BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of Martins Ferry
35 South 5th Street
Martins Ferry, Ohio 43935

Respondent

Director's Final Findings and Orders

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Martins Ferry, 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

1. Respondent owns and operates a Class II waste water collection system (collection system) located within the city limits of Martins Ferry, Ohio.

2. Respondent discharges to the Class III Eastern Ohio Regional Wastewater Authority (EORWA) waste water treatment plant.

3. Respondent was issued Director's Final Finding's and Orders (DFFOs) on June 14, 2013 which included an order to obtain a Class II certified wastewater collections operator (certified operator) within six months.
4. On August 21, 2017, Ohio EPA issued the City of Martins Ferry a Notice of Violation (NOV) citing failure to comply with Order #3 of the DFFOs issued on June 14, 2013. Respondent was requested to obtain a certified operator. Respondent was given thirty (30) days to respond. No response was received.

5. On January 12, 2018, Ohio EPA contacted Respondent via email to inquire about the status of retaining a certified operator. Respondent provided an email response on January 31, 2018 stating they are still in search of a certified operator.

6. On February 5, 2018, Ohio EPA upper management held a conference call with Respondent to discuss the need to comply with the DFFOs and obtain a certified operator. The potential for enforcement was also discussed.

7. On February 5, 2018, Respondent contacted a third-party contract operator company about working as the city’s certified operator. On March 7, 2018, Respondent forwarded on to Ohio EPA the response from the third-party contractor operator. The response stated that they could not dedicate the required resources for the position and had to decline.

8. On February 28, 2018, Ohio EPA issued the Respondent a follow-up memo correspondence which documented the February 5, 2018 meeting. In addition, the memo correspondence included two requests: to secure a certified operator and submit an Operator of Record Notification Form and to provide weekly updates on securing the certified operator.

9. On June 5, 2018, Respondent contacted Ohio EPA via email and stated they will be posting an ad in the local newspaper as well as internet search for the position. In addition, Respondent stated they were still planning on sending an employee for Class II certified operator training. Subsequently, the Respondent advertised in the local newspaper for a certified operator from June 9 through June 11, 2018.

10. On June 17, 2018, Respondent contacted Ohio EPA via email and stated they have been unable to find a certified operator. As of the date of these orders, Martins Ferry has not employed the services of a certified operator.

11. Ohio Administrative Code ("OAC") Rule 3745-7-02 requires each person owning or operating a treatment works to designate one or more operators of record to oversee the technical operation of the treatment works and supply notification on a form acceptable to the Director.

12. OAC Rule 3745-33-08 (A)(9) requires the Respondent provide adequately trained and qualified personnel as required in Chapter 3745-7 of the Administrative Code to operate such wastewater treatment facilities.
13. 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.

14. 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 ORC Chapter 6111.

V. ORDERS

1. Within thirty (30) days after the effective date of these Orders, Respondent shall retain the services of a Class II Certified Wastewater Collections Operator and submit the Operator of Record Notification Form under Chapter 3745-7-02 (A)(2) of the Ohio Administrative Code to the following address: Ohio EPA, Division of Surface Water, P.O. Box 1049, Columbus, Ohio 43215-1049 attn. Aleks Yakhnitskiy.

2. Respondent shall pay the amount of five thousand dollars ($5,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within sixty (60) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio". The official check shall be submitted to Carol Butler, or her successor, together with a letter identify the Respondent, to:

   Office of Fiscal Administration  
   Ohio Environmental Protection Agency  
   P.O. Box 1049  
   Columbus, Ohio 43215-1049

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 43215-1049
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 the 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
Central Office
Division of Surface Water
ATTN: Aleks Yakhnitskiy
50 W. Town Street, Suite 700
Columbus, Ohio 43215

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 or 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

Craig W. Butler, Director

December 14, 2018
Date

IT IS SO AGREED:

City of Martins Ferry

Signature

Scott L. Porter

Printed or Typed Name

Director of Public Services

Title