

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
MAY - 7 2012

In the matter of:

ENTERED DIRECTOR'S JOURNAL

Sims Brothers Inc.
1011 South Prospect Street
Marion, OH 43302

Director's Final Findings
and Orders

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Sims Brothers Inc. ("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 its successors in interest liable under Ohio law.

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 there under.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a wastewater disposal system located at 1101 S. Prospect Street, Marion, 43302.
2. Respondent holds National Pollutant Discharge Elimination System ("NPDES") permit, number 2IN00052*FD, for the discharges from the disposal system that expired on November 30, 2011.
3. Respondent submitted an untimely NPDES permit renewal application to Ohio EPA NWDO on August 1, 2011. As such, Respondent is discharging pollutants without a lawful permit in violation of ORC 6111.04(A)(1).

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4. Respondent discharges to "waters of the state" as defined by ORC Section 6111.01.
5. This document does not modify NPDES Permit No. 2IN00052*FD. The purpose of this document is to correct a condition of noncompliance with NPDES Permit No. 2IN00052*FD and not to alter said permit.
6. Pursuant to ORC Section 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.
7. 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.
8. Respondent violated terms and conditions of its NPDES permit on numerous occasions as cited in Attachment I. Each violation cited in Attachment I constitutes a separate violation of ORC Sections 6111.04 and 6111.07. Attachment I is hereby incorporated into these Findings and Orders as if fully stated herein.
9. The Ohio EPA has sent Respondent at least two (2) noncompliance notifications in an effort to address the compliance issues in the disposal system. Attachment II is Respondent's noncompliance notifications. Attachment II is hereby incorporated into these Findings and Orders as if fully stated herein.
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 requirements of Ohio Administrative Code ("OAC") Chapter 3745-42.
11. Compliance with the ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
12. 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

The Director hereby issues the following Orders:

1. Respondent shall not cause, permit or allow the installation or modification of a disposal system at any location in Ohio without first receiving a permit to install (PTI) or plan approval from the Director as required by OAC Rule 3745-42-02 and ORC 6111.45.
2. Respondent shall achieve compliance with the final effluent limitations of its currently-effective NPDES permit, and any successor permit, as expeditiously as practicable, but not later than the following schedule:
 - a. Respondent is ordered to hire a consultant qualified in wastewater disposal system operation and evaluation to assess the Sims Brothers Inc. wastewater disposal system within sixty (60) days after the effective date of these Orders. This consultant shall complete a report on the results of the assessment within eighty (80) days after the effective dates of these Orders.
 - b. Within one hundred twenty (120) days after the effective date of these Orders, Respondent shall submit to Ohio EPA a complete and approvable PTI application and detail plans for treatment system improvements. Respondent is ordered to complete all recommended improvements to the Sims Brothers Inc. wastewater disposal system.
 - c. Within twelve (12) months of the effective date of the PTI, Respondent shall achieve compliance with the final effluent limitations in its NPDES permit or any successor permit.
3. Until the date specified in the schedule listed in Order No. 2(b) in which Respondent's disposal system is able to attain compliance with final effluent limitations in its unexpired NPDES permit, No. 2IN00052*FD, or any successor permit, Respondent shall properly operate and maintain its existing disposal system to achieve the best quality effluent possible.
4. Respondent shall pay the amount of five thousand dollars (\$5,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC 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". The official check shall be submitted to Akia Smith, or her successor, together with a letter identify the Respondent, to:

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

A copy of the check shall be sent to Mark Mann, Environmental 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

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 the Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(D)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole proprietorship, and OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility.

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. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

XI. 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.

XII. EFFECTIVE DATE

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

XIII. 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

5/7/12

Date

IT IS SO AGREED:

Sims Brothers Inc.



Signature

4-26-12

Date

TIMOTHY A. MENZIE

Printed or Typed Name

SAFETY / ENVIRONMENTAL DIRECTOR

Title

Attachment 1

Get New Data								
Event No.	Reporting Period	Station	Reporting Code	Parameter	Unit	Limit	Reported Value	Violation Date
21N00052*FD	January 2011	001	00980	Iron, Total Recoverabl	30D Conc	1000	1700.	1/1/2011
21N00052*FD	March 2011	001	00980	Iron, Total Recoverabl	30D Conc	1000	2300.	3/1/2011
21N00052*FD	August 2010	001	00980	Iron, Total Recoverabl	30D Conc	1000	1300.	8/1/2010
21N00052*FD	February 2011	001	00980	Iron, Total Recoverabl	30D Conc	1000	8600.	2/1/2011
21N00052*FD	December 2010	001	00980	Iron, Total Recoverabl	30D Conc	1000	1800.	12/1/2010
21N00052*FD	October 2010	001	00980	Iron, Total Recoverabl	30D Conc	1000	3000.	10/1/2010
21N00052*FD	November 2010	001	00980	Iron, Total Recoverabl	30D Conc	1000	1700.	11/1/2010
21N00052*FD	September 2010	001	00980	Iron, Total Recoverabl	30D Conc	1000	2000.	9/1/2010
21N00052*FD	July 2010	001	00980	Iron, Total Recoverabl	30D Conc	1000	1800.	7/1/2010
21N00052*FD	September 2011	001	00980	Iron, Total Recoverabl	30D Conc	1000	3000.	9/1/2011
21N00052*FD	November 2011	001	00980	Iron, Total Recoverabl	30D Conc	1000	1600.	11/1/2011
21N00052*FD	August 2011	001	00980	Iron, Total Recoverabl	30D Conc	1000	4800.	8/1/2011
21N00052*FD	October 2011	001	00980	Iron, Total Recoverabl	30D Conc	1000	1400.	10/1/2011
21N00052*FD	July 2011	001	00980	Iron, Total Recoverabl	30D Conc	1000	1300.	7/1/2011
21N00052*FD	April 2011	001	00980	Iron, Total Recoverabl	30D Conc	1000	2400.	4/1/2011
21N00052*FD	December 2011	001	00980	Iron, Total Recoverabl	30D Conc	1000	1400.	12/1/2011

Attachment 2



Environmental
Protection Agency

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

Re: Marion County
Sims Brothers Inc.
NPDES Permit

June 17, 2011

Mr. Tim Menzie, Safety/Environmental Director
Sims Brothers Inc.
1011 South Prospect Street
P. O. Box 1170
Marion, Ohio 43301

Dear Mr. Menzie:


This will acknowledge our June 2, 2011, compliance inspection at your Marion facility. This facility is located at 1011 South Prospect Street, Marion, Ohio. The inspection included a brief tour of your material storage facilities and a stormwater settling pond. This inspection was conducted as part of your facility's National Pollutant Discharge Elimination System (NPDES) permit No. 2IN00052.

At the time of the inspection, no discharge from the settling pond (Outfall 001) was noted. Also, there was no oil sheen observed on the pond. Your existing NPDES permit will expire on November 30, 2011, and the permit renewal application should be submitted to our office no later than 180 days prior to the expiration date.

Our review of your discharge monitoring reports (7/1/2009 to 5/1/2011) for this facility indicated numerous effluent violations especially for Iron. Please refer to the enclosed violation table.

In order to avoid escalated enforcement action, steps must be taken to eliminate these violations as soon as possible. Our completed inspection form is enclosed for your review. If you have any questions or comments, please call me at 419-373-3021.

Sincerely,



Jason Ko
Division of Surface Water

~~pc~~ BSW-NWDO File

NPDES COMPLIANCE INSPECTION REPORT

Section A: National Data System Coding

Permit #	NPDES	Yr/Mo/Day	Inspection Type	Inspector	FacType
2IN00052	OH0057991	2011/6/2	C	S	I

Section B: Facility Data

Name and Location of Facility Inspected Sims Brothers Inc 1011 South Prospect Street Marion, OH 43301	Entry Time	Permit Effective Date
	Exit Time	Permit Expiration Date
	11:30 AM	12/1/2006
	12:30 PM	11/30/2011

Name(s) and Title(s) of On-Site Representative(s)	Phone Number(s)
Mr. Tim Menzie, Safety/Environmental Director	(740) 387-9041

Name, Address and Title of Responsible Official	Phone Number
Mr. Tim Menzie Sims Brothers Inc 1011 South Prospect Street P. O. Box 1170 Marion, OH 43301	(740) 387-9041

Section C: Areas Evaluated During Inspection

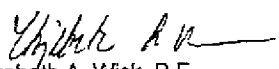
(S = Satisfactory, M = Marginal, U = Unsatisfactory, N = Not Evaluated)

S Permit	-- Flow Measurement	-- Pretreatment
N Records/Reports	-- Laboratory	-- Compliance Schedules
S Operations & Maintenance	N/A Effluent	S Self-Monitoring Program
S Facility Site Review	-- Sludge Storage/Disposal	- Other

Section D: Summary of Findings/Comments (Attach additional sheets if necessary)

- * No discharge from Outfall 001
- * Current NPDES permit will expire on 11/30/2011
- * A review of Discharge Monitoring Reports (7/2009 – 5/2011) indicated numerous effluent violations especially in Iron


9/6/11
 Jason Ko, Ohio EPA, Northwest District Office
 Name(s) and Signature(s) of Inspector(s) Date


6/16/11
 Elizabeth A. Wick, P.E., Ohio EPA, Northwest District Office
 Name and Signature of Reviewer Date