PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Fred W. Neil, dba Spuds Corner, ("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 ownership of the site, the ownership or operation of the facility or the wastewater treatment plant ("WWTP"), 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 has made the following findings:

1. Respondent is a "person."

2. Spud's Corner ("facility") is a restaurant / cafeteria bar located at 4019 Alabama Avenue NW, Lawrence Township, Stark County, ("site").

3. Title to the site transferred to Respondent on October 17, 2014, with Respondent thereupon becoming owner and operator of the facility.
4. On December 4, 2015, Ohio EPA Inspectors visited the site and facility and noted that a PVC pipe discharged from the facility's restrooms and sink into a 6-foot-deep dry well (with earthen sides and gravel bottom). Sewage odors were observed. There are four storm sewer catch basins between the facility and Newman Creek, a water of the state, with two basins on each side of the street. The two catch basins on the west side contained a grey colored water and exhibited strong sewage odors. A storm sewer outfall was discharging grey septic water to Newman Creek.

5. The dry well is considered a large capacity cesspool in that the dry well:
   a. Is a "well" other than a "septic system" or a "subsurface fluid distribution system" that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom or perforated sides. [Ohio Adm.Code 3745-34-01(C)(4)]; and
   b. Receives sanitary wastes, containing human excreta, that has an open bottom and a perforated side. [Ohio Adm.Code 3745-34-04(E)(2).]

   **Regulatory Statutes and Rule**

6. R.C. 6111.04(A) prohibits any person from causing pollution or causing any sewage, industrial waste or other waste to be placed in any location where they cause pollution to waters of the state, except if such discharges occur in accordance with a valid, unexpired Ohio National Pollutant Discharge Elimination System ("NPDES") permit issued by the Director or if an application for renewal of such permit is pending.

7. Operation of and injection into large capacity cesspools is prohibited by Ohio Adm.Code 3745-34-11(B).

8. R.C. 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by R.C. 6111.01 to 6111.08, or violating any order, rule, or term or condition of a permit issued or adopted by the Director. Each day of violation is a separate offense.

9. R.C. 6111.09 provides that any person who violates R.C. 6111.07 shall pay a civil penalty of not more than ten thousand dollars per day of violation.

   **Violations**

10. Respondent caused and continues to cause pollution to waters of the state and is in violation of R.C. 6111.04 and 6111.07(A).

11. Respondent used and continues to use a prohibited large capacity cesspool and is in violation of Ohio Adm.Code 3745-34-11(B) and R.C. 6111.07(A).
Proposed Violation Abatement Schedule

12. Respondent, on January 27, 2017, through its consultant, proposed the following schedule to abate the violations and achieve compliance with Ohio law and rules:

On or about July 1, 2017
Submission of NPDES, Complete Plans for a Proposed New WWT System, Anti-degradation complete with approvable permit to install application, plans.

On or about September 1, 2017
Commencement of Construction of the WWTP.

On or about October 1, 2017
Completion of Construction of the WWTP, start up and operation

13. The Agency informed Respondent and its consultant that the deadline for attaining operation level of the WWTP and achieving compliance with the NPDES permit is October 10, 2017. To meet this deadline the permit to install and NPDES permit applications should be submitted sooner than July. An earlier submittal is necessary to provide sufficient time for Respondent to address any questions or make revisions required by the Agency and depending on design flow, to prepare and submit an antidegradation addendum. An earlier submittal, such as April 15, 2017 was encouraged.

Director’s Considerations

14. 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 their 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.

15. The following Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any disposal system. Any such construction or modification is subject to R.C. 6111.44 and 6111.45 and Ohio Admin.Code Chapter 3745-42.
V. ORDERS

1. Respondent shall achieve compliance with R.C. Chapter 6111 and the rules adopted thereunder in accordance with the following schedule:
   a. No later than October 10, 2017, complete construction of the WWTP in accordance with the approved applications and plans and attain operational level and meet final effluent limits established in the NPDES permit;
   b. Not later than when construction is completed on the WWTP hire an operator of record to oversee plant operations and submit the required notification to Ohio EPA in accordance with Section X of these Orders; and
   c. Not later than when the NPDES permit is effective establish an electronic business account with Ohio EPA to submit electronic data monitoring reports.

2. Respondent shall submit revisions / corrections to address any deficiencies in any documents submitted pursuant to these Orders within thirty (30) days of notification by letter from Ohio EPA of any deficiencies.

3. Should Respondent fail to implement Order No. 1.a within the deadline set forth therein, Respondent shall immediately pay to Ohio EPA the amount of fourteen thousand six hundred twenty-two dollars ($14,822.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to R.C. Chapter 6111. Payment shall be made by tendering an official check for that amount, made payable to "Treasurer, State of Ohio." The official check, together with a letter identifying Respondent, shall be submitted to Carol Butler or her successor at:

   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
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 signed by Respondent and submitted to Ohio EPA.

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 Respondent’s 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
Northeast District Office
Division of Surface Water
Attn: DSW Enforcement Unit Supervisor
2110 E. Aurora Road
Twinsburg, Ohio 44087

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

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 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

3/3/17
Date

IT IS SO AGREED:
Fred W. Neil
dba Spuds Corner

Fred Neil
By:
Fred Neil

2/13/17
Date

Print Name