

OHIO E.P.A.

BEFORE THE

JUN 28 2010

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Village of Bluffton  
100 E. Elm Street  
Bluffton, OH 45817

Respondent

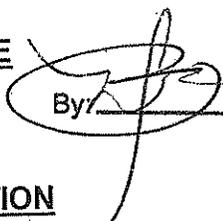
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Director's Final Findings  
and Orders

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

PREAMBLE

It is agreed by the Parties hereto as follows:

By:  Date: 6-28-2010

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Village of Bluffton ("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. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in the composition of 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 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is an incorporated village located in Richland Township, Allen County, Ohio.
2. Respondent is the owner and operator of a wastewater treatment plant ("WWTP") and associated collection system.
3. Respondent holds a valid unexpired National Pollutant Discharge Elimination System ("NPDES") permit, Number 2PC00005\*ID (effective September 1, 2006), for the

discharge from its WWTP, via WWTP outfall (station no. 2PC00005001) and two combined sewer overflows ("CSOs") from station nos. 2PC00005021 and 2PC00005023, to Riley Creek.

4. Riley Creek constitutes "waters of the state" as defined by ORC § 6111.01(H).

#### Permit to Install ("PTI") Violations

5. Respondent replaced sanitary sewers in Harmon Road in the Village of Bluffton. The construction began on November 15, 2007, and ended December 5, 2007. Ohio EPA notified Respondent on November 29, 2007, that a PTI was required before the construction could continue, as documented in the December 6, 2007, Notice of Violation ("NOV"). Ohio EPA had previously informed Respondent that a PTI was required before replacing a part of the sewer, as documented in letters dated June 16, 2005 and July 3, 2007.
6. Respondent submitted PTI Application No. 644884 and modification plans to Ohio EPA, on January 10, 2008, after construction of the sewer line had been completed.
7. The sanitary sewer replacement proposed in PTI Application No. 644884 is a "disposal system," as defined in ORC § 6111.01(G).
8. Pursuant to ORC Section 6111.44(A), no municipal corporation shall install or make a change in any sewerage or treatment works until the plans therefor have been submitted to and approved by Ohio EPA.
9. Ohio Administrative Code ("OAC") Rule 3745-42-02 requires a PTI and plan approval before a modification may be made to a disposal system.

#### CSO Elimination Violations

10. NPDES permit No. 2PC00005\*ID included a compliance schedule for the elimination of all CSOs by September 30, 2007. Respondent was also required to submit status reports every six months beginning March 1, 2006. Respondent must also report, within 14 days, when a CSO is eliminated, in accordance with NPDES permit No. 2PC00005\*ID.
11. Two CSOs had not been eliminated as of September 30, 2007. One of the two remaining CSOs (the Jefferson Street CSO) was eliminated in January 2008, leaving one remaining CSO (the Riley and Spring Street CSO). In a letter dated August 16, 2007, but received December 3, 2007 by Ohio EPA, Respondent has conceded that the remaining CSO would not be eliminated until the end of 2009. Respondent informed Ohio EPA that the final CSO was eliminated in August 2009.

12. Respondent failed to submit status reports regarding the CSOs on March 1, 2007, September 1, 2007, March 1, 2008, and September 1, 2008, as required by the NPDES permit. Ohio EPA sent NOV letters dated July 3, 2007 and November 16, 2007 notifying the Village that it failed to meet the status report requirements of the NPDES permit.
13. Respondent did not timely report elimination of the Jefferson Street CSO.
14. 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.

#### **Implementation of Nine Minimum Controls**

15. NPDES permit No. 2PC00005\*ID requires implementation of the Nine Minimum Controls ("NMC"). NMC require the use of technologies to prohibit dry weather overflows, and to provide proper operation and maintenance for the collection system and the CSO points.
16. On June 5, 2007 Ohio EPA inspected Respondent's wastewater collection system and identified Respondent's failure to document, implement, and establish operation and regular maintenance procedures including those to prevent both dry and wet weather overflows. By inspection letter and NOV dated June 21, 2007, Respondent received notice of these deficiencies.

#### **Sanitary Sewer Overflows**

17. NPDES Permit No. 2PC00005\*ID prohibits sanitary sewer overflows ("SSOs") except under emergency conditions. NPDES Permit No. 2PC00005\*ID additionally requires that SSOs be reported on monthly operating report form 4500.
18. Respondent submitted Follow-Up Written Reports on SSOs that occurred on March 15, 2007 and another on March 7, 2008. However, Respondent did not include these on the March 2007 and March 2008 monthly operating reports. Respondent was notified of this deficiency in a letter dated July 3, 2007 and entitled NPDES Permit Compliance/ CSO inspection letter and report. Additional SSOs occurred in July and August of 2008.
19. 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 ORC §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.
20. This document does not modify NPDES permit No. 2PC00005\*ID. The purpose of these Orders is to correct Respondent's noncompliance with permit No. 2PC00005\*ID and not to alter said permit.

21. 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. Respondent shall not install sewerage, or treatment works for sewage disposal or new disposal systems, including but not limited to sanitary sewers, at any location without first receiving prior approval from the Director as required by law.
2. Respondent shall report all SSOs, in accordance with NPDES permit No. 2PC00005\*ID. Respondent shall electronically submit Station 300 reports for March 2008, July 2008 and August 2008 to account for the SSOs that occurred during those months.
3. Respondent shall pay to the Ohio EPA the amount of ten thousand dollars (\$10,000.00) in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 6111.09. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for that amount within thirty (30) days of the effective date of these Orders, to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent, to:

Office of Fiscal Administration  
Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, Ohio 43216-1049

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.

This 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 for a municipal, state, or other public facility.

#### **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 Respondent's WWTP and sewer 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 the Respondent.

#### **IX. MODIFICATIONS**

These Orders may be modified by the 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 EPA, Northwest District Office  
Attn: DSW Enforcement Unit Supervisor  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

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 those 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.

**IT IS SO AGREED:**

Village of Bluffton

Frederick Rodabaugh

6-1-2010  
Date

Frederick D Rodabaugh  
Print Name

Mayor  
Title

**IT IS SO ORDERED AND AGREED:**  
Ohio Environmental Protection Agency

Chris Korleski  
Chris Korleski  
Director

6/25/10  
Date