

By: Kelly A. Mark Date: _____

BEFORE THE

1/14/2021

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Capstone Properties LLC : Director's Final Findings
P.O. Box 186 : and Orders
Athens, OH 45701 :

Respondent

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Capstone Properties LLC ("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 ownership of the Facility described in Finding No. 1 of these Orders 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 Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA (Director) has made the following findings:

1. Respondent owns and operates the Capstone Village Apartments located at 8864 United Lane, Athens, Athens County, Ohio 45701 ("Facility"). The Facility includes 72 apartments in 18 buildings.

2. The Facility is currently served by four package wastewater treatment plants ("WWTPs"), called Plants 1, 2, 3, and 4, each of which consists of a trash trap, aeration, clarification, dosing, and shared surface sand filters, chlorination, and dechlorination.
3. Effluent from Plant 1 (2,500 gallons per day ("GPD")) combines with effluent from Plant 2 (5,000 GPD), and the combined discharge of "sewage," as defined in ORC § 6111.01, flows through Outfall 001 to an unnamed tributary to Margaret Creek.
4. Effluent from Plant 3 (4,500 GPD) combines with effluent from Plant 4 (7,500 GPD) and the combined discharge of "sewage," as defined in ORC § 6111.01, flows through Outfall 002 to an unnamed tributary to Margaret Creek.
5. The unnamed tributary and Margaret Creek are "waters of the state" as defined in ORC § 6111.01.
6. Respondent was issued Ohio National Pollutant Discharge Elimination System ("NPDES") permit No. 0PW00018*DD for the discharges from the Facility. The permit became effective May 1, 2014 and expired April 30, 2019. A renewal permit, No. 0PW00018*ED, was issued effective May 1, 2019 and will expire April 30, 2024.
7. Ohio EPA conducted an inspection of the Facility for compliance with Respondent's NPDES permit and ORC Chapter 6111 and rules adopted thereunder on September 14, 2016. Following this inspection, Ohio EPA sent a notice of violation ("NOV") and an inspection report to Respondent on October 14, 2016.
8. The NOV cited violations of effluent limitations in Respondent's NPDES permit and noted that the Facility was in Significant Non-Compliance for exceedances of the ammonia limit. The NOV also cited Respondent's failure to have an Operator of Record for the WWTPs.
9. Respondent had a Class I Operator of Record until Respondent submitted an Operator of Record notification form dated September 19, 2016 removing the operator. Respondent submitted an Operator of Record notification form dated February 16, 2017, designating two Class A Operators of Record. Respondent currently has at least one Class A Operator of Record as required by its NPDES permit No. 0PW00018*ED.
10. The Facility has had re-occurring violations of total suspended solids, ammonia, E. coli, and other effluent limitations in NPDES permit No. 0PW00018*DD and

No. 0PW00018*ED. Respondent has, on at least the dates listed in the chart attached hereto as Attachment I and incorporated by reference as if fully rewritten herein, exceeded final effluent limitations in its NPDES permit from January 2015 through September 2020. Respondent's failure to comply with the final effluent limitations in the NPDES permit violated the permit and ORC § 6111.07. Each day of violation cited on Attachment I constitutes a separate offense.

11. Between January 2015 and November 15, 2019, Respondent failed to report analytical results for dissolved oxygen and water temperature as required by NPDES permit No. 0PW00018*DD and No. 0PW00018*ED on at least the dates listed in the charts attached hereto as Attachment 2 and incorporated by reference as if fully rewritten herein. In addition, from January through July 2020, Respondent entered code "AH" on ten (10) different days because the operator was sick (January 23, 2020, February 24, 2020, March 23, 24 and 31, 2020, and July 21, 2020) or on vacation (May 18, 19, 20, and 21, 2020). These are violations of the permit requirement that the facility have a back-up operator to complete daily visits and testing when the primary operator is not available. Respondent's failure to report as required by the NPDES permit violated the permit and ORC § 6111.07. Each day of violation cited on Attachment 2 and listed in this Finding constitutes a separate offense.
12. Notices of violations that resulted from effluent code, effluent limit, or analytical results were not reported as required by NPDES permit No. 0PW00018*DD and NPDES permit No. 0PW00018*ED were sent to Respondent on at least April 21, 2015, May 21, 2015, June 23, 2015, July 20, 2015, September 21, 2015, November 23, 2015, December 21, 2015, February 22, 2016, June 21, 2016, July 18, 2016, September 20, 2016, October 21, 2016, January 20, 2017, June 21, 2017, July 19, 2017, November 22, 2017, February 19, 2018, March 20, 2018, April 23, 2018, May 21, 2018, June 21, 2018, July 23, 2018, August 21, 2018, October 18, 2018, November 21, 2018, February 18, 2019, March 27, 2019, April 22, 2019, July 19, 2019, and September 13, 2019.
13. During 2013, Respondent investigated and removed infiltration and inflow ("I/I") into the sewer system at the Facility, resulting in improvements to the quality of the effluent discharged from the Facility.
14. On January 5, 2018, Ohio EPA conducted an inspection of the WWTPs at the Facility for compliance with Respondent's NPDES permit, ORC Chapter 6111, and rules adopted thereunder. Following this inspection, on February 28, 2018, Ohio EPA sent an NOV and an inspection letter and report to Respondent.

15. The NOV sent on February 28, 2018 cited violations of effluent limitations for ammonia, pH, and E. coli in Respondent's NPDES permit and the failure to have a sign posted at outfall 001 as required by Respondent's NPDES permit. Violations of the NPDES permit are violations of ORC § 6111.07.
16. The inspection letter dated February 28, 2018, described Respondent's failure to follow through on investigating I/I in the sewer system at the Facility and repairing the sewers in accordance with its plan provided to Ohio EPA on February 15, 2017 and on its commitment to Ohio EPA on November 10, 2016 to return to compliance with the terms and conditions of its NPDES permit by May 2017.
17. I/I appear to continue at the Facility. It is believed that the I/I problems at the Facility are currently the leading cause of the Facility's operational problems and permit violations.
18. Respondent requested assistance from Ohio EPA's Compliance Assistance Unit ("CAU") in the fall of 2014 and the CAU worked with Respondent on and off since then through at least December 2017, including making numerous visits to the Facility to inspect the WWTPs. The operator of the WWTPs has implemented all of CAU's recommendations to improve operation of the WWTPs, but violations of effluent limitations in Respondent's NPDES permit persist.
19. Athens County is planning to extend its sanitary sewer collection system (the "Athens to Albany expansion"), beginning construction by the spring of 2020 and completing construction and beginning connection of individual homes and businesses in the summer of 2021. The Athens to Albany expansion project would include replacing the collection system to every building on the expanded sewer line, including all of the collection systems at Capstone Village Apartments.
20. Pursuant to ORC § 6111.04(A), 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.
21. Pursuant to ORC § 6111.04(C), no 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.
22. Pursuant to ORC Section 6111.07(A), no person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code 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. Each day of violation is a separate offense.

23. This document does not modify NPDES permit No. 0PW00018*ED. The purpose of these Orders is to correct Respondent's noncompliance with permit No. 0PW00018*ED and not to alter said permit.
24. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
25. 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 purposes of ORC Chapter 6111.

V. ORDERS

1. From the effective date of these Orders, Respondent shall comply with Ohio Administrative Code ("OAC") Rule 3745-7-02(A)(2), by ensuring an operator of record with a valid Class A certification or above is employed or under contract to oversee the technical operation of the WWTPs.
 - a. Respondent shall submit to Ohio EPA, in accordance with Section X. of these Orders, an Operator of Record Notification Form upon hiring or contracting with a certified operator and in the event of a change in Respondent's certified operator.
 - b. If Respondent enters into a contract with a certified operator, it shall meet the requirements in OAC 3745-7-02(D).
 - c. Respondent shall require its operator of record to meet the minimum staffing requirements in OAC 3745-7-04(C)(1).
 - d. Respondent shall require its operator of record to meet the recordkeeping requirements and other responsibilities in OAC 3745-7-09.
2. Respondent shall comply with the terms and conditions of NPDES permit No. 0PW00018*ED and any successor permits.
3. Once Athens County's sanitary sewer collection system becomes available to the Facility, Respondent shall connect the sanitary sewer collection system at the

Facility to the Athens County sanitary sewer collection system and decommission the WWTPs at the Facility in accordance with the following schedule:

- a. Within thirty (30) days from Athens County sewers becoming available to the Facility, Respondent shall complete connection to the sewer system in accordance with all the terms and conditions of the sewerage authority.
- b. Within fourteen (14) days of completing the connection to the Athens County sanitary sewer collection system, Respondent shall submit to Ohio EPA, in accordance with Section X. of these Orders, certification that connection is complete and operational to the satisfaction of the sewerage authority and a request to terminate Respondent's NPDES permit pursuant to OAC 3745-33-04(F);
- c. Within sixty (60) days after certifying that connection to the Athens County sanitary sewer system is complete and operational, Respondent shall decommission the four WWTPs and all associated abandoned collection system components at the Facility as follows:
 - i. Pump out and properly dispose of all wastewater and sludge from the tanks, pump vaults, pipes and any other component capable of holding wastewater or sludge;
 - ii. Remove all metal, piping and wire, collapse the concrete tanks in place and raise the area to grade, or dispose of the concrete in accordance with paragraph iii below;
 - iii. Remove all piping, conduit, steel tanks, and mechanical equipment, such as blowers and pumps, from the Facility and dispose of it in a licensed construction and demolition debris landfill or solid waste landfill;
 - iv. Provide notice to Ohio EPA, in accordance with Section X. of these Orders, within fourteen (14) days of completion of the decommissioning of the WWTPs.
4. Respondent shall pay to the Ohio EPA the amount of twenty-one thousand eight hundred ten dollars (\$21,810.00) in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 6111.09. Payment of five thousand dollars (\$5,000.00) shall be made within thirty (30) days of the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio," together with a letter identifying Respondent, to Carol Butler or her successor at:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

A photocopy of the check shall be sent to Ohio EPA, Southeast District Office, in accordance with Section X. of these Orders and to Larry Reeder, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, OH 43216-1049

5. In lieu of paying the remaining sixteen thousand eight hundred ten (\$16,810) dollars of the civil penalty, within thirty (30) days of the effective date of these Orders Respondent shall implement a supplemental environmental project ("SEP") by depositing sixteen thousand eight hundred ten (\$16,810) dollars into a designated account held by the Athens County Health Department ("HD") for the HD to disburse to residents in economic need to assist them in connecting to the Athens to Albany expansion sewer line once it is constructed.
6. If Respondent fails to complete the SEP in Order No. 5 by the completion date, Respondent shall pay the remaining penalty amount of sixteen thousand eight hundred ten (\$16,810.00) dollars to Ohio EPA within sixty (60) days of the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio," together with a letter identifying Respondent, to Carol Butler or her successor at:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

A photocopy of the check shall be sent to Ohio EPA, Southeast District Office, in accordance with Section X. of these Orders and to Larry Reeder, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio EPA
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.

This 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 Respondent. For purposes of these Orders, a responsible official is as 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, the Respondent's Facility.

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 the Facility.

IX. MODIFICATIONS

These Orders may be modified by the 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
Southeast District Office
Division of Surface Water
Attn: DSW Enforcement Unit Supervisor
2195 Front Street
Logan, OH 43138

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

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 those 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



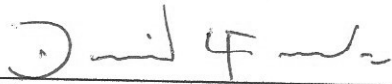
Laurie A. Stevenson
Director

1/14/2021

Date

IT IS SO AGREED:

Capstone Properties LLC



Signature

December 5, 2020

Date

David L. Funk

Print Name

Managing Member, Village at Rolling Hills

Title