

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

**Vincent Larney  
5925 Belmont Avenue  
Youngstown, Ohio 44505**

**Director's Final Findings  
and Orders**

**and**

**Consumer Car Co.  
5925 Belmont Avenue  
Youngstown, Ohio 44505**

**Respondents**

OHIO E.P.A.  
DEC 14 2004  
ENTERED DIRECTOR'S JOURNAL

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Vincent Larney and Consumer Car Co., (together referred to as "Respondents," and individually as "Respondent Larney" and "Respondent CCC," respectively), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code Chapter 6111.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondents, Respondent Larney's heirs, and Respondents' successors in interest liable under Ohio law. No change in ownership of the Respondent Larney property or change in ownership or operation of the building or Respondent CCC, shall in any way alter Respondents' 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:

- 1 Respondent Larney is the owner of property ("Respondent Larney property") located on the east side of 5925 Belmont Avenue (State Route 193), just south of Tibbetts-Wick Road, in Liberty Township, Trumbull County.

*I certify this to be a true and accurate copy of the  
official document as filed in the records of the Ohio  
Environmental Protection Agency.*

*Donna Gachben 12-14-04*

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2. Adjacent to the Respondent Larney property is property owned by Angelo Dickey, Michael Dickey, and Florence C. Dicintio ("Dickey property").
3. On the Respondent Larney property is situated a building ("building"), within which is a business owned and operated by Respondent CCC, incorporated in Ohio on December 21, 1977, as a for profit corporation, which current incorporation status is "active." Respondent Larney is Respondent CCC's statutory agent. Respondent CCC, formally an auto repair and auto parts company, is currently an auto repair, auto sales and truck rental company.
4. The southern portion of said building is rented to Barnett Plumbing.
5. The building, erected by Respondents, encroaches on the Dickey property and upon said property Respondents have placed a 2000 gallon holding tank and tank effluent lines.
6. A septic tank is located in the building, underneath concrete. At the time of a July 2, 1996 inspection, a stream of raw wastewater was noted flowing away from the building and onto the Dickey property.
7. The holding tank on the Dickey property receives sewage and receives or received mechanical wastewater (engine lubricating oil and antifreeze). While Respondent Larney indicated that the tank was approved by Ohio EPA, as no documentation was found or provided demonstrating such approval, the holding tank is found to be unpermitted.
8. Ohio Administrative Code ("OAC") Rule 3745-42-02, effective October 17, 2003, and its predecessor rule OAC Rule 3745-31-02, require the Director's issuance of a plan approval and permit to install ("PTI") prior to the installation of a new "disposal system," as such term is defined in ORC § 6111.01(G).
9. 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 rule adopted by the Director pursuant to those sections, including OAC Rule 3745-42-02 and its predecessor rule OAC Rule 3745-31-02.
10. The septic tank, holding tank and tank effluent lines are "disposal systems" as defined in ORC Section 6111.01(G).
11. Respondents' installation of new disposal systems without a plan approval and PTI is a violation of ORC §6111.07 and OAC Rule 3745-42-02 and its predecessor rule OAC Rule 3745-31-02.

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12. On August 21, 1996, the Trumbull County Health Department ("TCHD") declared the building a public health nuisance and ordered Respondent Larney to install an Ohio EPA approved semi public disposal system within six months.

On August 4, 1997, Ohio EPA received a written proposal from Respondent Larney to abate water pollution concerns on the property. The proposal was to move the holding tank to the south of the building, on the Respondent Larney property. The tankage would be temporary, approximately 6-9 months, until the installation of a pump station and force main which would conduct Respondent CCC's wastewater to the Trumbull County existing sanitary sewer line on State Route 193, south of the Respondent Larney property.

On August 20, 1997, Respondent Larney was informed by Ohio EPA to submit a plan approval and PTI application for the above proposal.

15. Respondent Larney did not comply with the TCHD's Order and on January 8, 1998, entered a no contest plea in the Girard Municipal Court for that noncompliance. A \$500.00 fine was imposed on Respondent Larney, which was suspended on the condition that Respondent Larney either install a holding tank on the Respondent Larney's property and connect to a sanitary sewer line to be built, or, if not available, install an Ohio EPA approved pump station and force main and connect to the existing sanitary sewer line and eliminate the holding tank.
16. On January 14, 1998, Respondent Larney and the Trumbull County Board of Commissioners ("Commissioners") entered into an agreement that, among other things, provided that:
  - a. The Commissioners will, in the future, attempt to provide sewage service for the property; and
  - b. Because a permanent sanitary sewer line has not yet been made available for the area, the Commissioners will allow and permit a temporary connection via a force main and pump station to the existing sanitary sewer line to the south of the property.
17. On February 20, 1998, Ohio EPA received a PTI application and detailed plans for Respondent Larney's proposal, with final revisions received on July 8, 1999.
18. On July 16, 1999, Respondent CCC was issued PTI No. 02-11970, which provided, among other things, for the following:
  - a. Relocation of the holding tank to the Larney property;

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- b. Within nine months of the effective date of the PTI, connection to the soon to be built sanitary sewer line, or, if not available, install an Ohio EPA approved pump station and force main to connect to the existing sanitary sewer line; and
  - c. Achieve connection of the pump station and force main to the existing sanitary sewer line and eliminate the holding tank within twelve months.
19. As Respondents did not, within eighteen months of the effective date of the PTI and plan approval, undertake a continuing program of installation or modification, nor enter into a binding contractual obligation to undertake and complete, within a reasonable time, a continuing program of installation or modification, the PTI and plan approval terminated.

On May 20, 2002, TCHD conducted a dye test at the building. Dye was poured into a toilet in the building and flowed out of the top of the holding tank located on the Dickey property.

21. On January 10, 2003, TCHD inspected the building and properties and found effluent overflowing from the top of the holding tank on the Dickey property and that the septic system was creating a nuisance.
22. On August 5, 2004, TCHD inspected the building and properties and found that the holding tank on the Dickey property was flooded at ground level.

On August 17, 2004, TCHD inspected the building and properties and found that both tanks had been emptied on August 12, 2004. A dye test was also conducted demonstrating a path of effluent flow from the building to the holding tank.

24. The dye tests evidenced that the tank effluent lines were connected to the holding tank on the Dickey property and capable of conducting waste to said tank.

Respondents have not provided Ohio EPA with documentation from the Dickeys authorizing Respondents' entry upon the Dickey property for the purpose of emptying the holding tank or providing maintenance to said tank and tank effluent lines.

26. ORC § 6111.03(H) provides that the Director may 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.

27. ORC § 6111.03(O) provides that the Director may exercise all incident powers necessary to carry out the purposes of ORC Chapter 6111.

ORC § 6111.05 provides that the Director, on his own initiative, may investigate or make inquiries into any alleged act of pollution or failure to comply with ORC Chapter 6111., or any order, any rule, the terms and conditions of a permit, or any other determination pursuant thereto.

29. ORC § 6111.46(A) provides that Ohio EPA shall exercise general supervision of the treatment and disposal of sewage and industrial wastes and the operation and maintenance of works or means installed for the collection, treatment, and disposal of sewage and industrial wastes. Such general supervision shall apply to all features of construction, operation, and maintenance of the works or means that do or may affect the proper treatment and disposal of sewage and industrial wastes.

30. ORC § 6111.46(C) provides that Ohio EPA may require the submission of records and data of construction, operation, and maintenance, including plans and descriptions of existing works or means of treatment and disposal of such sewage and industrial wastes. When Ohio EPA requires the submission of such records or information, the person or corporation shall comply promptly with that order.

Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.

32. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and 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. Within thirty (30) days of the effective date of these Orders, Respondents shall submit to Ohio EPA the following information:
- a. A description of, and submittal of records for, the disposal systems (septic tank and holding tank and tank effluent lines) identified in these Orders, and any other disposal systems as may be located within the building or on the Respondent Larney property, with said description and submittal including all of the following:

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- Construction and installation records;
  - ii. The year of installation, model numbers, manufacturer, dimensions and construction specifications;
  - iii. Points of any chemical addition, control instrumentation, alarm levels, and monitoring equipment;
  - iv. Maximum design flow;
  - v. Whether the design allows for ten days of storage retention; and
  - vi. Presence and description of any secondary containment structures.
- b. Operation and maintenance plan for the tanks and tank effluent lines, that at a minimum shall address:
- i. Waste hauling schedules and any contracts therefor, including the name and vehicle registration number of the hauler and the name and address of the receiving facility;
  - ii. Spill control plan;
  - iii. Standard operating procedures for filling, operating and emptying the tanks;
  - iv. Operation and maintenance of any equipment associated with the tanks; and
  - v. Any other measures that will prohibit the creation of a public nuisance or pollution of waters of the state.
2. The following records of the off-site shipment of waste shall be maintained at the building for a period of three years:
- a. The date of shipment;
  - b. The volume and description of the waste from each disposal system;
  - c. The name and address of the receiving facility; and
  - d. The name and vehicle registration number of the hauler.

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3. Within thirty (30) days of the effective date of these Orders, Respondents shall obtain and provide a copy to Ohio EPA of a letter of authorization to enter upon the Dickey property for the purpose of emptying the holding tank and providing maintenance for said tank and tank effluent lines. Should authorization to enter upon the Dickey property not be obtained within the time provided, Respondents shall plug and seal the tank effluent lines or otherwise make said lines non-operational, so that no effluent leaves Respondent Larney property nor is otherwise conducted to the holding tank on the Dickey property and provide certification of such line plugging to Ohio EPA within ninety (90) days of the effective date of these Orders.
4. Within the time provided therein, submit complete applications for any permits or approvals so required by law, as is instructed by Ohio EPA.
5. All documents and submittals required under these Orders shall be submitted to:

Ohio Environmental Protection Agency  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087-1969  
Attn: DSW Enforcement Group Leader

## **VI. TERMINATION**

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I (we) certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondents to Ohio EPA and shall be signed by responsible officials of the Respondents. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(D).

**VII. OTHER APPLICABLE CLAIMS**

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 Respondents.

**IX. RESERVATION OF RIGHTS**

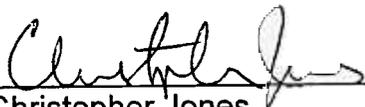
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondents for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondents to perform additional activities pursuant to ORC Chapter 6111., or any other applicable law in the future. Nothing herein shall restrict the right of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

**X. EFFECTIVE DATE**

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

**IT IS SO ORDERED**

**Ohio Environmental Protection Agency**

  
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Christopher Jones  
Director

17-10-04  
Date