

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY OHIO E.P.A.

OCT -9 2012

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Harold Mong  
2125 Township Road 405  
Jeromesville, OH 44840

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:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Harold Mong ("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 Respondent and agents, assigns, heirs, successors in interest and any person acting in concert or privity with any of them, liable under Ohio law. No change in the ownership or operation of the farm, described below, 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 adopted thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

**Background**

1. Respondent owns and operates a dairy farm located on Township Road 405, Mohican Township, Ashland County, ("farm").
2. On September 28, 2009, an overflow from a manure lagoon at the farm entered an approximately eight inch field tile and six inch field tile, located near the intersection of Township Road 405 and County Road 2102, in Ashland County.

*Deny Cassiter* Date: 10-9-12

The discharge, which was opaque black and had a strong manure odor, subsequently flowed to the Jerome Fork of the Mohican River, a water of the state. Approximately 150 fish were killed as a result of the discharge.

3. In a meeting with investigators on that day, Respondent stated that one of the farm's manure lagoons had overflowed because a riser pipe in the lagoon had become clogged with straw. The manure spilled out of the south end of the primary lagoon and flowed past the second lagoon and into a grassy waterway. An employee of Respondent attempted to build a dike across the end of the lagoon where the overflow occurred and clear the straw from the inlet of the riser piper. Respondent further stated that a pump was on route to pump down the settling lagoon in order to prevent future overflows.

### **Statutory Requirements**

4. ORC § 6111.04 prohibits any person from causing pollution or causing any sewage, 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 a valid, unexpired National Pollutant Discharge Elimination System permit issued by the Director, ("Ohio NPDES permit"), or if the person's application for renewal of such a permit is pending.
5. OAC Rule 3745-33-02(A) provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit. Any person who holds a federal NPDES permit issued under Section 402 (a) of the Clean Water Act is not required to obtain an Ohio NPDES permit until the federal permit's expiration date. The Director is to administer and enforce such federal permit, and may modify the terms and conditions thereof, in accordance with ORC § 6111.03(J).
6. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 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 represents a separate violation.
7. ORC § 6111.09 provides that any person who violates ORC § 6111.07 shall pay a civil penalty of not more than ten thousand dollars per day of violations.

### **Violation of Ohio Wastewater Pollution Control Laws and Rules**

8. At the time of the discharge, Respondent did not have an Ohio NPDES permit or federal NPDES permit for the discharge of pollution into waters of the state.

9. Respondent has violated OAC Rule 3745-33-02(A) and ORC §§ 6111.04 and 6111.07.

#### **Notices of Violation**

10. On January 6, 2010, Ohio EPA sent Respondent a letter documenting the September 28, 2009 discharge and violation and stated that due to the unpermitted discharge of manure from the production area of the farm to waters of the state, the farm meets the definition of a medium Concentrated Animal Feeding Operation ("CAFO") and as a result is required to obtain coverage under a CAFO NPDES permit.
11. The January 6, 2010 letter requested, within thirty days, the submittal of a CAFO NPDES permit application, with a Manure Management Plan.
12. A CAFO NPDES permit application was received on February 22, 2010, in which application Respondent stated that an updated Comprehensive Nutrient Management Plan ("CNMP") was in development.
13. On November 29, 2010, Ohio EPA informed Respondent that the status of its CAFO NPDES permit application is "incomplete" and will remain so until a revised Manure Management Plan is submitted. The CNMP submitted with the application was not, as is required, developed with current data and was not written for the five year life of the permit. Respondent was requested to provide, within fourteen business days, a completion schedule for an updated Manure Management Plan.
14. On May 18, 2011, Ohio EPA informed Respondent that neither a schedule for the completion of an updated Manure Management Plan or the Plan had been received. Respondent was informed to provide an updated Manure Management Plan within thirty days of the letter.
15. On June 26, 2012, Ohio EPA received an updated CNMP.

#### ***Order to Prevent, Control, or Abate Water Pollution***

16. ORC § 6111.03(H) authorizes the Director to issue orders to prevent, control, or abate water pollution by such means as prohibiting or abating discharges of sewage, industrial waste, or other wastes into the waters of the state.
17. ORC § 6111.03(H) requires that the Director in the issuance of Orders under the Division give consideration to, and base the determination on, evidence relating to the technical feasibility and economic reasonableness of complying with those orders and to evidence relating to conditions calculated to result from compliance

with those orders, and their relation to benefits to the people of the state to be derived from such compliance in accomplishing the purposes of the Chapter.

18. 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 purpose of ORC Chapter 6111.

#### **V. ORDERS**

1. Respondent shall pay the amount of five thousand dollars (\$5,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within forty-five (45) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for one thousand two hundred fifty dollars (\$1,250.00) of the total amount. The official check shall be submitted to Akia Smith, or her successor, together with a letter identifying the Respondent, to:

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

Thereafter, Respondent shall make subsequent payments of one thousand two hundred fifty dollars (\$1,250.00) within one hundred thirty-five (135) days from the effective day of these Orders, a third payment of one thousand two hundred fifty dollars (\$1,250.00) within two hundred twenty five (225) days from the effective date of these Orders, and a final payment of one thousand two hundred fifty dollars (\$1,250.00) within three hundred fifteen (315) days from the effective date of these Orders, for the total payment of five thousand dollars (\$5,000). All official checks shall be sent to Akia Smith, or her successor, at the address stated above.

A copy of the checks shall be sent to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio Environmental Protection Agency  
Division of Surface Water  
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 Division of Surface Water acknowledge, 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 the Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03.

## **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 activities occurring on or at the farm.

## **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**

Unless otherwise specifically stated herein, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Permit Supervisor  
PTI, Compliance Assistance, & CAFO Unit  
Division of Surface Water  
Central Office  
P.O. Box 1049  
Columbus, OH 43216-1049

#### **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.

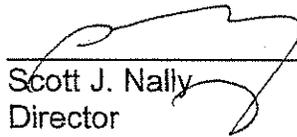
#### **XIII. EFFECTIVE DATE**

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**XIV. SIGNATORY AUTHORITY**

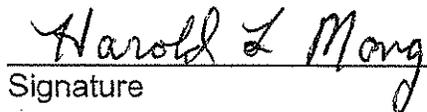
Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:  
Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Scott J. Nally  
Director

10/4/12  
\_\_\_\_\_  
Date

**IT IS SO AGREED:  
Harold Mong**

  
\_\_\_\_\_  
Signature

9-14-12  
\_\_\_\_\_  
Date

Harold L. Mong  
\_\_\_\_\_  
Printed or Typed Name

OWNER  
\_\_\_\_\_  
Title