent that the industrial waste water is unable to be injected or incorporated; or (2) at dark on December 31, 2007, whichever occurs first.

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 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
Northwest District Office
Division of Surface Water
Attn: DSW Enforcement Supervisor
347 North Dunbridge Road
Bowling Green, Ohio 43402

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

XI. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce 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 and for all violations at the Site. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 6111, or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability,

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Respondent consents to the issuance of these Orders and agrees to comply with these Orders. 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.

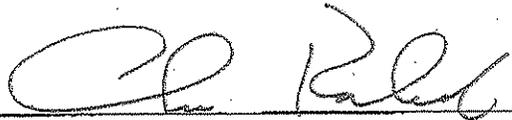
EnviroArtscaping, Inc.
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XIV. SIGNATORY AUTHORITY

Each undersigned representative or 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

8/17/07
Date

IT IS SO AGREED:

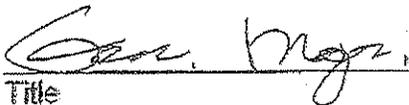
EnviroArtscaping, Inc.



Signature

8/17/07
Date

GERALD L. RICHTER
Printed or Typed Name



Title

