

4. The tributary to East Fork Whitewater River is considered "waters of the state" as defined by ORC Section 6111.01.
5. The ER On-Scene Coordinator ("OSC") responded to the incident at 1042 State Route 121 in New Paris, Darke County where a fish kill had occurred and approximately one mile of stream impacts was visible. Representatives from the Darke County Soil and Water Conservation District ("SWCD"), Ohio Department of Natural Resources ("ODNR") and ODA also responded to the incident.
6. An estimated 500 gallons of hog manure was released to waters of the state after Respondent had land applied manure to the Site several days prior without working the manure into the soil preceding a rain event.
7. The OSC gathered field readings for ammonia which were in excess of 10 parts per million ("ppm") in the creek along the property line of 1042 State Route 121. An ammonia screening was also conducted where the creek intersects with a smaller drainage ditch, measuring 4.03 ppm at this location. It was determined the creek should be dammed at this location to stop the manure from spreading farther downstream.
8. The OSC and SWCD identified the property owner of the impacted field at 1042 State Route 121 and Respondent agreed to coordinate with the property owner in order to get the materials for the dam in place for construction the following day.
9. On August 19, 2020, the OSC had issued a Notice of Violation ("NOV") to Respondent for the unauthorized discharge of manure to waters of the state. The initial abatement actions called for Respondent to install and maintain a containment dam, stop all off-property releases of manure to the impacted waterway, coordinate with ODA on best management practices for storage of manure with future anticipated precipitation events, and remediate the initial scene of the release to prevent additional discharges to waters of the state.
10. On August 20, 2020, the dam was not yet in place and ODA observed the waterway where the fish kill had occurred was now clear and free of odor. Field ammonia readings obtained from the SWCD indicated the levels were less than 4 ppm. Higher ammonia concentrations were noted by ODA in the waterway near Billman Road, and Respondent was instructed to place an earthen dam in this area.
11. On August 21, 2020, ODA and the SWCD confirmed the earthen dam had been installed. Field screenings for ammonia upstream of the dam indicated levels were above 9.99 ppm. Several thousand gallons of manure-laden water were removed from the waterway via vacuum truck and transported to a contained storage area in Greenville, Ohio. Ammonia readings upstream of the dam were still above 5.0 ppm and Respondent was instructed to flush out his field tile and

- collect the manure-laden water to lower the ammonia concentrations. Respondent was also instructed to leave the dam in place to allow precipitation to naturally flush the culvert and reduce the ammonia levels.
12. On August 24, 2020, the SWCD determined the ammonia levels were below 5.0 ppm both upstream and downstream from the dam and the dam could then be removed. An additional several hundred gallons of water was pumped out to assist with the dam removal.
 13. On August 25, 2020, Respondent plugged his field tile as a measure to prevent future manure releases. Several thousand gallons of clean water were flushed down the culvert to allow clean water to flow into the waterway.
 14. ODNR determined the release resulted in the death of one-thousand nine-hundred and sixty-two (1,962) animals. The restitution and investigative costs totaled \$731.96.
 15. ORC 6111.04(A)(1) "Acts of Pollution prohibited [...]" states: "No person shall cause pollution or place or cause to be placed any sewage, sludge, sludge material, industrial waste, or other wastes in a location where they cause pollution of any waters of the state."
 16. OAC 3745-1-04 (A) through (D) "Criteria applicable to all waters" states: The following general water quality criteria shall apply to all surface waters of the state including mixing zones. To every extent practical and possible as determined by the director, these waters shall be as follows: (A) Free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life. (B) Free from floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or cause degradation. (C) Free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance. (D) Free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life or are rapidly lethal in the mixing zone.
 17. ORC 3745.12(B) "Liability for unauthorized spill, release or discharge" states: Any person responsible for causing or allowing the unauthorized spill, release, or discharge is liable to the director for the costs incurred by the agency [...]"
 18. 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 sewer system. Any such construction or modification is subject to the PTI requirements of ORC §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.

19. 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. Within sixty (60) days of the effective date of these Orders, in settlement of Ohio EPA's claims for civil penalty, Respondent shall pay to the Ohio EPA the amount of five thousand dollars (\$5,000) which may be assessed pursuant to ORC §6111.09. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the total amount within sixty (60) days of the effective date of these Orders. The official check and a cover letter identifying the Respondent shall be submitted to Carol Butler, or her successor at:

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

A copy of the check shall also be sent to Larry Reeder, Environmental Manager, Enforcement Section, or his successor, at the following address:

Division of Surface Water
Ohio Environmental Protection Agency
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 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 operation of Respondent's waste water treatment 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

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southwest District Office
401 East Fifth Street
Dayton, Ohio 45402
ATTN: Enforcement Supervisor

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 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.

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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

Laurie A. Stevenson
Director

March 22, 2021

Date

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2021 FEB -1 PM 12:09
OHIO EPA
DIVISION OF AIR QUALITY CONTROL

IT IS SO AGREED:

Dan Clark

Dan Clark

Signature

1-28-21

Date

DAN CLARK owner

Printed or Typed Name and Title