



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

5/25/2017

Apio, Inc.
12700 South Dixie Highway
Bowling Green, OH 43402

RE: Director's Final Findings & Orders
NPDES
Wood County
8OU00049

Ladies and Gentlemen:

Transmitted herewith is one copy of the Director's Final Findings & Orders in the referenced matter. An appeal paragraph is set forth in the Orders.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Fowler", is written over a light blue horizontal line.

Kevin J. Fowler, Supervisor
Permit Processing Unit
Division of Surface Water

KJF/dks

Enclosure

CERTIFIED MAIL

cc: L. Reeder, DSW
R. Demuth, DSW
B. Palmer, DSW
J. Martin, DSW
Fiscal
Compliance Section
M. McCarron, PIC
H. Griesmer, PIC
J. Lee, PIC
T. Poffenbarger, NWDO/DSW
B. Fischbein, Legal
P. Simcic, Legal
P. Fallah, DEFA
Journal Room
File

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the matter of:

**Apio, Inc.
12700 South Dixie Hwy
Bowling Green, Ohio 43402**

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:
:

**Director's Final Findings
and Orders**

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Finding and Orders ("Orders") are issued to Apio, Inc., ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("R.C.") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These orders shall apply to and be binding upon Respondent and their 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 R.C. 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 fresh green bean and packaged salad commercial processing and packaging facility is located at 12700 South Dixie Highway, Bowling Green, Ohio ("the Facility.")
2. Ohio EPA commenced an investigation of Respondent's Facility in response to a complaint received on September 8, 2015 of noxious and septic odors coming from an unnamed tributary of the North Branch of the Portage River. OEPA-NWDO Division of Emergency Response and the Division of Surface Water observed septic and odorous conditions in the tributary and in four storm water catch basins along the east side of South Dixie Highway, some of which had visible green beans in them. They also observed a four-inch PVC pipe near the fence of

Respondent's Facility and a channel leading to the storm drainage ditch along the highway.

3. OEPA investigators visited the Facility itself and observed a flexible blue hose and a submersible pump in an open manhole leading to the four-inch PVC pipe. The manhole was for the process wastewater wet well, which normally pumps process wastewater to the Village of Portage sanitary sewer system. Respondent's industrial engineer indicated to OEPA that the Facility was having capacity issues with the existing pumps and was using the submersible pump to discharge excess process wastewater from the wet well. OEPA asked Respondent to remove the pump and hose from the wet well.
4. Investigators further observed two onsite containers used for food waste which were leaking leachate and draining directly into the Facility's storm drain system. Waste vegetables were also observed on the ground in areas that drained to the storm catch basin, resulting in the discharge of contaminated storm water runoff.
5. Ohio EPA sampled the storm drainage ditch, which was grey with areas of noticeable septic deposits. The samples indicated dissolved oxygen levels of 0.35 mg/l and 1.38 mg/l, below the minimum required standard of dissolved oxygen of 5.0 mg/l in violation of OAC 3745-1-07.
6. Under the direction of the Department for Environmental Response and Revitalization ("DERR"), Respondent began remediation of the storm drain catch basin and ditch by installing a dam in the unnamed tributary and pumping the ditch and catch basins. In a follow-up investigation dated September 10, 2015, Ohio EPA observed the two waste containers had been removed and the remediation work had been completed to the point where the dam could be removed to allow natural drainage to resume.
7. A Notice of Violation ("NOV") letter dated September 17, 2015 was sent to Respondent citing the multiple violations noted above. The Respondent was ordered by Ohio EPA to describe events that led to the decision to install the bypass pump, when it was installed, the frequency of bypass events, and approximate volume per discharge. Further, Respondent was ordered to provide Ohio EPA with average daily water usage at the facility for August 2015, summarize all remediation action and correction actions taken in response to the incident, provide a long term solution to properly handle the generated wastewater while reviewing the adequacy of the existing capacity of the process wet well pumps and force main, and finally to provide long-term solutions to address and prevent contaminated stormwater from discharging off site.
8. Respondent replied to the NOV on October 5, 2015. The plant experienced substantial rapid growth which is thought to have contributed to the capacity issues of the wastewater pumps. On July 22, 2015 the first instance of wastewater

discharge occurred at the plant where Respondents estimated approximately 3,000 gallons had been discharged. Two of the pumps were replaced at that time, and the submersible pump was used to pump accumulated water from the holding tank. On September 2, 2015 the facility had another discharge of approximately 3,000 gallons. Bigger pumps with more horsepower were installed, and the pumps are being monitored daily. The company worked with Ohio EPA and EQ Services to complete response and remediation work.

9. OEPA sent a follow up NOV on November 2, 2015, indicating that the installation of new, larger pumps, as well as a change in the configuration of holding tanks onsite, was in violation of R.C. 6111.45 for failing to obtain a PTI prior to installation.
10. The unnamed tributary of the North Branch of the Portage River is considered a "waters of the state" as defined in R.C. § 6111.01.
11. R.C. § 6111.07 (A) prohibits any person from violating, or failing to perform, any duty imposed by R.C. §§ 6111.01 to 6111.08, or violating any rule adopted by the Director pursuant to those sections, including OAC Rule 3745-42-02.
12. In accordance with R.C. § 6111.04, no person 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 without a valid, unexpired permit.
13. Pursuant to OAC Rule 3745-1-04, the following general water criteria shall apply to all waters of the state including mixing zones. To every extent practical and possible as determined by the director, these waters shall be: (A) free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life.
14. R.C. § 6111.44(A) states no municipal corporation, county, public institution, corporation, or officer or employee thereof or other person shall provide or install sewerage or treatment works for sewage, sludge, or sludge materials disposal or treatment or make a change in any sewerage or treatment works until the plans therefore have been submitted to and approved by the director of environmental protection.
15. Pursuant to OAC Rule 3734-42-02, no person shall cause, permit or allow the installation of a new disposal system or cause, permit or allow the modification of a disposal system without first obtaining an individual permit to install, a general permit to install or plan approval in accordance with this chapter and all other applicable rules and laws.

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 PTI requirements of Ohio Administrative Code ("OAC") Chapter 3745-42.
17. Compliance with the R.C. Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
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 purposes of R.C. Chapter 6111.

V. ORDERS

The Director hereby issues the following Orders:

1. Within ninety (90) days from the effective date of these Orders, Respondent shall submit an as-built permit to install ("PTI") for changes made to the process wastewater system.
2. Within ninety (90) days from the effective date of these Orders, Respondent shall install a high-water alarm on the existing process wet-well, and document daily inspections and house-keeping to ensure that discharges of process and contaminated storm water runoff are prevented in the future.
3. Respondent shall pay the amount of twelve thousand dollars (\$12,000.00) in settlement of Ohio EPA's claim 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 the total amount. The official check shall be submitted together with a letter identifying Respondent to:

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

A copy of the check shall also be sent to Mark Mann, Environmental Manager, Enforcement Section, or his successor, at the above address:

A photocopy of the check shall be sent to Ohio EPA, Northwest 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 the Respondent. For purposes of these Orders, a responsible official is 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 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 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

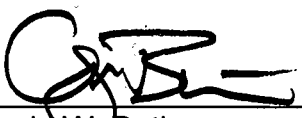
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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




Craig W. Butler
Director

5/24/17
~~5/24~~

Date

IT IS SO AGREED:


Apio, Inc.



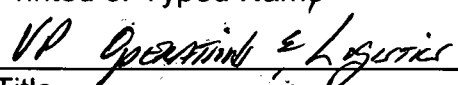
Signature

5/4/17

Date



Printed or Typed Name



Title