

BEFORE THE OHIO  
ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
FEB - 8 2013  
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

City of Cleveland  
Department of Public Utilities  
Division of Water  
Crown Water Treatment Plant  
1201 Lakeside Avenue  
Cleveland, Ohio 44114

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Director's Modified Final  
Findings and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Cleveland, Department of Public Utilities, Division of Water, Crown Water Treatment Plant ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3753.08 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 ownership of the facility owned by the Respondent 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 ORC Chapter 3753 and the rules promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA makes the following findings:

1. On August 8, 2012, the Director and Respondent entered into Director's Final Findings and Orders ("August Orders") to address violations of Ohio Administrative Code Chapter 3745-104 and ORC § 3753.08 which were observed during an inspection conducted on September 13, 2011. The August Orders, which are attached hereto and incorporated herein by reference, contained a requirement for payment of a civil penalty including funding of Supplemental Environmental Project ("SEP").

2. Specifically, Order 3 of the August Orders required that Respondent:

"In lieu of paying the remaining eleven thousand five hundred eighty seven dollars (\$11,587) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by retrofitting some of its fleet of vehicles with diesel oxidation catalysts to reduce diesel particulate emissions. Respondent shall submit documentation that the SEP has been completed within one hundred twenty (120) days after the effective date of these Orders to Bruce Weinberg, Manager, Enforcement Section, or his successor, at the following address:

Ohio EPA  
Division of Air Pollution Control  
Lazarus Government Center  
P.O. Box 1049  
50 West Town Street, Suite 700  
Columbus, Ohio 43216-1049"

3. The August Orders did not require Respondent to return to Ohio EPA any portion of the allotted SEP funds that were not used after completing the SEP.
4. On November 21, 2012, Respondent submitted documentation showing that the SEP was completed at an actual cost of nine thousand three hundred twenty-six dollars and twelve cents (\$9,326.12), resulting in a difference of two thousand two hundred sixty dollars and eighty-eight cents (\$2,260.88) that is now due to be refunded to Ohio EPA.
5. The Director and Respondent wish to modify Order 3 of the August Orders.
6. These Modified Director's Final Findings and Orders are being issued to reflect Respondent's need to return a portion of the funds allotted for the SEP that were not spent by Respondent after completing the SEP. Eleven thousand five hundred eighty-seven dollars of the civil penalty were allocated for Respondent to complete the SEP. Respondent spent \$9,326.12 on the SEP to retrofit six of its fleet vehicles with diesel oxidation catalysts to reduce diesel particulate emissions, leaving an unspent amount in the sum of \$2,260.88. Order 1, along with this Finding, have been added to reflect the change.

## V. ORDERS

1. The August Orders are effective, except that Order 3 is modified to add the following:

Should Respondent fail to fully expend all funds allocated for completion of this SEP, Respondent shall immediately return the remaining unspent balance of the

civil penalty to Ohio EPA in accordance with Orders 2 and 4.

#### **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 Air Pollution Control 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 Respondent. For purposes of these Orders, a responsible official is a "facility official" who is in charge of a principal business function of Respondent.

#### **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 of these Orders, for any liability arising from, or related to the operation of Respondent's 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. NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: Sherri Swihart

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**

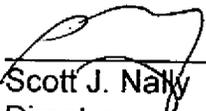
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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.

**ORDERED AND AGREED:**

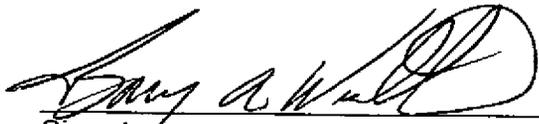
**Ohio Environmental Protection Agency**

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

2/4/13  
\_\_\_\_\_  
Date 2/4/13

**AGREED:**

**City of Cleveland  
Department of Public Utilities  
Division of Water  
Crown Water Treatment Plant**

  
\_\_\_\_\_  
Signature

Barry A. Withers  
\_\_\_\_\_  
Printed or Typed Name

1/18/13  
\_\_\_\_\_  
Date

Director  
\_\_\_\_\_  
Title

The legal form and correctness of the within instrument is hereby approved.  
Barbara Langhenry Director of Law  
By Shirley Inanuelo Asst. Director of Law  
Date 1/29/13