

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Lake County Commissioners
105 Main Street
Painesville, Ohio 44077

: 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 the Lake County Commissioners ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code ("ORC") Chapters 6111.

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 Respondent's sewer system 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 Chapters 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. On September 15, 2011, Ohio EPA received a Verified Complaint (VC) No. 11067W01 from Mr. Jerome T. Osborne alleging violations of Ohio Revised Code Chapter 6111 against the Lake County Department of Utilities regarding discharges of sewage from a leaking sewer line into Mentor Marsh. Ohio EPA determined it to be a valid verified complaint under Ohio Revised Code (ORC) Section 3745.08(A).

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2. In accordance with ORC Section 6111.04, no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant to waters of the state without applying for and obtaining a valid permit.
3. 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.
4. Mentor Marsh is a "water of the state" as defined by ORC Section 6111.01.
5. Ohio EPA conducted an investigation of the complaint as required by ORC Section 3745.08(B). Ohio EPA's investigation revealed that the sewer line had fallen into a state of decay and that sewage was discharged into Mentor Marsh. Because Respondent does not hold a permit for the discharge of pollutants for the discharges at issue, the discharges were in violation of ORC Sections 6111.04 and 6111.07.
6. Respondent took action to repair the sewer line and abate the discharges. Further, Respondent indicated an intention of replacing the sewer line as a long term solution to this issue. Because of these actions, the Director determined that violations were unlikely to reoccur and therefore on January 10, 2012, VC 11067W01 was dismissed.
7. On July 6, 2012, Ohio EPA received another verified complaint (VC No. 12032W02) alleging further discharges from the same sewer line in question in four locations. Ohio EPA determined it to be a valid verified complaint under ORC Section 3745.08(A).
8. Ohio EPA conducted an investigation of the complaint as required by ORC Section 3745.08(B). Ohio EPA's investigation revealed that the sewer line had further discharges in violation of ORC Sections 6111.04 and 6111.07.
9. On August 2, 2012, staff from Ohio EPA met with representatives of the Lake County Department of Utilities. Ohio EPA emphasized the need to closely monitor the sewer and to increase the frequency of inspections until such time the sanitary sewer is replaced.
10. Lake County Department of Utilities has nominated a project to replace the sewer line which will eliminate the unauthorized discharges for the Water Pollution Control Loan Fund 2013 intended use plan. A construction schedule has been proposed with a construction loan request by December 1, 2013.
11. 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.

12. Compliance with the ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
13. 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

1. Within one (1) year from the effective date of these Orders, Respondent shall obtain all necessary easements, temporary easements, rights-of-way, and other necessary property interests for construction. Respondent shall pursue acquisition of these interests with all reasonable diligence, but if Respondent is unable to acquire the necessary property interests within the allotted period, Respondent shall contact Ohio EPA, and Ohio EPA shall consider appropriate extensions of time.
2. As soon as possible but not later than twenty-one (21) months from the effective date of these Orders, Respondent shall submit a Permit to Install (PTI) application for detailed plans for necessary upgrades to the sanitary sewer line.
3. As soon as possible, but not later than one-hundred eighty (180) days from Ohio EPA's approval and issuance of the PTI, Respondent shall initiate construction in accordance with the PTI.
4. Within fifteen months of initiation of construction, or such shorter time as the scope of the project may allow, Respondent shall complete construction.
5. Until construction of upgrades pursuant to the PTI is complete, Respondent shall, at a minimum, perform and document monthly inspections of the sanitary sewer line.
6. Until construction of upgrades pursuant to the PTI is complete, Respondent shall continue eliminating unauthorized discharges from the sewer line when discovered.

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, acknowledge, 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 as 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 the operation of Respondent's sewer collection system.

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
Central District Office

Division of Surface Water
P.O. Box 1049, Columbus, OH 43216-1049

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. Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for WWTP violations specifically cited in 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. Except for the right to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders, which right Ohio EPA does not waive, 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

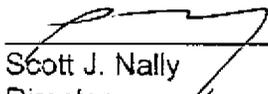
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



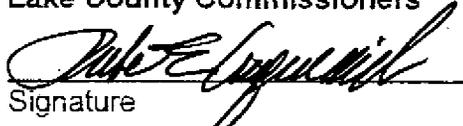
Scott J. Nally
Director

6/20/13

Date

IT IS SO AGREED:

Lake County Commissioners



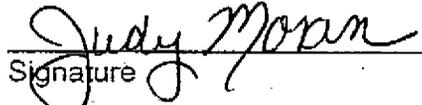
Signature

June 11, 2013

Date

Robert E. Aufuldish, President

Printed or Typed Name and Title



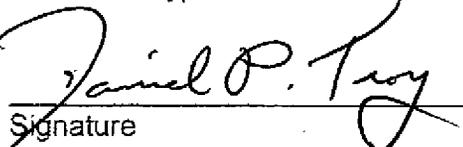
Signature

June 11, 2013

Date

Judy Moran Commissioner

Printed or Typed Name and Title



Signature

June 11, 2013

Date

Daniel P. Troy Commissioner

Printed or Typed Name and Title