

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.  
MAR 23 2001

ENTERED DIRECTOR'S JOURNAL

In the matter of:

Mid-Toll, Inc.  
7041 Truck World Blvd.  
Hubbard, Ohio 44425

: Director's Final Findings  
: and Orders  
:

**Jurisdiction**

Pursuant to Ohio Revised Code (ORC) Chapter 6111 and ORC Section 3745.08, the Director of the Ohio Environmental Protection Agency (Ohio EPA) hereby makes the following Findings and issues the following Orders.

**Parties Bound**

These Orders shall apply to and be binding upon Mid-Toll, Inc., hereinafter "Mid-Toll," its assigns and successors in interest. No change in ownership of the companies or properties described below will in any way alter Mid-Toll's responsibilities under these Orders. Mid-Toll's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

**Findings**

1. Mid-Toll owns and operates three noncontiguous pieces of property, near the intersection of State Route 49 (SR 49) and Exit One of the Ohio Turnpike in Williams County. For the purpose of these Findings and Orders, the following terms will be used:
  - "NE property" refers to the property north of the Turnpike and east of SR 49
  - "NW property" refers to the property north of the Turnpike and west of SR 49
  - "SE property" refers to the property south of the Turnpike and east of SR 49
2. Storm water from the Mid-Toll properties discharges to the headwaters of Eagle Creek, an intermittent stream and tributary of the St. Joseph River. Both Eagle Creek and the St. Joseph River constitute "waters of the state," as defined by ORC Section 6111.01(H). Sediment contained in storm water constitutes "other wastes," as defined in ORC Section 6111.01(D). Placement of this waste into waters of the state constitutes "pollution," as defined in ORC Section 6111.01(A).
3. On June 8, 1995, Mid-Toll submitted a Notice of Intent (NOI) for the NE property to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) permit for storm water discharges associated with construction activities (general storm water permit). Ohio EPA granted Mid-Toll coverage under the general storm water permit (No. OHR103547) for 16 acres of the NE property on June 26, 1995. On April 2, 1997, Mid-Toll submitted a new NOI for coverage

under the storm water general permit for the NE property. The NOI listed the total size of the site as 42 acres (including the original 16 acres). Ohio EPA issued a storm water general permit (OHR105603) for the 42 acres on May 6, 1997.

4. The most recent storm water pollution prevention plans submitted by Bell Engineering on behalf of Mid-Toll on April 11, 1997 indicate that approximately 25 of the 42 acres have been disturbed on the property. Mid-Toll had only obtained coverage for 16 acres of property under a general storm water permit issued June 26, 1995, until May 6, 1997 when all 42 acres were permitted. Therefore, at least 9 acres of the site had begun to be developed prior to first obtaining coverage under a general storm water permit.
5. The general storm water permit requires the development of a Storm Water Pollution Prevention Plan (SWP3). After repeated requests from Ohio EPA, Bell Engineering submitted a SWP3 for the NE property on behalf of Mid-Toll. Each version of the SWP3 was found to be deficient; Ohio EPA outlined these deficiencies in letters to Mid-Toll according to the time line below.

<u>Date Submitted:</u>	<u>Date of Ohio EPA Response:</u>
August 24, 1995	August 30, 1995
December 6, 1995	December 18, 1995
January 1996	*
October 18, 1996	February 14, 1997
December 12, 1996	February 14, 1997
April 11, 1997	September 24, 1997

\* Ohio EPA did not receive these revisions.

\*\* A copy of the January 1996 revised SWP3 was submitted to Ohio EPA on December 12, 1996, during a meeting between Ohio EPA and a representative of Mid-Toll.

6. During inspections conducted by Ohio EPA beginning on November 29, 1995, Ohio EPA staff observed construction activities on the NW property, in violation of the requirement to submit a NOI at least 45 days prior to the start of construction. Mid-Toll submitted a NOI application for the NW property to Ohio EPA on August 19, 1996. Ohio EPA granted Mid-Toll coverage under the general storm water permit (No. OHR104868) on September 5, 1996.
7. During a site inspection on November 29, 1995, Ohio EPA Northwest District Office (NWDO) staff observed workers installing sewer pipe on the NW property to service a convenience store located on the NE property. Mid-Toll had not submitted an application for, or obtained the required Permit to Install (PTI) for the installation of this sewer pipe. Mid-Toll submitted two PTI applications (one for the sewer line and one for an interim holding tank to service the convenience store on the NE property) to Ohio EPA on November 30, 1995. Ohio EPA issued Mid-Toll the two PTIs on December 29, 1995.

8. NWDO staff have conducted at least 16 inspections of the NE property between February 1995 and July 1997. These inspections have revealed that Mid-Toll has failed to comply with the SWP3 implementation requirements of the general storm water permit. Specific requirements of the general NPDES permit for storm water discharges and the corresponding violations occurring at the NE property site are as follows (citations of the storm water general permit have been italicized to clarify the exact wording.):
  - a. Part III.C.3. states that "*the permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to waters of the United States or if the storm water pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity. Amendments to the plan may be reviewed by Ohio EPA in the same manner as Part III.C.2. [of the general storm water permit].*" Although Mid-Toll recently submitted updates to the SWP3, except for the current revisions, Mid-Toll did not keep the SWP3 current.
  - b. Part III.C.5.b.i.B.1. states that "*sediment control structures shall be functional throughout earth disturbing activity. Sediment ponds and perimeter sediment barriers shall be implemented as the first step of grading and within seven days from the start of grubbing. They shall continue to function until the upslope development area is restabilized.*" The controls that have been installed on the NE property have not been installed within the required time frame, and have not remained functional throughout the earth disturbing activity.
  - c. Part III.C.5.b.iv.C. states that the SWP3 "*shall ensure and demonstrate compliance with applicable State or local waste disposal, sanitary sewer or septic system regulations.*" The SWP3 submitted for the NE property did not provide documentation assuring compliance with the appropriate state and local waste disposal, sanitary sewer, or septic system regulations.
  - d. Part III.C.5.b.v. states that "*all temporary and permanent control practices shall be maintained and repaired as needed to assure continued performance of their intended function. The pollution prevention plan shall be designed to minimize maintenance requirements. The applicant shall provide a description of maintenance procedures needed to assure the continued performance of control practices.*" The controls that have been installed on the NE property have not remained functional. Repairs have been attempted, but the majority were inadequate.
  - e. Part III.C.5.b.vi. states that "*at a minimum, procedures in a plan shall provide that all erosion and sediment controls on the site are inspected at least once every seven (7) calendar days and within 24 hours after any storm event*

greater than 0.5 inch of rain per 24 hour period. Although Mid-Toll conducted regular inspections, it did not conduct inspections within 24 hours after a 0.5" or greater 24-hour rain event. In addition, no inspection logs were provided to Ohio EPA, despite at least three requests in writing for these logs. Mid-Toll did submit copies of the inspection logs during a December 12, 1996 meeting between Ohio EPA and a representative of Mid-Toll. The inspection logs submitted by Mid-Toll were not certified by a qualified inspector, as required by the general storm water permit.

- f. Part III.C.5.c. states that "*erosion and sediment control practices used to satisfy the conditions of this permit shall meet the standards and specifications in the current edition of Water Management and Sediment Control in Urbanizing Areas (Soil Conservation Service, USDA).*" These practices have not been properly implemented on this site in accordance with the SWP3, and they do not meet the standards and specifications of the aforementioned USDA manual.
9. Ohio EPA received two verified complaints (No. VC9512W01 and No. VC9601W01) dated December 6 and 13, 1995, respectively. The complaints cited a letter from Ohio EPA NWDO storm water staff dated August 7, 1995. The complainants cited specific issues outlined in the letter that they did not feel were properly addressed. It was alleged that:
- a. Sewer pipe and fittings were buried on or around November 27, 1995, prior to plan submission, inspection and approval.
  - b. The sewer pipe mentioned in Finding No. 8.a. above was constructed to release treated water into a new ditch that empties into Eagle Creek. Eagle Creek, a dry stream bed, was unacceptable as an outlet for treated surface and sewage water.
  - c. No environmental impact survey was completed. No plans had been submitted until after the installation of the sewer pipe.
  - d. The recommended sediment pond had not been constructed, and sediment was leaving the site. The controls implemented were not adequate.
  - e. Some of the disturbed areas had not been seeded within the required time frame.
  - f. More concern should be given to buried fuel tanks, gas, oil, and fuel spillage, as the water table is close to the ground surface, buried fuel tanks, gas, oil, and fuel spillage. Furthermore, there were also concerns about the temporary approval of a septic system, as opposed to an approved sewage treatment plan and system.
  - g. The property owned by Mid-Toll south of the turnpike and east of SR 49 was to be seeded, but had not yet been done.
  - h. Appropriate measures were not being taken to protect an endangered species of water snake that is indigenous to the area.
  - i. A drainage ditch, not approved by the Army Corp of Engineers, had been dug north of a two-acre wetland area. Existing sheet water waterways had been

- destroyed, and water flows that fed the headwaters of the wetland had been altered.
- j. Asbestos siding and other asbestos materials had been buried or scattered by Mid-Toll on the site, and had not been cleaned up or removed.
  - k. There were as many as three uncapped wells on the site.
10. Representatives of Ohio EPA Division of Surface Water (DSW), Division of Air Pollution Control (DAPC) and Division of Drinking and Ground Waters (DDAGW), as well as the U. S. Army Corps of Engineers, inspected the site to investigate the allegations listed in the verified complaints. DAPC staff found no obvious evidence of asbestos materials on site (Finding No. 9.j.). DDAGW staff located one existing well that will be used to supply the truck plaza facility, and one abandoned well that was filled/plugged with bentonite and covered with soil on the property (Finding No. 9.k.). The Corps of Engineers determined that because the wetland area is less than one acre in size, it does not have jurisdiction over that wetland area (Findings No. 9.h. and No. 9.i.). These allegations do not constitute violations of law over which Ohio EPA has jurisdiction. The remaining allegations (Findings No. 9.a. through No. 9.g.) were found to be violations of ORC Chapter 6111.
  11. Mid-Toll did not maintain compliance with the terms and conditions of the general storm water permit for the NE property, in violation of ORC Sections 6111.04, 6111.07, and 6111.12.
  12. Mid-Toll is also in violation of OAC Rules 3745-31-02, and 3745-33-02 in that it started construction of its wastewater treatment facility prior to obtaining a PTI from Ohio EPA, and discharged pollutants without applying for and obtaining an Ohio NPDES permit.
  13. On July 13, 1998, Ohio EPA NWDO storm water staff conducted an inspection of the properties. At the time of the inspection, the northeast and northwest sites were inactive. A retention pond had been installed on the northeast site, and most of the areas on both sites had established vegetation. At the time of inspection, the items that still needed to be addressed included the following items:
    - Catch basins leading to the pond on the northeast site must be installed. The areas around the two surface openings near the pond must be maintained to protect against erosion.
    - Temporary structural controls should be removed from upslope areas that have established vegetation with a density of 70%.
  14. On March 15, 1999, Ohio EPA NWDO storm water staff conducted another inspection of the properties. Ohio EPA listed the items that still needed to be addressed, which included those found during the July 13, 1998 inspection, as outlined above in Finding No. 13, as well as the requirement to maintain signed copies of the inspection logs. Since the March 15, 1999 inspection, Mid-Toll has maintained properly signed copies of the inspection logs.

15. On October 18, 1999, Ohio EPA NWDO storm water staff conducted another inspection of the properties. Ohio EPA listed the items that still needed to be addressed, which included the installation of catch basins leading to the pond on the Northeast site, and the removal of what appeared to be a burn pile near the southeast corner of the stone parking lot. At the time of the inspection, the Northwest site was also found to be inactive, and the temporary structural controls that needed to be removed had been.
16. These Findings and Orders are intended to formally resolve verified complaints No. VC9512W01 and No. VC9601W01, and the violations of ORC Chapter 6111, as alleged in the verified complaints and summarized in Findings No. 9.a. through No. 9.g. above, in accordance with ORC Chapter 3745.
17. This document does not modify NPDES permits No. OHR103547, No. OHR104868, or OHR105603. The purpose of this document is to correct Mid-Toll's non-compliance with permits No. OHR103547, No. OHR104868, and No. OHR105603, and not to alter said permits.
18. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and the 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 Chapter 6111 of the Ohio Revised Code.

### Orders

1. From the effective date of these Findings and Orders, Mid-Toll shall insure that a copy of the SWP3 is made available on-site at all times during construction until the site reaches final stabilization as defined in Part VII of the general permit.
2. Mid-Toll shall achieve compliance with the general storm water permits for the NE property (No. OHR103547) as expeditiously as practicable, but not later than the dates in the following schedule:
  - a. Within thirty (30) days of the effective date of these Orders, Mid-Toll shall perform inspections of the NE property as required under the general storm water permit for all sediment and erosion controls once every 7 calendar days and within 24 hours of a 0.5 inch or greater rainfall per 24 hour period. A written log of these inspections shall be kept on site.
  - b. Within one hundred and eighty (180) days of the effective date of these Findings and Orders, Mid-Toll shall install catch basins leading to the pond on the northeast site. Mid-Toll shall maintain the areas around the two surface openings near the pond to protect against erosion.

3. Within seven (7) days of the milestone dates in Orders No. 2.a and 2.b above, Mid-Toll shall submit written notification of compliance with these Orders to Ohio EPA NWDO.
4. Beginning on the effective date of these Findings and Orders, and lasting until all disturbed areas on the NE property meet the criteria outlined in Part IV., Notice of Termination Requirements, of the general storm water permit, Mid-Toll shall comply with the general storm water permit.
5. Mid-Toll shall pay to Ohio EPA the amount of eight thousand (\$8,000) dollars in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to Chapter 6111 of the Ohio Revised Code. This payment shall be made by tendering a certified check made payable to "Treasurer, State of Ohio" for the full amount within thirty (30) days after the effective date of these Findings and Orders to the following address:

Vicki Galilei, Office of Fiscal Administration  
Ohio Environmental Protection Agency  
122 South Front Street  
P. O. Box 1049  
Columbus, Ohio 43216-1049.

A photocopy of the check shall be sent to Ohio EPA Northwest District Office at the address listed below.

6. All documents, applications, and notifications required under these Orders, unless specified otherwise, shall be submitted to:

Ohio EPA  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
Attn. DSW Enforcement Group Leader

#### **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. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Mid-Toll's operation of the NE, NW, and SE properties.

### Reservation of Rights

These Orders do not prevent Ohio EPA from enforcing the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary for noncompliance with these Orders or for violations identified in these Orders. These Orders do not prevent Ohio EPA from exercising its authority to require Mid-Toll to perform additional activities pursuant to Chapter 6111 or the Ohio Revised Code or any other applicable law in the future. These Orders do not restrict the right of Mid-Toll to raise any administrative, legal or equitable claim or defense for any additional activities that Ohio EPA may seek to require of Mid-Toll. These Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

Respondent's entry into these Orders is not to be construed as an admission of liability by Respondent. Ohio EPA and Respondent have agreed to enter into these Orders in order to avoid continued, contested and costly litigation. Respondent reserves the right to contest whether the violations alleged in these Orders have occurred and reserves the right to contest any effort on behalf of Ohio EPA to view Respondent as a repeat offender/violator in any future action which may be brought by Ohio EPA against Respondent for violations similar to those alleged in these Orders.

### Termination

Mid-Toll's obligations under these Orders shall be satisfied and terminate when Mid-Toll demonstrates in writing and certifies to the satisfaction of Ohio EPA that all obligations under these Orders have been performed, and Ohio EPA Division of Surface Water acknowledges in writing this demonstration and certification.

This certification shall be submitted by Mid-Toll to the Northwest District Office (Attention: DSW Enforcement Group Leader) and shall be signed by a responsible official of Mid-Toll. A responsible official is as defined in Ohio Administrative Code (OAC) Rule 3745-33-03(D)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, and OAC Rule 3745-33-03(D)(3) for a sole proprietorship. The certification shall contain the following attestation:

*I certify under the penalty of law that I have personally examined and am familiar with the information contained in or accompanying this certification, and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment.*



**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 addressed in these Orders, Mid-Toll agrees that these Orders are lawful and reasonable, that the schedules provided for compliance herein are reasonable, and Mid-Toll agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Mid-Toll's liability for the violations cited herein. Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph of these Orders.

Mid-Toll hereby waives the right to appeal the issuance, terms, and service of these Orders, and it hereby waives any and all rights it might have to seek administrative or judicial review of said Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Mid-Toll agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Mid-Toll retains the right to intervene and participate in such appeal. In such event, Mid-Toll shall continue to comply with these Orders notwithstanding such appeal and intervention, unless said Orders are stayed, vacated, or modified.

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

**IT IS SO AGREED:**

**Mid-Toll, Inc.**

By 

*Pres.*

\_\_\_\_\_  
Title

12/21/00  
Date

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



\_\_\_\_\_  
Christopher Jones  
Director

3-14-01

\_\_\_\_\_  
Date