BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:  
G. A. Wintzer and Son Company  
P.O. Box 406  
Wapakoneta, OH 45895  

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 G. A. Wintzer and Son Company ("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 ownership of Respondent or the Facility (as hereinafter defined) 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 active Ohio corporation for profit, entity number 203064, and a “person” as defined in ORC §§ 6111.01(l) and 1.59(C).

2. Respondent’s statutory agent is Gustave S. Wintzer, 540 Ramga Road, Wapakoneta, OH 45895.

3. Respondent services beef, poultry, pork, and sheep slaughter houses, as well as food preparation facilities, in the collection, processing and converting of animal co-products, used cooking oils, meat and food scraps, and animal fats into pet and farm animal feed ingredients, and biofuels. Respondent’s Facility that is the subject of these Orders is located on property it owns, at 12279 CR 25A (South Dixie Highway), Pusheta Township, Auglaize County.
4. Of relevance to these Orders are the following disposal systems, located on the property and identified in Attachment A, which is attached hereto and incorporated by reference herewith, as if fully rewritten herein:

   a. Storm water pond, constructed in 2017, located west of the new parking lot (south of the plant) to receive storm water runoff. There is a pipe to convey storm water from the storm water pond to the control structure.

   b. Two wastewater EQ ponds ("EQ ponds") that hold wastewater generated by the Facility prior to treatment. There is a pipe from the control structure to convey storm water to the EQ ponds; and

   c. Control structure, installed in 2017, to receive storm water from the storm water pond and then either send storm water to the EQ ponds for treatment, or discharge via an 18-inch pipe to an unnamed tributary of Pusheta Creek, once a permit was obtained.¹ The pipes from the storm water pond and to the EQ ponds have closure valves.

5. On August 13, 2018, Ohio EPA, Office of Emergency Response, was notified of an approximately 4-mile fish kill in the Auglaize River, traced back to Pusheta Creek and an unnamed tributary thereof, culminating at Respondent's EQ ponds.

6. Wastewater was observed discharging into the unnamed tributary from:

   a. A six-inch discharge tile from the fire pond,² which becomes a field tile that runs under / along the control structure’s 18-inch discharge pipe, and

   b. The control structure’s 18-inch discharge pipe.

7. Untreated wastewater from EQ ponds back flowed through the pipe connecting the control structure to the EQ ponds, and the valve structure, resulting in an unauthorized discharge of pollutants to the unnamed tributary, then to Pusheta Creek and the Auglaize River, all waters of the state.

8. The wastewater conveyance pipe from the control structure to the EQ ponds and valve structure is a disposal system and installed without authorization from the State.

9. On August 13, 2018, the control structure valves were checked and were in the closed position. The fire pond’s discharging tile and the control structure’s discharging pipe were then capped by Respondent.

¹ An NPDES permit modification request was submitted in March 2018. The Modification was issued on August 28, 2018 and became effective on November 1, 2018.

² The fire pond holds fresh water and does not contain "storm water associated with industrial activity."
10. The level of wastewater in the EQ ponds were at near capacity due to the following being conveyed to the ponds:
   a. May and June storm water; and
   b. WWTP upset wastewater.

11. During the summer there were at least two 1.5" precipitation events over the course of weekends.

12. The EQ ponds were not monitored for freeboard level, nor action taken to reduce the level of wastewater contained therein.

13. Respondent reported the unauthorized discharge by telephone at approximately 8:53 p.m. on August 13, 2018, and again by email on August 15, 2018.

14. On August 14, 2018, wastewater from the EQ ponds was observed discharging from underneath the control structure’s 18-inch discharge pipe, as the wastewater infiltrated in the saturated ground and gravel around the pipe and tile, to the unnamed tributary.

15. On August 22, 2018, the unauthorized discharge event ended when the ammonia level in the unnamed tributary tested below 3.0 mg/l., the NPDES permit effluent limit. During the unauthorized discharge event, ammonia levels were as high as 80 mg/l.

16. During the event, Respondent engaged in the following activities:
   a. Capped the fire pond and control structure discharge tile and pipe;
   b. Vacuumed potentially impacted waters from the unnamed tributary;
   c. Obtained a temporary discharge permit to facilitate flushing the discharge tile;
   d. Set up an aeration treatment station to reduce ammonia levels that were above NPDES permit effluent limitations;
   e. Removed 1.56 million gallons of wastewater from the EQ ponds;
   f. Installed an excavator dam and concrete collar around the control structure’s discharge pipe;
   g. Installed a collection pit near discharge points to collect wastewater; and
   h. Removed the 6-inch tile and 18-inch discharge pipe.

18. The letter set forth the following violations:

   a. The unauthorized discharge of pollutants into waters of the state; and
   
   b. The unauthorized installation of a disposal system, i.e., the pipe between the control structure and the EQ ponds and associated valve structure.

19. The letter set forth the following resolution of the violations:

   a. The unauthorized discharge to waters of the state ceased; and.
   
   b. The unauthorized disposal system was removed.

20. ORC § 6111.04(A)(1) provides that no person shall cause pollution or place or cause to be placed any industrial waste, or other wastes in a location where they cause pollution of any waters of the state.

21. ORC § 6111.04(A)(2) provides that the action prohibited under ORC § 6111.04 (A)(1) is declared to be a public nuisance.

22. OAC Rule 3745-33-02(A) provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an NPDES permit.

23. OAC Rule 3745-42-02(A)(1) provides that, except as provided therein, no person shall permit or allow the installation of a new disposal system or cause, permit, or allow the modification of a disposal system without first obtaining an individual permit to install, a general permit to install or plan approval in accordance with this chapter and all other applicable rules and laws.

24. ORC § 6111.07(A) provides that no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or condition of a permit issued or adopted by the Director. Each day of violation is a separate offense.

25. The unauthorized discharge of pollutants to waters of the state and the unauthorized installation or modification of a disposal system, as found herein, are violations of ORC § 6111.07(A)

26. As described herein, Respondent violated ORC § 6111.07(A).
27. The Director considered 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 their 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 comply with ORC Chapter 6111 and the rules promulgated thereunder and these Orders.

2. Freeboard:
   a. During the period beginning on the effective date of these Orders and lasting eight (8) months thereafter, unless otherwise extended by mutual agreement, Respondent shall implement the following activities:
      i. Determination what equipment is necessary to achieve and maintain at least two (2) feet of freeboard within the EQ ponds;
      ii. Submit complete and approvable permit(s) to install for said equipment;
      iii. Install and maintain said equipment in accordance with approved permit(s) to install; and
      iv. Provide for the removal of sludge and/or wastewater in the EQ ponds in the event that wastewater levels increase, and lower wastewater levels within the EQ ponds by utilizing Respondent's wastewater treatment plant as necessary, to prevent any unauthorized discharges from the ponds.
   b. During the period beginning eight (8) months from the effective date of these Orders, and thereafter, unless otherwise extended by mutual agreement, Respondent shall achieve and maintain at least two feet of freeboard within the EQ ponds.

3. Respondent shall pay to Ohio EPA the amount of seventeen thousand five hundred dollars ($17,500.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made within forty-five (45) days of the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" together with a letter identifying Respondent, submitted to Carol Butler or her successor at:
Ohio Environmental Protection Agency  
Office of Fiscal Administration  
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 to Larry Reeder, Environmental Manager, Enforcement Section, or his successor, at the following address:

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

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 Respondent. For purposes of these Orders, a responsible official is 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 on or at the site.

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
Northwest District Office
Division of Surface Water
Attn: DSW Enforcement Unit Supervisor
347 North Dunbridge Road
Bowling Green, Ohio 43402-9398

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

7/1/19
Date

IT IS SO AGREED:
G. A. Wintzer and Son Company

[Signature]
Vice President, Environmental

[Signature]
Name (Please Print)