BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Garden Harvest, LLC
62969 US HWY 50
McArthur, OH 45651

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 Garden Harvest, LLC ("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 Garden Harvest, LLC, located at 62969 US HWY 50 McArthur, OH 45651 in Vinton County (Facility).

2. At this facility, Respondent historically operated a vegetable processing and cannery operation which ceased operations in February, 2018. The property also includes some unrelated small businesses/office space which produces sanitary wastewater.
3. The building housing the operation is served by a septic tank that discharges to a roadside ditch which then flows into a tributary to Puncheon Fork.

4. The roadside ditch and the tributary to Puncheon Fork constitute "waters of the state" as defined by ORC Section 6111.01.

5. Pursuant to ORC Section 6111.04(C), no person to whom a permit has been issued 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.

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

7. On September 29, 2015, Ohio EPA issued an NPDES permit for Small Sanitary Discharges that Cannot Meet BADCT standards, 0GV00048*AG to Respondent, with an effective October 1, 2015. NPDES permit 0GV00048*AG contained a schedule of compliance that required the upgrade of Respondent’s system to meet BADCT effluent limits within 18-months of the effective date or by April 1, 2017.

8. Part III.3 of Respondent’s NPDES permit contains a compliance schedule to make upgrades to the wastewater treatment facility and includes the following milestones:

   a. Submit a complete Permit to Install (PTI) application and approvable detail plans for plant improvements as soon as possible, but not later than 6 months after received coverage under this permit (April 1, 2016);
   b. Advertise for construction bids, receive bids, and award contracts as soon as possible, but not later than 9 months after receiving coverage under this permit (July 1, 2016);
   c. Begin construction as soon as possible, but not later than 12 months after receiving coverage under this permit (October 1, 2016);
   d. Notify the appropriate Ohio EPA District Office within seven days of beginning construction;
   e. Complete construction as soon as possible, but not later than 17 months after receiving coverage under this permit (March 1, 2017);
   f. Notify the appropriate Ohio EPA District Office within seven days of completing construction;
   g. Attain operational level of the treatment works and meet the final effluent limitations as soon as possible, but not later than 18 months after receiving coverage under this permit (April 1, 2017).
9. In violation of Part III.3 of Respondent's NPDES, Respondent failed to comply with any of the milestones necessary to upgrade the wastewater treatment plant. Each day is a new and separate violation of ORC Section 6111.07.

10. NPDES permit Part IV.L3 requires that Discharge Monitoring Reports ("DMRs") submitted using e-DMR shall be submitted to Ohio EPA by the 20th day of the month following the month-of-interest.

11. In violation of NPDES permit Part IV.L3, Respondent failed to submit any DMRs for the months of 10/1/15 through 2/1/17, 4/1/17 and 10/1/17 to present. By failing to submit any DMR data, Ohio EPA has no indication of treatment effectiveness or compliance with required effluent limits. Each day in which DMR data is not submitted constitutes a separate violation of ORC Section 6111.07.

12. Respondent submitted DMR data for the months of 3/1/17 and 5/1/17 through 9/1/17. However, except for sampling for 3/1/17, Respondent failed to submit all required data parameters required under the NPDES permit. Each day in which all required data under the NPDES is not submitted constitutes a separate violation of ORC Section 6111.07.

13. On August 4, 2016, Vinton County Health Department (VCHD) received a complaint about raw sewage being discharged into the roadside ditch near Garden Harvest facility. VCHD investigated the complaint on August 8, 2016 and forwarded the complaint to DSW-SEDO the next day.

14. On January 3, 2017 DSW-SEDO and the VCHD inspected Garden Harvest and found the August 4 complaint to be valid. Based on the inspection, DSW-SEDO became aware that the sanitary and industrial wastewaters generated from the canning process were both being directed to the WWTP. The industrial wastewater is not covered under NPDES permit 0GV00048*AG. Ohio EPA discussed the findings with Respondent and the steps needed to return to compliance.

15. On February 1, 2017, Ohio EPA, SEDO mailed a Notice of Violation ("NOV") to Respondent for the following Permit violations:
   - No Permit to Install (PTI) and approvable detail plans were supplied to Ohio EPA within 6 months after receiving Respondent obtaining permit coverage as required by the Compliance Schedule in Part III Item 3 of the Permit. Pursuant to ORC § 6111.07(A), each day of violation is a separate offense.
   - As of January 23, 2017, Ohio EPA had not received any discharge monitoring reports for effluent parameters from outfall 001 as required by Part V(K)(2) of the Permit. Pursuant to ORC § 6111.07(A), each day of violation is a separate offense.
Garden Harvest, LLC  
Director's Findings and Orders  
Page 4

- At the January 3, 2017 inspection, Ohio EPA observed floating debris, scum, foam, a sheen, and noticeable accumulations of debris in waters of the state at the wastewater treatment discharge location, in violation of the general effluent limitations in Part V(J)(1-2) of the Permit. Pursuant to ORC § 6111.07(A), each day of violation is a separate offense.
- Industrial wastewater discharged to the sanitary wastewater treatment plant in violation of the limitations on coverage in Part I(C)(2)(c) of the Permit, ORC § 6111.45, and OAC § 3745-42-02. Pursuant to ORC § 6111.07(A), each day of violation is a separate offense.

16. After the February 1, 2017 NOV, Ohio EPA and Respondent engaged in multiple phone calls and written correspondence and Respondent took certain actions in furtherance of attempting to address compliance issues noted in the NOV.

17. On May 31, 2017, a preliminary compliance review (PCR) letter was sent to Respondent for flow rate and turbidity frequency violations in March 2017. No response to the PCR letter was provided.

18. On June 7, 2017, a 2nd NOV letter was sent to respondent regarding the January 3, 2017 inspection. Noted violations included:

- Failure to submit PTI and approvable detail plans for plant improvements within 6 months after receiving coverage on November 1, 2015 as required by the compliance schedule in Part III 1 Item 3 of the Permit. Pursuant to § 6111.07(A), each day of violation constitutes a separate offense.
- As of January 23, 2017, Ohio EPA had not received any discharge monitoring reports for the effluent parameters from outfall 001 as required by Part V(K)(2) of the Permit. Pursuant to § 6111.07(A), each day of violation constitutes a separate offense.
- Industrial wastewater discharged to the sanitary wastewater treatment plant in violation of the limitations on coverage in Part I(C)(2)(c) of the Permit, ORC § 6111.45, and OAC § 3745-42-02.

19. On August 30, 2017, DSW-SEDO received a call from VCHD regarding another complaint they had received about Respondent's unauthorized discharge.

20. On September 8, 2017, Respondent emailed the plan of action to temporarily eliminate the discharge which stated the tank would be pumped out, capped and checked daily. The tank was pumped on: September 9, 15, and 23, 2017, and October 12, 2017, all with receipts submitted to Ohio EPA.

21. On September 14, 2017, Respondent met with SEDO to discuss noncompliance with the NPDES permit and the enforcement process. Respondent also emailed DSW-SEDO a corrective action plan and dates to have upgrades installed.
22. On October 4, 2017, DSW-SEDO performed a site visit to observe the log book onsite. At the time of the visit, the tank was discharging into the roadside ditch and there was no log book present. Respondent stated on October 6, 2017 that he did not maintain a log book or records.

23. On October 9, 2017, after inquiry from Ohio EPA, Respondent emailed the notarized service contract with Analytical Associates as well as the operator of record form. Both had been signed May 23, 2017. Respondent indicated the tank had been re-capped.

24. On January 29, 2018, a 3rd NOV letter was sent to Respondent following the October 4 inspection. Response was required within thirty days of receipt of the letter. Noted violations included:
   - Lack of sampling for dissolved oxygen, pH, total suspended solids, nitrogen ammonia, turbidity, fecal coliform, E. coli, chlorine residual and CBOD for September 2017 as required by ORC § 6111.04(C) and Part III of the Permit. In addition, Respondent’s well flow meter was broken, and water usage could not be calculated. Pursuant to ORC § 6111.07(A), each day of violation is a separate offense.
   - No Operator of Record had been designated for the WTP and sewerage (collection) system as required by OAC 3745-7-02(A)(2) and part IV Item 1.2a of the Permit. Pursuant to ORC § 6111.07(A), each day of violation is a separate offense.
   - No log book of the operation and maintenance records were available as required by OAC § 3745-7-09(A) and Part V Item O of the Permit. Pursuant to ORC § 6111.07(A), each day of violation is a separate offense.
   - Lack of signage at the outfall discharge as required Part IV Item J of the Permit. Pursuant to ORC § 6111.07(A), each day of violation is a separate offense.

25. Canning operations at the facility reportedly ceased in February 2018. There are three other businesses currently located at the property. The only waste water generated is sanitary wastewater.

26. During a May 15, 2018 inspection, Ohio EPA observed sewage from the wastewater system was observed in the roadside ditch. The presence of sewage worms was noted. The capped line was dug up and wastewater was found to be leaking around the cap.

27. On April 3, 2019, Respondent submitted a Permit to Install application to construct an on-site sewage disposal system.

28. Ohio EPA approved the PTI application 1286399 on June 5, 2019.
29. This document does not modify NPDES Permit No. 0GV00048*AG. The purpose of this document is to correct a condition of noncompliance with NPDES Permit No. 0GV00048*AG and not to alter said permit.

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

31. The Director has given consideration to the factors set forth in ORC Sections 6111.03, 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 purposes of ORC Chapter 6111.

V. ORDERS

1. Respondent shall attain compliance with ORC Chapter 6111 and the administrative rules promulgated thereunder in accordance with the following schedule:

   A. By no later than September 16, 2019, Respondent shall begin construction of the on-site sewage disposal system in accordance with PTI 1286399;

   B. By no later than October 16, 2019, Respondent shall complete construction in accordance with its approved PTI.

2. Within 7 days of completion of installation of the on-site sewage disposal system, Respondent shall submit a written request to terminate coverage of the NPDES permit 0GV00048*AG.

3. Until such time as the wastewater system is upgraded in accordance with Order 1, Respondent shall continue to maintain a cap on its wastewater system and haul wastewater to an approved publicly owned treatment facility. Respondent shall provide Ohio EPA with records monthly documenting compliance with this Order.

4. Respondent shall continue submitting DMRs to Ohio EPA each month. If no discharge is occurring, Respondent shall report no discharge coding in accordance with the NPDES permit.

5. Respondent is hereby assessed a penalty of $4,089.00 in settlement for violations alleged in these Orders pursuant to ORC Chapter 6111.
6. If Respondent completes installation of the on-site sewage disposal system in accordance with the timeframes required by Order 1, Respondent’s obligation to pay the civil penalty will terminate.

7. If Respondent fails to install the on-site disposal system in accordance with the timeframes required by Order 1, Respondent shall pay the civil penalty within 30 days of Ohio EPA’s demand. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" by no later than thirty (30) days after Ohio EPA’s demand letter. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondent, at the following address:

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

A copy of the check shall be sent 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, Ohio 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
Division of Surface Water, Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: Enforcement Supervisor

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 or 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

Laurie A. Stevenson, Director

Date

IT IS SO AGREED:

Garden Harvest, LLC.

Signature

Date

David Keim, owner

Printed or Typed Name and Title