

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Michael Wheeler
900 Licking Springs Rd
Newark, OH 43055

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Director's Final Findings
and Orders

Respondent

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: [Signature] Date: 4-13-17

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Michael Wheeler ("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 has made the following findings:

1. The property is located east of Henpeck Road in Knox County (approximately 40.267369 N, -82.283344 W) Ohio ("the Site"). A well permit for the drilling of a new well on the Site was issued to Respondent on July 15, 2008 from the Ohio Department of Natural Resources, Division of Mineral Resources and Management ("ODNR").
2. Ohio EPA's Wetland Ecology group studied the wetland on the Site in 2001. During a review of aerial imagery of the Site in 2013, an Ohio EPA ecologist noticed that a road has been constructed within the wetland area. Ohio EPA 401 staff was made aware of

the incident by the wetland ecologist. The approximate wetland and well location was determined to be 40.267446 N, -82.283171 W. The 2001 data indicated that the wetland is a high quality Category 3 wetland.

3. On December 3, 2013, Ohio EPA 401 staff conducted a site investigation and determined that approximately 0.24 acres of wetland had been impacted and filled by Respondent during the installation of a conventional oil well pad, pump jack, and access road (Ohio Department of Natural Resources ("ODNR") well No. 34-083-2-4385-00-00). A ditch had also been excavated within the wetland near the north side of the well pad. Respondent did not obtain a 401 water quality certification form Ohio EPA to perform this work.
4. A review of the ODNR well permit application indicated that Respondent misrepresented the current land use in the vicinity of the well. The well permit indicated that the area was "idle land" and the "wetlands" category remained unchecked on the permit application restoration plan.
5. On December 12, 2013, a Notice of Violation ("NOV") was sent to Respondent. The NOV stated options to correct the violation including potentially applying for an after-the-fact ("ATF") permit. Impacts to Category 3 wetlands are only authorized when the proposed activity is necessary to meet a demonstrated public need. The NOV later states that based on the current information available to Ohio EPA, it does not appear that an ATF permit would be approvable in accordance with Ohio EPA regulations.
6. On December 29, 2013, Respondent replied to the NOV in writing indicating that he intended to apply for an ATF permit.
7. On January 17, 2014, Ohio EPA sent a response indicating that the wetland impacted was considered to be a Category 3 wetland and that an ATF permit would not be likely approved since a public need demonstration as defined in Ohio Adm. Code 3745-1-50 would be required in order to approve the violations.
8. Pursuant to Sections 401 and 404 of the federal Clean Water Act, anyone who wishes to discharge dredge or fill material into waters of the United States, must obtain a section 404 permit from the U.S. Army Corps of Engineers ("Corps") and a section 401 water quality certification from Ohio EPA. Respondent has caused pollution by discharging or placing or causing to be placed other wastes into waters of the state. Respondent has violated ORC §§ 6111.04 and 6111.07.
9. Pursuant to ORC § 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.

10. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
11. 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 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. As soon as possible, but within at least eighteen (18) months from the effective date of these Orders, Respondent shall properly abandon the oil well at the Site in accordance with R.C. 1509.13, through the removal of the oil well, well pad, access road, and pump jack. The oil well shall be plugged and abandoned in accordance with ORC Chapter 1509 and the rules adopted thereunder. The excavated ditch shall also be returned to the approximate original condition. Once removal of the oil well, well pad, access road and pump jack have been removed and the well has been properly capped, Respondent shall submit notice of the abandonment to Ohio EPA in accordance with Section X of these Orders. Ohio EPA will then conduct a field visit to the Site to verify the requirements of this Order.
2. Within sixty (60) days from the effective date of these Orders, Respondent shall provide 0.72 acres of offsite compensatory mitigation in accordance with OAC 3745-1-54 for the impacts that occurred at the Site. Off-site mitigation shall be made through either the purchase of credits from either an IRT approved mitigation bank or an in-lieu fee sponsor. Respondent shall submit notice of the purchase of credits from the approved mitigation bank or in-lieu fee sponsor to Ohio EPA in accordance with Section X of these Orders. If Respondent is unable to acquire sufficient credits within sixty days of the effective date of these Orders after reasonable efforts, Respondent shall contact Ohio EPA in accordance with Section X of these Orders to obtain an extension of time to obtain sufficient credits. Provided Respondent has documented efforts to acquire sufficient credits, Ohio EPA's consent to such an extension shall not be unreasonably withheld.
3. Respondent shall pay to the Ohio EPA the amount of eight thousand dollars (\$8,000.00) in settlement of the Ohio EPA's claim for civil penalties, 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 that amount within thirty (30) 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 be sent to Mark Mann, Environmental Manager, 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.

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 Ohio Administrative Code Rule 3745-33-03.

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. NOTICE

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

Ohio Environmental Protection Agency
Central District Office
Division of Surface Water
Attn: DSW Enforcement Supervisor
50 W. Town Street, Suite 700
Columbus, Ohio 43215

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, defenses 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 law, 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 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**




Craig W. Butler
Director

4/10/17

Date

IT IS SO AGREED:

Michael Wheeler



Signature

3-6-17

Date

Michael Wheeler

Printed or Typed Name

owner

Title