

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

**Byron Dalton  
3333 State Route 60  
Wakeman, Ohio 44889**

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**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 Byron Dalton ("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**

The Director of the Ohio EPA makes the following findings:

1. Respondent owns properties located at 3333 State Route 60 and 6047 Auster Road, Wakeman, Ohio, Huron County (the "Sites").

I certify this to be a true and accurate copy of the  
official documents as filed in the records of the Ohio  
Environmental Protection Agency.

By Jonny Cassiter Date: 10-21-19

2. A Verified Complaint (#19-003 VC) was submitted to Ohio EPA dated December 3, 2018, pertaining to Respondent's 3333 State Route 60 Site, alleging that Respondent illegally discharged unknown pollutants into waters of the state in violation of ORC Chapter 6111.04. On August 20, 2018, the complainant observed Respondent pumping "black sediment material" from a storage pond at the Site into a drainage ditch that discharges into the Vermillion River. The complainant notified the Huron County Emergency Management Agency ("EMA") of the discharge.
3. The drainage ditch and the Vermillion River are considered "waters of the state" as defined by ORC Chapter 6111.01.
4. Pursuant to ORC Chapter 6111.04, no person 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 without a valid, unexpired permit.
5. Ohio EPA conducted an investigation of the Verified Complaint and determined the following:
  - a. On August 20, 2018, the Huron County EMA Director documented that Respondent was pumping and discharging concentrated accumulated solids from the pond at the Site to the ditch that flows east of the Site and discharges to the Vermillion River. The accumulated solids from the pond were flowing downstream and depositing on the stream bed. Once the release to the stream was documented by the Huron County EMA Director, Respondent redirected the pumping and discharge of concentrated accumulated solids from the pond into a field located south of the pond and no longer into waters of the state.
  - b. On the evening of August 20, 2018, the Huron County EMA Director discussed the incident with Ohio EPA Emergency Response ("ER") where it was determined that the discharge event had ceased and remediation activities to remove the accumulated solids from the stream would not be pursued.
  - c. On August 21, 2018, Ohio EPA ER received an email from the Huron County EMA with video footage from the complainant documenting the discharge. This email was later forwarded to Ohio EPA Division of Surface Water ("DSW") on September 4, 2018.
  - d. Within two weeks after the August 20, 2018 discharge event from the Site, staff from the Huron Soil and Water Conservation District ("SWCD") observed the drainage ditch that flows northeast to the Vermillion River where the discharge from Respondent's pond had occurred. The Huron SWCD did not observe the deposition of accumulated solids from the incident and observed clear water at this time.

- e. On September 11, 2018, the Huron County EMA Director received notification of another potential release into the Vermillion River. The Huron County EMA Director, the Village of Wakeman Mayor, and the Assistant Fire Chief observed a substance of the same nature as what was discharged from the pond at Respondent's Site on the Vermillion River. After inspecting the Site and observing that Respondent was not discharging from the pond at this time, it was concluded that recent heavy rainfall had disturbed accumulated solids from the August 20, 2018 discharge event and was not the result of a new discharge from the Site.
6. Ohio EPA DSW contacted Respondent on January 23, 2019 to discuss the complaint and the actions taken by Respondent to clean out the pond, which resulted in the unauthorized discharge of pollutants into waters of the state.
7. On February 21, 2019, Ohio EPA issued Respondent an NOV letter outlining the discussion with Respondent on January 23, 2019 and detailing the violation description as a result of Ohio EPA's investigation of the Verified Complaint. The NOV stated that in August 2018, a dark slurry mixture from the bottom of Respondent's pond was discharged to a drainage ditch which led to the Vermillion River. Photos received from the complainant showed discoloration and solids causing degradation of the water within the ditch, as well as the Vermillion River. The NOV letter requested that Respondent acknowledge the violation and provide actions that will be taken to ensure the violation does not reoccur in the future.
8. On March 18, 2019, Ohio EPA received written response to the February 21, 2019 NOV letter, with Respondent stating there have been no violations after August 2018 and that future violations are not expected due to the infrequency of the pond cleaning. Should the pond need cleaning in the future Respondent would utilize dewatering bags and land apply the accumulated solids onto the field present at the Site.
9. On April 15, 2019, Ohio EPA DSW conducted an inspection at the 6047 Auster Road Site in response to a complaint received on April 1, 2019 regarding construction activities without permit coverage.
10. On April 17, 2019, Ohio EPA issued Respondent an NOV letter for storm water runoff associated with construction activities disturbing one or more acres of land without applying for coverage under the National Pollutant Discharge Elimination System ("NPDES") Construction Storm Water General Permit. The NOV requested that Respondent develop a Storm Water Pollution Prevention Plan ("SWPPP") and submit a Notice of Intent ("NOI") application for permit coverage. Shortly thereafter, Respondent submitted the NOI application for permit coverage under the Construction Storm Water General Permit.

11. The construction activities at the Site were issued coverage under NPDES Construction Storm Water General Permit on April 19, 2019 under permit number 2GC05614\*AG.
12. On May 3, 2019, Ohio EPA issued Respondent a Resolution of Violation ("ROV") letter for the April 17, 2019 NOV.
13. On May 7, 2019, Ohio EPA DSW conducted an inspection at the Site to evaluate compliance with ORC Chapter 6111 and with the Construction Storm Water General Permit. At the time of the inspection, construction was in progress. Two sediment basins were present with banks that had not been stabilized. Additionally, silt fence that had been installed along the east and west sides of the Site was showing damage on the east side. These findings were documented in an inspection letter sent to Respondent on June 12, 2019, along with recommendations to maintain compliance with the Construction Storm Water General Permit.
14. 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. Respondent shall not cause pollution to waters of the state, alter, fill, dredge or otherwise degrade the uses and/or existing functions or values of any portion of any waters of the state at any location in Ohio, without first receiving prior approval from the Director as required by law.
2. Respondent shall pay the amount of two thousand five dollars (\$2,500) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. 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 identifying Respondent, to:

Office of Fiscal Administration  
Ohio Environmental Protection Agency  
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 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. RESERVATION OF RIGHTS**

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

#### **XI. 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 consent 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.

#### **XII. EFFECTIVE DATE**

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

**XIII. 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**

Laurie A. Stevenson  
Laurie A. Stevenson, Director

OCT 21 2019  
Date

**IT IS SO AGREED:**

**Byron Dalton**

Byron H. Dalton  
Signature

9-25-19  
Date

Byron Dalton  
Printed or Typed Name

Owner  
Title