BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JUL - 1 2013

| | | |
|---|---|---|
| In the Matter of: | : | Director's Final Findings and Orders |
| Riley Holdings, LTD.<br>P.O. Box 258<br>Norwalk, Ohio 44857 | : | |
| Respondent | : | |

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.

By: [signature] Date: 7-1-13

## PREAMBLE

It is agreed by the parties hereto as follows:

## I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Riley Holdings, LTD. ("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 or the ownership or operation of the wastewater treatment plant ("WWTP") identified herein 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 § 6111.01 and the rules adopted thereunder.

## IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is an active Ohio Domestic Limited Liability Company, entity number 927423.

2. Respondent owns and operates a 15,000 gallon per day, extended aeration WWTP, located at 4290 State Route 601, Norwalk, Ohio, Huron County, servicing the Eagles Wing Subdivision, a small residential housing development.

3. The WWTP, which consists of a trash trap, aeration tank, final clarifier, sludge holding tank, two sand filters and chlorine contact tank, discharges into the East Branch of Rattlesnake Creek, a water of the state, pursuant to Ohio National Pollutant Discharge Elimination System ("NPDES") permit number 2PY00080*AD.

4. The East Branch of Rattlesnake Creek is designed as:

| | | |
|---|---|---|
| a. | Aquatic Life Habitat: | Warm Water Habitat |
| b. | Water Supply: | Agricultural, Industrial |
| c. | Recreation: | Primary Contact |

**Prior Compliance History**

5. During a June 3, 2009 inspection, memorialized in a June 12, 2009 letter, Ohio EPA staff observed that the WWTP was operating and discharging to a drainage ditch located to the north eastern edge of the property, which drainage ditch is a water of the state.

6. Respondent did not possess an NPDES permit for this discharge.

7. The June 12, 2009 letter instructed Respondent to submit a complete NPDES permit application, with fee, within thirty days of Respondent's receipt of the letter.

8. During an October 15, 2009 inspection, memorialized in an October 19, 2009 letter, Ohio EPA staff observed that the WWTP was operating and discharging to a storm catch basin and drainage tile, waters of the state, north of the WWTP.

9. Respondent did not possess an NPDES permit for this discharge.

10. The October 19, 2009 letter instructed Respondent to submit a complete NPDES permit application as soon as possible, but not later than December 1, 2009.

11. An NPDES permit application with appropriate fee was received on March 22, 2010, with permit number 2PY00080*AD issued on June 14, 2010, with an effective date of August 1, 2010 and an expiration date of July 31, 2015.

**Inspections and NPDES Permit Violations**

12. During a March 22, 2011 inspection, memorialized in a May 17, 2011 letter, Ohio EPA staff observed and noted that a new tank with a dechlorinator tablet feed ("dechlorination unit") had been installed.

13. Respondent did not submit a permit to install application for this modification to the disposal system (WWTP) as was required in the NPDES permit and Ohio Administrative Code ("OAC") 3745-42-02, nor receive authorization under ORC Chapter 6111 for its installation.

14. Further observed during the March 22, 2011 inspection was that the WWTP was not in proper operation, nor maintained as efficiently as possible, as required by the NPDES permit, as evidenced by the:

a. Aeration tank was not being aerated;

b. Light floating solids in the clarifier, with some solid buildup in the effluent weir;

c. Solid buildup on both sand filters and ponding;

d. Operation and maintenance records for the WWTP were not housed and maintained in such a manner as to be protected from weather damage and guarantee the authenticity and accuracy of the records contained within, nor were accessible onsite for twenty-four hour inspection by Ohio EPA or emergency response personnel; and

e. Failure to employ an appropriately certified operator of record to properly oversee operation of the WWTP, whose name was to be provided to Ohio EPA by October 1, 2010.

15. The May 17, 2011 letter required Respondent to submit, by July 1, 2011, a permit to install application with as built detailed plans for the dechlorination unit and the operator of record notification and, within thirty days, a written response identifying the steps to be taken to bring the WWTP into compliance.

16. No response was received.

17. On July 20, 2011, Respondent was informed by email that Ohio EPA had not received a signed and dated response letter indicating how compliance items identified in the May 17, 2011 letter would be addressed, nor a permit to install application with as built detail plant for the dechlorination unit.

18. During an April 5, 2012 inspection, memorialized in an April 13, 2012 letter, Ohio EPA staff observed and noted that;

a. Solids were built up on both sand filters, with the eastern filter ponded and the western filter not in use;

b. A permit to install application with as built detail plans had not been submitted for the dechlorination unit, nor a response letter identifying how the WWTP would be returned to compliance;

c. Operation and maintenance records for the WWTP were not housed and maintained in such a manner as to be protected from weather damage and guarantee the authenticity and accuracy of the records contained within, nor were accessible onsite for twenty-four hour inspection by Ohio EPA or emergency response personnel; and

d. Noncompliance with minimum staffing requirements.

## NPDES Permit Effluent Limit Violations

19. From January 2010 to March 2012, the WWTP experienced the following effluent limit violations:

| Reporting Period | Reporting Code | Parameter | Limit Type | Limit | Reported Value | Violation Date |
|---|---|---|---|---|---|---|
| June 2011 | 31648 | E. coli | 30D Conc | 161 | 200. | 6/1/2011 |
| December 2011 | 00610 | Nitrogen, Ammonia (NH3 | 30D Conc | 3.0 | 7.45 | 12/1/2011 |
| December 2011 | 00610 | Nitrogen, Ammonia (NH3 | 7D Conc | 4.5 | 7.45 | 12/8/2011 |
| March 2012 | 00610 | Nitrogen, Ammonia (NH3 | 30D Conc | 3.0 | 6.06 | 3/1/2012 |
| March 2012 | 00610 | Nitrogen, Ammonia (NH3 | 7D Conc | 4.5 | 6.06 | 3/8/2012 |

## Relevant Ohio Water Pollution Control Laws

20. ORC § 6111.04(A) prohibits any person from causing pollution or causing any sewage, industrial waste or other waste to be placed in any location where they cause pollution to waters of the state, except if such discharges occur in accordance with a valid, unexpired NPDES permit issued by the Director or if an application for renewal of such permit is pending.

21. ORC § 6111.04(C) prohibits any person to whom an NPDES permit has been issued from placing or discharging or causing to be placed or discharged in any waters of state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit without first receiving a permit from the Director to do so.

22. OAC Rule 3745-7-09(A)(2) requires that operation and maintenance records for a WWTP shall be housed and maintained in such a manner as to be protected from weather damage and guarantee the authenticity and accuracy of the records contained within and shall be accessible onsite for twenty-four hour inspection by Ohio EPA or emergency response personnel.

23. OAC Rule 3745-42-02 requires the Director's issuance of a permit to install prior to the installation of a new "disposal system," or the modification of a "disposal system."

24. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any order, rule, or term or condition of a permit issued by the Director pursuant to those sections. Each day of violation represents a separate violation.

25. ORC § 6111.09 provides that any person who violates ORC § 6111.07 shall pay a civil penalty of not more than ten thousand dollars per day of violations.

### Finding of Violations

26. Premised on the above findings, Respondent has and continues to violate ORC § 6111.07(A).

### Later Developments

27. On August 8, 2012, proposed Orders were transmitted to Respondent.

28. In March 2013, Respondent submitted a permit to install application and detailed plans for the dechlorination unit.

29. On March 8, 2013, Ohio EPA notified Respondent by email of the following comments:

    a. The plans need details/specifications on the tablet feeders and inspection port;
    b. The PE needs to sign the B3 form; and
    c. The plans also need a site map with a scale and north arrow.

### *Director Considerations*

30. 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 purpose of ORC Chapter 6111.

31. 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 permit to install and plan approval requirements of ORC §§ 6111.44(A) and 6111.45 and Ohio Administrative Code Chapter 3745-42.

## V. ORDERS

1. Respondent shall not install sewerage or treatment works for sewage disposal or new disposal systems, at any location in Ohio without first receiving prior approval from the Director as required by law.

2 Immediately after the effective date of these Orders, Respondent shall operate the WWTP as efficiently as possible and maintain the WWTP in good working order.

3 As soon as possible but no later than thirty (30) days from the effective date of these Orders, Respondent shall have the operator of record fulfill the staffing time requirements for a Class A WWTP of two days a week for a minimum of one hour, pursuant to OAC Rule 3745-7-04.

4. As soon as possible but no later than ten (10) days from the effective date of these Orders, Respondent shall achieve and maintain compliance with OAC 3745-7-09.

5. Regarding any application, plan, form or document submitted pursuant to these Orders, Respondent shall submit corrections/revisions to address any deficiencies, to Ohio EPA in accordance with Section X. of these Orders, within thirty (30) days of receipt of written notification from Ohio EPA of any correction/deficiencies, unless an earlier time is indicated or additional time is requested and allowed.

6. Respondent shall pay the amount of seven thousand six hundred forty dollars ($7,640.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111, in installments according to the following schedule:

| *Date Payment Due* | *Amount* | |
|---|---|---|
| July 1, 2013 | $1,000.00 | (Paid) |
| October 1, 2013 | $1,000.00 | |
| January 1, 2014 | $1,000.00 | |
| April 1, 2014 | $1,000.00 | |
| July 1, 2014 | $1,000.00 | |
| October 1, 2014 | $1,000.00 | |
| January, 1, 2015 | $1,000.00 | |
| April 1, 2015 | $ 640.00 | |
| **TOTAL** | **$7,640.00** | |

All of the above payments shall be by official check made payable to "Treasurer, State of Ohio" and submitted to Carol Butler, or her successor, 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 in accordance with Section X of these Orders and Mark Mann, Enforcement Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio Environmental Protection Agency
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

7. If Respondent shall miss any of the scheduled payments as set forth in paragraph 6 above, all remaining payments shall become due and owing immediately.

## 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 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 activities occurring on or at the WWTP.

## 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

Unless otherwise stated herein, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Attn: Enforcement Supervisor
Division of Surface Water
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 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:**
**Ohio Environmental Protection Agency**

Scott J. Nally
Director

6/28/13
Date

**IT IS SO AGREED:**
**Riley Holdings, LTD**

By

Brad Riley
Print Name

Agent
Title

6/17/13
Date