

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Mark Rajko  
dba Perry One Stop Sunoco  
2500 North Ridge Road  
Painesville OH 44077-4802

Respondent

OHIO E.P.A.

JUN 17 2013

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: Sam Lassiter Date: 6-17-13

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mark Rajko, dba Perry One Stop Sunoco, ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under R.C. 6111.03 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 the site or the ownership or operation of the automotive service station, as identified herein, 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. 6111.01 and the rules adopted thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner of property located at 2500 North Ridge Road, Painesville Township, Lake County, ("site"), on which is situated an automotive service station.
2. Respondent applied for and was issued an Ohio National Pollutant Discharge Elimination System ("NPDES") permit No. 3PR00471\*AD ("permit") which expired October 31, 2012, which authorized a discharge from the site to McKinley Creek via a storm sewer, a waters of the state.
3. As a result of a July 24, 2008 compliance evaluation inspection of the wastewater treatment plant ("WWTP") serving the site, on July 29, 2008, a Notice of Violation

("NOV") was sent to Respondent identifying the following violations of the NPDES permit:

- a. Electronic discharge monitoring reports ("eDMRs") were not received for May and June 2008; and
  - b. A permit to install application, with detail plans, for WWTP upgrades, due by March 1, 2008, was not received, and construction, due June 1, 2008, did not commence.
4. As a result of a July 29, 2009 compliance evaluation inspection of the WWTP, on August 18, 2009, a NOV was sent to Respondent identifying the following violations of the NPDES Permit:
- a. The aeration tank contained little activated sludge and the settling tank's contents appeared turbid;
  - b. eDMRs revealed effluent violations for a multitude of parameters for May 2008 through June 2009; and
  - c. The permit to install application, with detail plans, was not received, construction of upgrades did not commence or was completed due October 1, 2008, and attainment of operational level and compliance with final effluent limits was not achieved, due November 1, 2008.
5. As a result of a November 3, 2010 compliance evaluation inspection of the WWTP, on November 10, 2010, a NOV was sent to Respondent identifying the following violations of the NPDES Permit:
- a. eDMRs revealed effluent violations for a multitude of parameters for July 2009 through September 2010; and
  - b. The permit to install application, with detail plans, for WWTP upgrades was not received, construction did not commence or was completed, and attainment of operational level and compliance with final effluent limits was not achieved.
6. As a result of a December 8, 2011 compliance evaluation inspection of the WWTP, on December 16, 2011, a NOV was sent to Respondent identifying the following violations of the NPDES Permit:
- a. eDMRs revealed effluent violations for a multitude of parameters for October 2010 through October 2011;
  - b. The aeration tank contained little activated sludge and the settling tank's contents were turbid;

- c. The permit to install application, with detail plans, for WWTP upgrades was not submitted, construction did not commence or was completed and attainment of operational level and compliance with final effluent limits was not achieved; and
  - d. The requirement for a Class I licensed WWTP operator was not fulfilled.
7. As a result of an October 2, 2012 compliance evaluation inspection of the WWTP, on October 3, 2012, a NOV was sent to Respondent noting that the WWTP was not in operation, the upgrades to include tertiary treatment and disinfection were not performed and that there was no record of an appropriate operator of record for the WWTP.
  8. As of October 12, 2012, the WWTP was back in operation.
  9. During the period of December 1, 2011 to August 1, 2012, the following effluent limit violations were recorded at the WWTP:

| Parameter               | Limit Type | Limit | Reported Value | Violation Date |
|-------------------------|------------|-------|----------------|----------------|
| Total Suspended Solids  | 30D Conc   | 12    | 76.            | 12/1/2011      |
| Nitrogen, Ammonia (NH3) | 30D Conc   | 3.0   | 23.            | 12/1/2011      |
| CBOD 5 day              | 30D Conc   | 10    | 21.            | 12/1/2011      |
| Total Suspended Solids  | 1D Conc    | 18    | 76.            | 12/31/2011     |
| Nitrogen, Ammonia (NH3) | 1D Conc    | 4.5   | 23.            | 12/31/2011     |
| CBOD 5 day              | 1D Conc    | 15    | 21.            | 12/31/2011     |
| Total Suspended Solids  | 30D Conc   | 12    | 17.            | 3/1/2012       |
| Nitrogen, Ammonia (NH3) | 30D Conc   | 3.0   | 27.            | 3/1/2012       |
| Nitrogen, Ammonia (NH3) | 1D Conc    | 4.5   | 27.            | 3/30/2012      |
| Nitrogen, Ammonia (NH3) | 30D Conc   | 1.0   | 1.3            | 6/1/2012       |
| Chlorine, Total Residu  | 1D Conc    | 0.019 | .15            | 6/30/2012      |
| Dissolved Oxygen        | 1D Conc    | 6.0   | 1.5            | 6/30/2012      |
| Total Suspended Solids  | 30D Conc   | 12    | 60.            | 8/1/2012       |
| Nitrogen, Ammonia (NH3) | 30D Conc   | 1.0   | 2.             | 8/1/2012       |
| Total Suspended Solids  | 1D Conc    | 18    | 60.            | 8/31/2012      |
| Nitrogen, Ammonia (NH3) | 1D Conc    | 1.5   | 2.             | 8/31/2012      |

**NPDES Permit Renewal Application**

10. Ohio Administrative Code ("OAC") 3745-33-04(C)(1) provides that an NPDES permit holder who wishes to continue to discharge after the expiration date of its permit must file for permit reissuance at least 180 days prior to the permit's expiration.
11. Respondent did not file a timely NPDES permit renewal application and is discharging pollutants into waters of the state without a valid unexpired permit or an application for permit renewal pending.

### ***Regulatory Statutes***

12. R.C. 6111.04(A) 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 NPDES permit issued by the Director or if an application for renewal of such permit is pending.
13. Pursuant to R.C. 6111.04(C), no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit.
14. Pursuant to R.C. 6111.07(A), no person shall violate or fail to perform any duty imposed by R.C. 6111.01 to 6111.08 or violate any order, rule, term or condition of a permit issued or adopted by the Director pursuant to those sections. Each day of violation constitutes a separate offense.
15. Pursuant to R.C. 6111.09(A), any person who violates R.C. 6111.07 shall pay a civil penalty of not more than ten thousand dollars per day of violation.

### ***Director's Considerations***

16. 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 permit to install requirements of R.C. 6111.44 and 6111.45 and OAC 3745-42-02.
17. 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 R.C. Chapter 6111.

### **V. ORDERS**

1. Within ten (10) days of obtaining approval from the Lake County Health District, Respondent shall submit to Ohio EPA in accordance with Section X. of these Orders, a copy of the letter from the Lake County Health District stating that the onsite dissipation system has been approved.
2. Within ten (10) days of bringing the on-site dissipation system into operation, Respondent shall notify Ohio EPA in writing in accordance with Section X. of these Orders that the on-site dissipation system is in operation and the existing WWTP has been properly demolished.

3. In no event shall the bringing of the on-site dissipation system into operation and the proper demolition of the WWTP take longer than six (6) months after the effective date of these Orders.
- 4 Respondent shall respond in writing to any questions or comments Ohio EPA may have on the letters submitted under Orders No.1 and 2, within thirty (30) days of the date on the correspondence from Ohio EPA.
- 5 Respondent shall pay the amount of nine thousand dollars (\$9,000.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to R.C. Chapter 6111. Within thirty (30) 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 seven thousand two hundred dollars (\$7,200.00). The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondent, to:

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

A photocopy of the check shall be sent to Ohio EPA in accordance with Section X of these Orders.

6. In lieu of paying the remaining one thousand eight hundred dollars (\$1,800.00) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a supplemental environmental project ("SEP") by making a contribution in the amount of one thousand eight hundred dollars (\$1,800.00) to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check and a cover letter identifying Respondent shall be submitted to Carol Butler, or her successor at:

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

A photocopy of the check shall be sent to Ohio EPA in accordance with Section X of these Orders. Copies of both checks shall be sent to Mark Mann, Enforcement Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio EPA  
Division of Surface Water  
P.O. Box 1049  
Columbus, Ohio 43216-1049

7. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 6, Respondent shall immediately pay to Ohio EPA the remaining one thousand eight hundred dollars (\$1,800.00) of the civil penalty in accordance with the procedures in Order No. 5.

#### **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, 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 defined in OAC 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 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**

Unless otherwise stated herein, 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  
Attn: DSW Enforcement Unit Supervisor  
2110 E. Aurora Road  
Twinsburg, Ohio 44087

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**

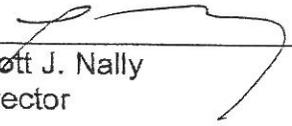
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal

**XIV. SIGNATORY AUTHORITY**

Each undersigned representative 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:**

**Ohio Environmental Protection Agency**

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

6/7/13  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Perry One Stop Sunoco**

  
\_\_\_\_\_  
By

6-1-13  
\_\_\_\_\_  
Date

Mark Bajko  
\_\_\_\_\_  
Print Name

Owner  
\_\_\_\_\_  
Title