BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of Coshocton, Ohio
760 Chestnut Street
Coshocton, Ohio 43812

Respondent

Director's Final Findings and Orders

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Coshocton, Ohio ("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 Chapters 6111 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent is a municipality with a population of approximately 11,216 residents located in Coshocton County, Ohio.

2. Storm water from Respondent's municipal separate storm sewer system
discharges to the Muskingum River and unnamed tributaries to the Muskingum River. The unnamed tributaries and the Muskingum River constitute "waters of the state," as defined in ORC § 6111.01(H). Urban storm water discharges commonly contain total suspended solids, gross solids (trash and debris), oil and grease, bacteria, heavy metals, and excess nutrients, which constitute "sewage," "industrial waste," or "other wastes," as defined in ORC § 6111.01(B), (C), and (D). Placement of these wastes into waters of the state constitutes "pollution," as defined in ORC § 6111.01(A).

3. Ohio Administrative Code ("OAC") Rule 3745-38-02 provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without either applying for and obtaining an Ohio National Pollutant Discharge Elimination System ("NPDES") individual permit in accordance with requirements of OAC Chapter 3745-33, complying with the indirect discharge permit program pursuant to OAC Chapter 3745-36, or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of OAC Chapter 3745-38.

4. ORC § 6111.03(J)(1) authorizes the Director to set the terms and conditions of the permit. That section further provides that any permit terms and conditions set by the Director shall be designed to achieve and maintain full compliance with mandatory requirements of the Federal Water Pollution Control Act that are imposed by regulation of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"). Pursuant to Section 402(p) of the federal act, the Administrator of U.S. EPA imposed by regulation requirements to regulate storm water discharges.

5. U.S. EPA developed a program to address storm water discharges from municipal separate storm sewer systems ("MS4s") generated by runoff from land and impervious areas such as paved streets, parking lots, and building rooftops during rainfall and snow events.

6. U.S. EPA's municipal storm water program addressed storm water runoff in two phases. Phase I addressed runoff from large MS4s (serving a population greater than 250,000) and medium MS4s (serving a population between 100,000 and 250,000). Large and medium MS4s were initially required to apply for National Pollutant Discharge Elimination System ("NPDES") permits to discharge storm water, and to develop a storm water management program ("SWMP") by November 16, 1992 and May 17, 1993, respectively.

7. Phase II addresses storm water runoff from small MS4s (serving a population less than 100,000). Many small MS4s were required to apply for permit
coverage and submit an SWMP by March 10, 2003, while others designated later as a small MS4 by Ohio EPA were required to apply for permit coverage within 180 days after notice of designation.

8. Respondent was designated as a small MS4 on November 1, 2006 and timely submitted its application for coverage under the General NPDES Permit for Small MS4s on April 23, 2007. The application consisted of a Notice of Intent ("NOI") and a Storm Water Management Program ("SWMP"). Coverage under the General NPDES Permit for Small MS4s, permit No. OHQ000002, was initially granted to Respondent on June 5, 2009.

9. Respondent submitted an application for renewal of coverage under the General NPDES Permit for Small MS4s on March 3, 2015, about sixty days late, and was granted coverage under the renewal permit, OHQ000003, on March 9, 2015.

10. The General NPDES Permit for Small MS4s requires the development, implementation, and enforcement of a storm water management program which includes the six minimum control measures specified in OAC 3745-39-03(C)(2). The six minimum control measures are: public education and outreach on storm water impacts; public involvement and participation; illicit discharge detection and elimination; construction site storm water runoff control; post-construction storm water management in new development and redevelopment; and, pollution prevention and good housekeeping for municipal operations. The six minimum control measures are summarized in Attachment I to these Orders and incorporated by reference as if fully rewritten herein.

11. On July 26, 2007, April 8, 2010, and June 13, 2013, Ohio EPA sent letters concerning deficiencies in Respondent’s SWMP to Respondent and/or to the Coshocton Soil and Water Conservation District, which has entered into an agreement with Respondent to assist it in implementing Respondent’s SWMP. Responses to those letters on October 1, 1007, June 8, 2010, and July 23, 2013, stated that updates to the SWMP would be submitted. The updates to the SWMP have not been received by Ohio EPA, however, and the most recent SWMP on file at Ohio EPA is dated April 1, 2007.

12. On January 7, 2019, Ohio EPA received a verified complaint alleging, among other things, that the City of Coshocton had failed to enforce its Storm Water Quality Control Ordinance, failed to inspect the construction site at 828 High Street, Coshocton, Ohio on a regular basis, and failed to terminate the illicit discharge from this construction site in violation of its Municipal Separate Storm Sewer System ("MS4") program.
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13. Ohio EPA conducted a review of portions of Respondent’s MS4 program on January 23, 2019 and found several violations of the General NPDES Permit for Small MS4s. A Notice of Violation ("NOV") describing the specific violations found was sent to Respondent on February 13, 2019. All of these violations of the Permit are also violations of OAC 3745-39-03 and ORC § 6111.07(A). The violations included:

a. Failure to submit an updated SWMP in violation of Part III.A.2. of the Permit;

b. Failure to implement the ordinance requiring erosion and sediment controls for construction activities that result in a land disturbance of one acre or more in violation of Part III.B.4.a.i. of the Permit;

c. Failure to require and review storm water pollution prevention plans ("SWP3s") for all construction sites resulting in a land disturbance of one acre or more, in violation of Part III.B.4.a.iv. of the Permit;

d. Failure to develop and implement procedures for receipt and consideration of information submitted by the public, in violation of Part III.B.4.a.v. of the Permit;

e. Failure to implement procedures to inspect regulated construction sites at least once per month in violation of Part III.B.4.c. of the Permit;

f. Failure to require the post-construction SWMP to include a pre-construction SWP3 review of all construction projects that result in a land disturbance of more than one acre in violation of Part III.B.5.f. of the Permit;

g. Failure to ensure that long-term operation and maintenance plans are developed and agreements in place for all applicable sites, in violation of Part III.B.5.f. of the Permit; and

h. Failure to maintain evidence of a contract or other type of agreement with the consultant contracted to assist Respondent with its SWMP identifying those parts of Respondent’s MS4 program that the consultant is responsible for on the City’s behalf, in violation of Part III.C.3. of the Permit.

14. On February 20, 2019, Respondent sent a response to the NOV to Ohio EPA in which Respondent agreed to update the SWMP and address the listed violations
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15. Pursuant to ORC § 6111.04, no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid unexpired permit, and no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit.

16. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 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.

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

17. The Director has given consideration to, and based her 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.

ORDERS

1. By November 1, 2019, Respondent shall provide to Ohio EPA, in accordance with Section X. of these Orders, a response to the comments and deficiencies listed in the email sent by Ohio EPA to Respondent on July 30, 2019 to ensure the SWMP complies with all of Part III of the General NPDES Permit for Small MS4s, including but not limited to: all six minimum control measures; Respondent’s ordinances that prohibit illicit (non-storm water) discharges into its storm sewer system, require erosion and sediment controls at construction sites that disturb one or more acres of land, and address post-construction runoff from new development and redevelopment projects; and a storm water pollution prevention plan (“SWP3”) for municipal facilities where industrial activities are exposed to precipitation, such as the service yard.

2. Within thirty (30) days of receipt of notification from Ohio EPA, Respondent shall provide to Ohio EPA, in accordance with Section X. of these Orders, a response
addressing any additional comments or deficiencies in the updated SWMP.

3. Respondent shall immediately implement the updated SWMP.

4. Respondent shall immediately implement the six minimum control measures required by the General NPDES Permit for Small MS4s and OAC 3745-39-03(C)(2).

5. Respondent shall review its SWMP annually and update it as needed pursuant to Part III.D. of the General NPDES Permit for Small MS4s.

6. Each year by April 1, Respondent shall submit to Ohio EPA an annual report that documents program development and implementation during the preceding year, including all the information required by Part IV.C. of the General NPDES Permit for Small MS4s.

7. Respondent shall comply with all terms and conditions of the General NPDES Permit for Small MS4s and any renewals thereof.

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(F).
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 in relation to Respondent's MS4.

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
Southeast District Office
Division of Surface Water
Attn: DSW Enforcement Unit Supervisor
2195 Front Street
Logan, Ohio 43138

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
Attn: Enforcement Manager
50 West Town Street, Suite 700
[P.O. Box 1049]
Columbus, Ohio 43215 [43216-1049]
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[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

[Signature]
Laurie A. Stevenson
Director

Date 11/14/19

IT IS SO AGREED:
City of Coshocton

[Signature]
Max K. Crown

Date 10/24/19

Printed or Typed Name

Title Safety Service Director
Attachment I

Public Education Program
- Develop a storm water pollution prevention education program for the public that delivers at least 5 messages or themes over the 5-year permit term and cumulatively reaches at least 50% of your population. At a minimum, at least one theme or message shall be targeted to the development community.

- You must use more than one mechanism to deliver messages (You can't just keep putting an article in the community newsletter. You would have to also put information on your website, cable station, place a brochure in the water bill, do a direct mailing, etc.)

Public Involvement Program
- Provide at least 5 opportunities for public involvement in the development and/or implementation of the SWMP over the 5-year permit term.

Illicit Discharge Program
- Develop an MS4 system map that includes the locations of all outfalls and names and locations of receiving surface waters, catch basins, pipes, road ditches, flood control facilities (detention/retention ponds), publicly-owned post-construction water quality practices and any privately-owned post-construction water practices installed to satisfy the Ohio EPA General NPDES Permit for Storm Water Associated with Construction Activities #OHC000004 and its successors.

- Perform a dry weather screening of MS4 outfalls at least once over the 5-year permit term.

- Based on findings from the dry weather screening, prioritize outfalls for follow-up investigation and take action to eliminate confirmed sources of illicit discharge.

- Develop an on-going systemwide surveillance program of the MS4 to identify and eliminate sources of illicit discharge as they are discovered.

- Take enforcement action per the local ordinance, as needed, to ensure illicit discharges are eliminated.

Construction Site Runoff Control Program
- Require the submittal of an erosion and sediment control plan for construction sites where the larger common plan of development or sale disturbs 1 or more
acre of land. The plan must also provide pollution prevention and control measures for non-sediment pollutants that will be onsite during construction.

- Review and approve the plan prior to the commencement of construction activities. Technical aspects of the plan must meet or exceed the requirements of the Ohio EPA General NPDES Permit for Storm Water Associated with Construction Activities #OHC000004 and its successors.

- Conduct an initial site inspection and follow-up inspections at a frequency of at least once per month as long as the site remains active.

- Develop and implement an enforcement program per the local ordinance to ensure compliance with the approved plan.

**Post-Construction Storm Water Management Program**

- Require the submittal of a post-construction storm water management plan for new development and redevelopment where the larger common plan of development or sale disturbs 1 or more acre of land. Ensure that long-term operation and maintenance plans are developed, and agreements are in place for all sites.

- Review and approve the post-construction storm water management plan prior to the commencement of construction activities. Technical aspects of the plan must meet or exceed the requirements of the Ohio EPA General NPDES Permit for Storm Water Associated with Construction Activities #OHC000004 and its successors.

- Conduct a site inspection to ensure the post-construction practices have been installed per the approved plan.

- Develop and implement an enforcement program to ensure that best management practices ("BMPs") are installed and long-term maintenance occurs.

**Pollution Prevention & Good Housekeeping for Municipal Operations**

- Develop maintenance activities and schedules for the MS4, including procedures for the proper disposal of waste removed from the system and the facilities where municipal operations occur.

- Implement controls to reduce or eliminate the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas you operate.
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- Identify the municipal facilities you own and/or operate that are subject to the industrial storm water NPDES program and ensure that these facilities have obtained an NPDES permit and have developed and implemented a storm water pollution prevention plan ("SWP3") in compliance with the permit or submitted a No Exposure Certification to Ohio EPA.

- Develop and implement an SWP3 for all municipal facilities where industrial activities described in 40 CFR 122.26(b)(14) occur, but are not subject to NPDES permitting under the industrial storm water NPDES program, e.g., the service yard. The SWP3 shall be developed in accordance with the requirements of the Ohio EPA General NPDES Permit for Storm Water Associated with Industrial Activities #OHR000005 and its successors.

- Provide employee training at least once per year on storm water pollution prevention practices.

- Develop procedures to ensure new flood management projects are assessed for impacts on water quality and existing flood management structures are assessed for incorporation of water quality protection devices or practices.