OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Municipality of Germantown 75 N Walnut Street Germantown, Ohio 45327	:	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 Municipality of Germantown ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code (R.C.) §§ 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 R.C. Chapters 6111 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent has authorization to discharge storm water from small municipal separate storm sewer systems (MS4s) under Ohio EPA Facility Permit Number 1GQ00031*AG.

Certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency
By: [illegible] Date 2-26-06

2. Pursuant to Ohio Administrative Code (OAC) 3745-39-03 (C)(7)(c) and Section 4.3 of Respondent's Small MS4 general permit, Respondent is required to submit Annual Reports to Ohio EPA starting one year after the date Ohio EPA has granted Respondent's general permit coverage.

3. To date, Ohio EPA has not received Respondent's Annual Report for year 2003 activities. Attachment 1 is Respondent's Notice of Violation (NOV) letter for not submitting the required 2003 Annual Report, which is attached to these Orders and incorporated by reference as if fully rewritten within.

4. To date, Ohio EPA has not received Respondent's Annual Report for year 2004 activities. Attachment 2 is Respondent's Notice of Violation (NOV) letter for not submitting the required 2004 Annual Report, which is attached to these Orders and incorporated by reference as if fully rewritten within.

5. 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 R.C. Chapter 6111.

V. ORDERS

1. Within thirty (30) days after the effective date of these Orders, Respondent shall submit to Ohio EPA the Respondent's 2003 Annual Report and the 2004 Annual Report. Both Annual Reports shall be submitted in accordance with Section X of these Orders.

2. In accordance with Ohio Administrative Code (OAC) 3745-39-03 (C)(7)(c) and Section 4.3 of Respondent's Small MS4 general permit, Respondent shall submit the upcoming 2005 Annual Report on or before the required due date.

3. Within fourteen (14) days of the effective date of these Orders, Respondent shall pay the amount of one thousand five hundred ($1,500.00) dollars in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to R.C. Chapter 6111. Payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for one thousand two hundred ($1,200.00) dollars of the total civil penalty amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

4. In lieu of paying the remaining three hundred ($300.00) dollars of civil penalty, Respondent shall within fourteen (14) days of the effective date of these Orders fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of three hundred ($300.00) dollars to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for three hundred ($300.00) dollars of the total civil penalty amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of each check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, OH 43216 - 1049

A copy of each check shall be sent to Ohio EPA, in accordance with Section X. of these Orders.

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 4, Respondent shall immediately pay to Ohio EPA three hundred ($300.00) dollars of the civil penalty in accordance with the procedures in Order No. 3.

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.

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 the Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(D)(4) 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 activities occurring on or at the 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
Southwest District Office
Division of Surface Water
Attn: DSW Enforcement Unit Supervisor
401 East Fifth Street
Dayton, Ohio 45402

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
Attn: Manager, Stormwater and Enforcement Section
122 South Front Street [P.O. Box 1049]
Columbus, Ohio 43215 [43216-1049]

[For mailings use the post office box number and zip code in brackets]

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.

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency

Joseph P. Koncelik
Director

2/16/06
Date

IT IS SO AGREED:
Municipality of Germantown

Randy J. Bukas
Signature

4 JANUARY 2006
Date

RANDY J. BUKAS
Printed or Typed Name

VILLAGE MANAGER
Title