BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Keith and Randi Williams
785 Township Road 285B
Ironton, Ohio 43932

Respondents

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 Keith and Randi Williams ("Respondents") 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 Respondents and successors in interest liable under Ohio law. No change in the composition of Respondents shall in any way alter Respondents' 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 has made the following findings:

1. Keith and Randi Williams, property owners, located at 765 Township Road 285B, Jefferson County, Ohio have relocated sections of both Town Fork, an exceptional warmwater habitat stream ("EWH"), and Dry Run, a warmwater habitat ("WWH") tributary to Town Fork.

2. On April 10, 2018, Respondents submitted a Department of the Army 404 permit
application for stream relocation to the United States Army Corps of Engineers ("the Corps.")

3. On April 19, 2018, a representative of the Corps performed a site visit and documented that the Respondents had already implemented the project prior to receiving a Nationwide Permit ("NWP") or coverage under the 401 WQC for the NWPs from Ohio EPA.

4. On May 14, 2018, Ohio EPA sent a Notice of Violation letter to Keith Williams for the placement of fill without coverage under a 401 WQC.

5. In-stream work was performed without coverage under a Department of the Army 404 permit from the Corps or a Section 401 water quality certification ("401 WQC") from Ohio EPA. The project was not planned or conducted by a contractor that specializes in environmental projects and has resulted in a degradation to in-stream habitat of both EWH and WWH streams.

6. In correspondence dated May 29, 2018, provided by Respondents to Ohio EPA, the intent of the project was described as primarily a protection of personal property, and not Aquatic Habitat Restoration, Establishment, and Enhancement activities. While the reduction of sedimentation to protect the eastern hellbender salamander is also mentioned in the Williams' correspondence, the activities performed onsite and the length of time the construction area was left unstabilized does not support that a reduction in downstream sedimentation was the goal, and not is an approvable impact under the 401 WQC for NWP 27.

7. While the Corps has issued an After-the-Fact ("ATF") Nationwide Permit ("NWP") 27 (Aquatic Habitat Restoration, Establishment, and Enhancement) for the project, the project does not meet Condition 2 within Ohio EPA's 401 WQC of the 2017 NWP 27, which states "This certification does not authorize projects where the primary purpose of the project is not the restoration, enhancement and establishment of tidal and non-tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal waters." The NWP and 401 WQC applications submitted to the Corps and Ohio EPA did not contain information regarding the enhancement of the stream. nor did it provide any details on how the project would result in an ecological lift to Town Fork or Dry Run.

8. On May 4, 2018, Ohio EPA notified the Corps through the Pre-Construction Notification ("PCN") coordination process that the Nationwide 27 permit was not appropriate, and an individual 404 permit or a different NWP should be required.

9. May 31, 2018, Ohio EPA performed a site visit. GPS data was collected at the
beginning and terminus of the stream channelization.

10. On May 31, 2018, the Corps issues coverage under NWP 27 to Keith Williams for the project. However, on June 13, 2018, Ohio EPA sent correspondence to Respondents, stating that the project does not meet the additional conditions within Ohio EPA’s 401 WQC for NWP 27. Ohio EPA indicated that an individual state 401 WQC application would be required.

11. On July 9, 2018, Ohio EPA received an individual 401 WQC application from Respondents for the Town Fork relocation, but Respondents were notified on July 30, 2018 that the 401 WQC application notification was incomplete.

12. 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.

V. ORDERS

1. Within ninety (90) days from the effective date of these Orders, Respondent shall plant at a minimum of 95 native woody plants within a 25-foot buffer along each side of the impacted segment of Town Fork of which 48 must be native tree species. The trees shall be evenly distributed throughout the 25-foot buffer along the impacted segment. Native tree species can be identified and selected from the following document: https://epa.ohio.gov/portals/35/wetlands/Ohio_FQAI.pdf

2. Respondent shall perform the following in order to initiate the reestablishment of a riffle-run-pool complex where the stream has been channelized:
   a. Utilize gravel and cobble substrates that were displaced during the channelization to install two riffles within the channelized section of stream.
   b. The riffles should be approximately 30 feet long and should be no deeper than 1 ft., with the middle section slightly lower than the section along the streambanks.
   c. The riffles should be stationed with one towards the upstream section of the channelization and one towards the downstream end.
   d. Equipment to place the materials shall be kept out of the stream during placement.

3. Towards the end of the downstream riffle, the Respondent shall establish a boulder cluster utilizing boulder slab substrates that were removed from the stream during the channelization and added to Respondent’s flower bed. A minimum of 10 boulder slabs shall be placed towards the thalweg of the stream and spaced randomly.
4. Upon completion of Orders 1 through 3, Respondent shall submit notice to Ohio EPA in accordance with Section X of these Orders. Ohio EPA will then conduct a field visit to the Site to verify the requirements of these Orders.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondents 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 Respondents of the obligations that have not been performed, in which case Respondents 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 Respondents to Ohio EPA.

VII. 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 Respondents.

VIII. 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.

IX. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges, defenses and causes of action, except as specifically waived in Section XI of these Orders.

X. NOTICE

Unless otherwise specified, all documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
XI. WAIVER

In order to resolve disputed claims, without admission of law, fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.
III. 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

6/18/19

IT IS SO AGREED:
Keith Williams

[Signature]

Keith A. Williams
Printed or Typed Name

Date

6/2/19

Randi Williams

[Signature]

Randi Williams
Printed or Typed Name

Date

6/2/19