

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

OCT 28 2008

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

KM Retreat LLC
1090 Aledo Drive
Beavercreek, Ohio 45430

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

By: AS Shapiro Date: 10/28/08

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to KM Retreat LLC, ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and heirs and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the Facility 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 has determined the following findings:

1. Respondent is the owner of Woodland Lake, a resort located at 8881 West Deadfall Road, Hillsboro, Ohio ("the Site"). Woodland Lake is served by a thirty-two thousand (32,000) gallon per day design flow wastewater treatment plant ("WWTP"), which discharges final effluent to an unnamed tributary of Ohio Brush Creek. The unnamed tributary and Ohio Brush Creek are "waters of the state" as defined by ORC section 6111.01.

2. An existing Ohio EPA National Pollutant Discharge Elimination System Permit ("NPDES"), No. 1PZ00054*BD, was issued to Clint Hackney for the Site's WWTP on November 4, 2005, and became effective on December 1, 2005. Respondent purchased the Site from a third party, Mr. William Stuckey, on March 1, 2007, and Mr. Stuckey is no longer the owner of the Site.
3. Respondent did not submit an application to transfer the Site's existing NPDES permit as required per Ohio Administrative Code 3745-33-04(E), nor did Respondent apply for, or obtain a new NPDES permit governing the causing or placement of sewage in waters of the state from Ohio EPA.
4. Respondent has discharged to waters of the state since March 1, 2007 without an NPDES permit authorizing such discharge. Respondent has also not submitted Monthly Operating Reports ("MORs"), hired a Class 1 Ohio Certified Wastewater Operator, nor submitted a permit to install ("PTI") application for WWTP upgrades as required for the Site under the NPDES permit issued to Mr. Hackney.
5. Since purchasing the Site on March 1, 2007, Respondent has not submitted any MORs to Ohio EPA.
6. On April 12, 2007 via facsimile, Respondent was sent a copy of the proposed Orders dated October 25, 2006 for the WWTP. Those Orders contained a construction schedule for the WWTP to return to compliance.
7. On June 13, 2007, Respondent and Ohio EPA held a teleconference to discuss compliance issues at the WWTP.
8. Pursuant to ORC section 6111.04(A), no person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state. Such an action is prohibited under ORC section 6111.04(A) and is declared to be a public nuisance unless the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in ORC sections 6111.01 to 6111.08 or if the person's application for renewal of such a permit is pending.
9. Pursuant to ORC section 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC sections 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
10. The following Orders do not constitute authorization or approval of the construction

of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Any such construction or modification is subject to the PTI requirement of ORC §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.

11. 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. Within thirty (30) days of the effective date of these Orders, Respondent shall submit an Application for Transfer of Ohio NPDES Permit, No. 1PZ00054*BD, and any supporting documentation as needed, to the Ohio EPA.
2. Within fourteen (14) days after the effective date of these Orders, Respondent shall hire a Class 1 Ohio Certified Wastewater Operator to operate the WWTP.
3. Respondent shall achieve compliance with the final effluent limitations of NPDES permit, No. 1PZ00054*BD, and any successor permit, as expeditiously as practicable, but not later than the following schedule:
 - a. Within one hundred twenty (120) days of the effective date of these Orders, Respondent shall submit to Ohio EPA a complete PTI application, with approvable detail plans, for any necessary WWTP improvements;
 - b. Respondent shall respond, in writing, to any questions or comments Ohio EPA may have on the documents submitted under Order No. 3a, within thirty (30) days of the date on the correspondence from Ohio EPA;
 - c. Within one hundred eighty (180) days of the Director's issuance of a PTI, Respondent shall initiate construction of any approved WWTP improvements;
 - d. Within twelve (12) months of the Director's issuance of a PTI, Respondent shall complete construction of any approved WWTP improvements and achieve compliance with the final effluent limitations in its NPDES permit or any successor permit; and
 - e. Within seven (7) days of completion of construction, Respondent shall notify Southwest 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 Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(D)(1) for a corporation.

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 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. 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:

Attention: Enforcement Supervisor
Ohio Environmental Protection Agency
Southwest District Office
Division of Surface Water
401 East Fifth Street
Dayton, Ohio 45402

and to:

Attention: Enforcement Manager
Ohio Environmental Protection Agency
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

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

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 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

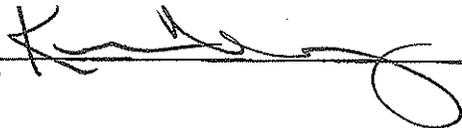


Laura Powell, Assistant Director

10/27/08
Date

IT IS SO AGREED:

KM Retreat LLC

By  _____

9/14/08
Date

Kevin Manley
Printed or Typed Name

Member
Title