

OHIO E.P.A.

MAR 20 2013

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the matter of:**

<b>City of Barberton</b>	:	<b>Director's Final</b>
<b>576 W. Park Drive</b>	:	<b>Findings and Orders</b>
<b>Barberton, Ohio 44203</b>	:	
	:	
<b>Respondent</b>	:	

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to the City of Barberton ("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. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent has authorization to discharge storm water from its municipal separate storm sewer systems (MS4s) under Ohio EPA Facility Permit Number 3GC00065\*AG. This permit was issued March 19, 2003.
2. Pursuant to Ohio Administrative Code (OAC) 3745-39-03(C)(2)(c)(ii)(b) and Section 3.2.3.1.3 of Respondent's Small MS4 General Permit, Respondent is required to adopt an ordinance or other regulatory mechanism to address illicit discharges into the storm water system.
3. Respondent was notified in regards to this violation on numerous occasions since 2009 via Notices of Violation letters, audits, phone calls and a letter by the Chief of the Division of Surface Water.
4. Respondent addressed this violation by adopting an ordinance to address illicit discharges on December 10, 2012.

5. Pursuant to ORC Section 6111.07(A), no person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violate any order, rule, or term or condition of a permit issued or adopted by the director of environmental protection pursuant to those sections. Each day of violation is a separate offense.
6. 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 RC Chapter 6111.

### **III. ORDERS**

The Director hereby issues the following Orders:

1. Within thirty (30) days from effective the date of these Orders, Respondent shall pay the amount of five thousand (\$5,000) dollars in settlement of Ohio EPA claim for civil penalties, which may be assessed pursuant to R.C. Chapter 6111. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent.

A copy of the check shall be sent to Ohio EPA at the address listed below:

Ohio EPA  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Larry Reeder, Enforcement Supervisor

### **IV. TERMINATION**

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the civil penalty payment required by these Orders.

### **V. RESERVATION OF RIGHTS AND WAIVER**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived herein.

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 of 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 comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

#### **VI. EFFECTIVE DATE**

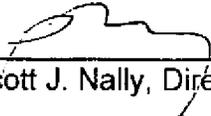
The effective date of these Orders is the date the Orders are entered into the Ohio EPA Director's journal.

**VII. SIGNATORY AUTHORITY**

Each undersigned representative or 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:**

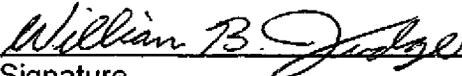
**Ohio Environmental Protection Agency**

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

3/19/13  
Date

**IT IS SO AGREED:**

**City of Barberton**

  
\_\_\_\_\_  
Signature

3-7-2013  
Date

William B. Judge  
\_\_\_\_\_  
Printed or Typed Name

Mayor  
\_\_\_\_\_  
Title