BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Mayor and Council
Village of Ashley
5981 Steamtown Road
Ashley, OH 43003

Respondent

Modified Director's Final Findings
and Orders

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These modified Director's Final Findings and Orders ("Orders") are issued to the Mayor and Council of the Village of Ashley, ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("R.C.") 6111.03(H) 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 or the ownership or operation of the wastewater treatment plant and its collection system, ("WWTP" or "plant"), identified below, 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 R.C. Chapter 6111 and the rules adopted thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. On October 28, 2014, the Director and Respondent entered into Director's Final Findings and Orders ("2014 Orders") to address violations of R.C. Chapter 6111 that occurred as a result of Respondent's noncompliance with the requirements of said Chapter, the rules adopted thereunder, and the terms and conditions of its Ohio National Pollutant Discharge Elimination System ("NPDES") permit. The 2014 Orders, which are attached hereto and incorporated by reference as if fully rewritten herein, included among other things, in pertinent part, at Order No. 2:
Respondent shall identify factors restricting the hydraulic capacity of the WWTP causing bypasses of the tertiary sand filters and shutdown of the oxidation ditch during high flow events ** ** [and] shall upgrade or expand the WWTP as expeditiously as practicable to eliminate filter bypasses, but not later than the following schedule:

a. By no later than six (6) months from the effective date of these Orders, Respondent shall submit a revised detailed engineering evaluation, signed and stamped by a Professional Engineer, which shall include a description of proposed improvements (e.g. flow equalization basin, additional clarifiers and upgraded tertiary treatment alternatives) or a WWTP expansion to accommodate hydraulic surcharges and eliminate tertiary filter bypasses;

b. By no later than twelve (12) months from the effective date of these Orders, Respondent shall submit a complete and approvable permit to install application for actions identified in the engineering evaluation, if required, to Ohio EPA ** **;

c. By no later than four (4) months after the approval of the permit to install application, Respondent shall begin implementation of WWTP upgrades as approved;

d. By no later than sixteen (16) months after the approval of the permit to install application, Respondent shall complete the WWTP corrective action work as approved and achieve operation level within thirty (30) days thereafter ** **.

2. On January 3, 2017, Permit to Install Application No. 1098893 ("PTI"), for improvements to the WWTP, was approved.

3. On January 4, 2017, a reconnaissance inspection was conducted, and numerous issues noted, including Significant Non-Compliance ("SNC") for effluent limits, facility operation and control issues (drainage from dumpster, solids in clarifier, solids observed in outfall), failure to submit timely Discharge Monitoring Reports ("DMRs"), frequency violations, and not responding to noncompliance notifications. A subsequent Notice of Violation ("NOV") was sent to Respondent for the above described violations on February 3, 2017.
4. On May 22, 2017, a follow up reconnaissance inspection was conducted, with all the violations noted in the February 3, 2017 NOV, remaining unresolved. A second NOV was sent to Respondent on June 1, 2017.

5. On May 22, 2017, a brief meeting was held between Ohio EPA and Respondent to discuss the ongoing noncompliance issues and the WWTP improvements pursuant to the PTI and 2014 Orders.

6. On September 12, 2017, Ohio EPA received an email update from Respondent stating that the construction associated with the WWTP improvements would be delayed further. A third NOV was sent to Respondent on September 13, 2017 for noncompliance with the 2014 Orders.

7. On November 8, 2017, a meeting occurred between Ohio EPA and Respondent, at which was discussed the SNC status, factors affecting noncompliance, and available enforcement options.

8. Respondent has, on at least the dates listed in the chart attached hereto as Attachment II and incorporated by reference as if fully rewritten herein, exceeded final effluent limitations in its NPDES permit for total suspended solids, Nitrogen, Ammonia (NH3), E. coli, oil and grease, dissolved oxygen, pH, and carbonaceous biochemical oxygen demand (CBOD5) from June 23, 2014 to January 31, 2018. Additionally, Respondent has reported code and frequency violations from June 23, 2014 to January 31, 2018.

9. As found herein, Respondent has failed to comply with the 2014 Orders and its NPDES permit.

10. R.C. 6111.04(C) provides that "(n)o 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 without first receiving a permit from the director to do so."

11. R.C. 6111.07(A) requires that "(n)o person shall violate or fail to perform any duty imposed by 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 environmental protection pursuant to those sections."

12. Respondent’s noncompliance with the 2014 Orders and the terms and conditions of its NPDES permit are violations of R.C. 6111.07(A), with each day of violation a separate offense.

13. The Director and Respondent wish to modify Order No. 2 of the 2014 Orders.
14. The following Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sanitary sewerage system. Any such construction or modification is subject to the permit to install requirements of R.C. 6111.44 and 6111.45 and Ohio Administrative Code ("Ohio Adm.Code") Chapter 3745-42.

15 The Director considered 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 R.C. Chapter 6111.

V. ORDERS

1. The 2014 Orders are effective, except that Order No.2 is deleted and replaced as follows:

   a. By no later than May 1, 2018, Respondent shall begin implementation of the WWTP improvements in accordance with the approved PTI.

   b. By no later than December 31, 2018, Respondent shall complete the WWTP improvements in accordance with the approved PTI and achieve operational level within thirty (30) days thereafter.

   c. Commencing thirty (30) days after beginning implementation of WWTP improvements, Respondent shall submit progress reports on the work by the fifteenth (15th) day of each month to Ohio EPA in accordance with Section X. of these Orders.

2. Should Respondent fail to meet any of the dates set forth in Order No. 1, Respondent shall be liable, and shall immediately pay stipulated penalties in accordance with the following schedule, for each failure to comply:

   a. For each day of each failure to meet a deadline from one (1) day to thirty (30) days, fifty dollars ($50.00) per day not met;

   b. For each day of each failure to meet a deadline from thirty-one (31) days to sixty (60) days, one hundred dollars ($100.00) per day not met;

   c. For each day of each failure to meet a deadline over sixty (60) days, two hundred fifty dollars ($250.00) per day not met.

3. Stipulated penalties due under Order No. 2 shall be paid within thirty (30) days after the date the milestone for which stipulated penalties have been accruing is completed.
Village of Ashley
Modified Director's Final Findings and Orders
Page 5 of 7

The penalties shall be paid by tendering an official check made payable to "Treasurer, State of Ohio" for the total amount of the accrued stipulated penalties. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent to:

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 Environmental Protection Agency
Division of Surface Water
P.O. Box 1049
Columbus, OH 43216-1049

4. All terms and conditions of the 2014 Orders not modified herein remain as written within the 2014 Orders.

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 Ohio Adm.Code 3745-33-03(F)(4) for a municipal, state, or other public facility.

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 WWTP.
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 District Office
Division of Surface Water
Attn: DSW Enforcement Supervisor
50 West 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. If Respondent fails to comply with the schedule set forth in Order No. 1 and as a result thereof is liable and owning for the stipulated penalties established in Order No. 2, Ohio EPA specifically reserves its rights to seek additional civil penalties pursuant to R.C. 6111, for violations that exceed ninety (90) days.

XII. WAIVER

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

Craig W. Butler
Director

Date 5/2/18

IT IS SO AGREED:
Village of Ashley

James L. Nelson
Signature

Date 4/24/18

James L. Nelson
Printed or Typed Name

Mayor
Title