

OHIO E.P.A.

DEC 17 2013

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Village of Coldwater
610 W. Sycamore Street
Coldwater, Ohio 45828

Respondent

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:
:

Director's Final Findings
and Orders

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.

PREAMBLE

It is agreed by the Parties hereto as follows:

By: Don Lasser Date: 12-17-13

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Village of Coldwater ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("EPA") under Ohio Revised Code (R.C.) §§ 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 R.C. Chapters 6111 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent is located in Mercer County, Ohio, and has a population of approximately 4,430 people.

2. Respondent owns and operates a wastewater treatment plant (WWTP) located at 618 Hardin Street, Coldwater, Ohio. The WWTP consists of a grit removal channel, comminution, a three-cell lagoon system, the first two cells of which are aerated, and controlled discharges. The WWTP is designed to treat 0.9 million gallons per day (MGD) of sewage.
3. Respondent holds a National Pollutant Discharge Elimination System (NPDES) permit, number 2PB00013*HD, effective February 1, 2008, which authorizes Respondent to discharge effluent from the WWTP to Hardin Creek. Hardin Creek is defined as "waters of the state" pursuant to R.C. § 6111.01.
4. Respondent's NPDES permit expired on January 31, 2013. Respondent submitted a timely renewal application on July 16, 2012, and continues to operate the WWTP under the terms and conditions of the expired permit.
5. Respondent also operates a separate sanitary sewerage system, which is over eighty years old, tributary to the WWTP.
6. Numerous sanitary sewer overflows ("SSOs") have occurred from a lift station and from manholes within the collection system. These overflows consist of untreated sanitary sewage which flows into either Coldwater Creek or Hardin Creek. Untreated and partially treated sanitary sewage is "pollution," as that term is defined in R.C. § 6111.01. Coldwater Creek is defined as "waters of the state" pursuant to R.C. § 6111.01.
7. SSOs of raw or diluted sewage pose a risk to public health and the environment.
8. Respondent's expired NPDES permit, No. 2PB00013*HD, contained a compliance schedule for elimination of separate sanitary sewer overflows by not later than 24 months after the effective date of the permit (February 1, 2010).
9. Respondent violated NPDES permit No. 2PB00013*HD by not eliminating the SSOs by February 1, 2010 in violation of R.C. § 6111.07.
10. Respondent's previous NPDES permit, No. 2PB00013*GD, effective from December 1, 2002 to November 30, 2007, contained an eight-phase compliance schedule for reducing infiltration and inflow (I/I) in the sanitary sewer system and eliminating five SSOs by not later than 70 months after the effective date of the permit, (October 1, 2008).

11. Respondent violated NPDES permit No. 2PB00013*GD by not eliminating all the SSOs by October 1, 2008, in violation of R.C. § 6111.07.
12. Each day of discharge of sanitary sewage from the SSOs to waters of the state without a valid NPDES permit for the discharge is a separate violation of R.C. §§ 6111.04 and 6111.07. The dates of the overflows or bypasses known to Ohio EPA are listed on Attachment I to these Orders and incorporated by reference as if fully rewritten herein. Each violation cited in Attachment I constitutes a separate violation of R.C. §§ 6111.04 and 6111.07.
13. Respondent completed televising its entire sanitary sewer collection system in 2007. Respondent has also completed testing of the sanitary sewer system and construction projects, including the construction of two new sewer trunks to try to eliminate the SSOs. In July 2013, Respondent completed a project to line nearly 55,000 linear feet of sewer and 2,000 vertical feet of manholes. Respondent has eliminated two of the SSOs, but five SSOs remain.
14. The discharge of pollutants into waters of the state in excess of the permissible limits of an NPDES permit is a violation of R.C. §§ 6111.04 and 6111.07.
15. SSO discharges to waters of the state are prohibited under ORC § 6111.04, except in accordance with a valid, unexpired permit. Respondent does not hold a valid, unexpired permit for SSO discharges to waters of the state.
16. Ohio EPA inspected Respondent's WWTP on November 4, 2010 and November 20, 2012. Following these inspections, an NOV dated January 16, 2013, along with a compliance inspection report, listing the SSOs that had occurred since February 2008, in violation of Respondent's NPDES permit, was sent to Respondent.
17. Respondent has received complaints about sewage backing up in basements.
18. Respondent has failed to maintain and operate the sanitary sewerage system in a fashion necessary to ensure compliance as required in Parts III.3.A. and III.B. of its NPDES permit. Failure to maintain the sanitary sewerage system as required to ensure compliance is a violation of R.C. § 6111.07. Each day of violation is a separate offense.
19. R.C. § 6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violating any order, rule, or term or condition of a permit issued or adopted by the Director

of Environmental Protection pursuant to those sections. Each day of violation is a separate offense.

20. On December 5, 2012, Ohio EPA met with Respondent to discuss Respondent's failure to meet the compliance schedules in its NPDES permit. Respondent submitted a proposed schedule to Ohio EPA for flow monitoring and corrective actions and repairs for the collection system to eliminate the SSOs which would not be completed until 2023.
21. Compliance with R.C. Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
22. 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 (PTI) requirements of R.C. §§ 6111.44 and 6111.45 and Ohio Administrative Code (OAC) Chapter 3745-42.
23. 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 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.

V. ORDERS

1. Respondent shall operate and maintain its sanitary sewerage system and WWTP in accordance with all requirements in its NPDES permit and in any modified or successor permit, and R.C. Chapter 6111.
2. Respondent shall minimize infiltration and inflow ("I/I") of ground and surface water into its sanitary sewer collection system and eliminate the SSOs as expeditiously as practicable, but not later than the following schedule:
 - a. Within eighteen (18) months of the effective date of these Orders, Respondent shall submit a General Plan ("Plan") for collection system improvements and SSO elimination to the Northwest District Office of Ohio EPA ("NWDO") in accordance with Section X. of these Orders for review and acceptance. The Plan shall incorporate a schedule which includes at

least the milestones set forth in Orders Nos. 2.c., 2.d., 2.f., and 2.g. Respondent shall provide justification for a schedule extending beyond the time frames in those Orders.

- b. Within fourteen (14) days from receipt of notification of comments or deficiencies from Ohio EPA on the Plan required by Order No. 2.a., Respondent shall provide to NWDO, in accordance with Section X. of these Orders, a response addressing any comments or deficiencies and/or submitting any requested revisions to the recommended actions or improvements.
- c. As soon as possible but no later than twenty (20) months after the effective date of these Orders, Respondent shall begin implementation of the accepted General Plan in accordance with the schedule in the Plan.
- d. Within twenty-four (24) months of the effective date of these Orders, Respondent shall submit, in accordance with Section X. of these Orders, complete and approvable PTI applications as necessary to comply with the accepted Plan, if PTIs are required for corrective actions including, but not limited to, new or replacement sewers, manholes or related structures.
- e. Respondent shall submit corrections to address any deficiencies in the PTI applications referenced in Order No. 2.d. to Ohio EPA, in accordance with Section X. of these Orders, within thirty (30) days of notification by letter from Ohio EPA of any deficiencies.
- f. If PTIs are required for the corrective actions, Respondent shall commence construction in accordance with the approved PTIs within twenty-six (26) months of the effective date of these Orders.
- g. Within forty-four (44) months of the effective date of these Orders, Respondent shall complete collection system corrective action work and construction, and eliminate all the SSOs in accordance with the accepted General Plan.
- h. Respondent shall notify the NWDO, in accordance with Section X. of these Orders, within seven (7) days of beginning implementation of the accepted General Plan as required by Order No. 2.c.
- i. Commencing ninety (90) days after beginning implementation of collection system corrective actions, Respondent shall submit quarterly progress

reports on the work by the fifteenth (15th) day of the month following the end of each quarter to the NWDO at the address in Section X. of these Orders.

- j. Respondent shall notify the NWDO, in accordance with Section X. of these Orders, within seven (7) days of completion of collection system corrective action work.
3. Respondent shall report all unauthorized discharges in accordance with Part III.12 of Respondent's NPDES permit.

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 OAC Rule 3745-33-03(E)(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 Respondent's WWTP or sanitary sewerage system.

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

Unless otherwise provided in these Orders, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Surface Water
Attn: DSW Enforcement Unit Supervisor
347 North Dunbridge Road
Bowling Green, Ohio 43402

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
Attn: Manager, Storm water and Enforcement Section
50 West Town Street, Suite 700
[P.O. Box 1049]
Columbus, Ohio 43215 [43216-1049]

[For mailings use the post office box number and zip code in brackets]

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. Ohio EPA and Respondent each reserve all other 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, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders, which right Ohio EPA does not waive, 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**



Scott Nally
Director

12/16/13

Date

**IT IS SO AGREED:
Village of Coldwater**



Signature

12/4/13

Date

JOSEPH H. KNAPSCHAEFER

Printed or Typed Name

MAYOR

Title

ATTACHMENT I

Parameter	Units	Date	Reported Value
Overflow Occurrence	No./Month	2/5/2008	3
Overflow Occurrence	No./Month	2/6/2008	3
Overflow Occurrence	No./Month	3/19/2008	5
Overflow Occurrence	No./Month	5/11/2008	5
Overflow Occurrence	No./Month	5/31/2008	5
Overflow Occurrence	No./Month	6/9/2008	3
Overflow Occurrence	No./Month	6/25/2008	3
Overflow Occurrence	No./Month	12/19/2008	4
Overflow Occurrence	No./Month	2/11/2009	5
Overflow Occurrence	No./Month	4/3/2009	4
Overflow Occurrence	No./Month	4/7/2009	5
Overflow Occurrence	No./Month	4/30/2009	5
Overflow Occurrence	No./Month	5/1/2009	5
Overflow Occurrence	No./Month	5/17/2010	2
Overflow Occurrence	No./Month	5/31/2010	2
Overflow Occurrence	No./Month	6/5/2010	2
Overflow Occurrence	No./Month	6/6/2010	5
Overflow Occurrence	No./Month	6/14/2010	2
Overflow Occurrence	No./Month	6/27/2010	3
Overflow Occurrence	No./Month	11/25/2010	2
Overflow Occurrence	No./Month	2/28/2011	5
Overflow Occurrence	No./Month	3/5/2011	5
Overflow Occurrence	No./Month	4/4/2011	4
Overflow Occurrence	No./Month	4/20/2011	5
Overflow Occurrence	No./Month	4/25/2011	4
Overflow Occurrence	No./Month	4/27/2011	4
Overflow Occurrence	No./Month	5/10/2011	5
Overflow Occurrence	No./Month	5/25/2011	4
Overflow Occurrence	No./Month	6/10/2011	8
Overflow Occurrence	No./Month	10/19/2011	3
Overflow Occurrence	No./Month	11/14/2011	3
Overflow Occurrence	No./Month	12/5/2011	4
Overflow Occurrence	No./Month	3/2/2012	2
Overflow Occurrence	No./Month	5/7/2012	4
Overflow Occurrence	No./Month	7/24/2012	4
Overflow Occurrence	No./Month	8/5/2012	4
Overflow Occurrence	No./Month	8/9/2012	4
Overflow Occurrence	No./Month	9/27/2012	3
Overflow Occurrence	No./Month	12/20/2012	2
Overflow Occurrence	No./Month	1/30/2013	1
Overflow Occurrence	No./Month	4/10/2013	4
Overflow Occurrence	No./Month	4/16/2013	3