

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
DEC 19 2011

In the Matter of: :
: :
White Oak Sewer Association, Inc. :
through its President and statutory agent :
C Jean Yost :
RT 1, Box 81A :
ST RT 550 :
Cutler, OH 45724 :
Respondent :

Director's Final Findings
and Orders

ENTERED DIRECTOR'S JOURNAL

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:

DMJ. Casater Date: 12-19-11

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the White Oak Sewer Association, Inc. ("Association"), through its President and statutory agent Charles Jean Yost ("Yost"), referred to as "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 agents, assigns, heirs, successors in interest and any person acting in concert or privy with any of them, liable under Ohio law. No change in the composition of Respondent or the ownership or operation of the wastewater treatment plant and associated sewerage system ("WWTP" or "plant") described 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 ORC Chapter 6111. and the rules adopted thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

Background

1. In 1989, the Association was issued an Ohio National Pollutant Discharge Elimination System ("NPDES") permit for a private WWTP to service a proposed residential, apartment and commercial complex ("complex") at State Route 339, which complex currently consists of approximately 20 to 30 residences, an assisted living home and commercial development.

2. The WWTP, a 50,000 gallons per day capacity extended aeration plant for sanitary waste, with an authorized flow to the plant of 10,000 gallons per day, is located 1/4 mile northeast of the State Route 339 and State Route 500 intersection, in Barlow Township, Washington County, and discharges to the South Fork of Wolfe Creek, a water of the state.

The Association

3. The Association filed Ohio domestic Articles of Incorporation as a non-profit corporation (Entity Number 748837) on May 10, 1989.
4. The Association was in good standing until May 27, 1994, at which time the Ohio Secretary of State, pursuant to ORC § 5733.20, cancelled the Articles of Incorporation due to the Association's failure to file the necessary corporate franchise tax reports or pay any such taxes within the time prescribed by law.
5. The Association's Articles of Incorporation were reinstated by the Ohio Secretary of State on November 1, 2010.

Violations of Ohio Water Pollution Control Laws

6. ORC § 6111.04 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 NPDES permit issued by the Director or if the person's application for renewal of such a permit is pending.
7. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any order, rule, or term or condition of a permit issued by the Director pursuant to those sections. Each day of violation represents a separate violation.

Untimely NPDES Permit Renewal Application / Discharging Without a Permit

8. Ohio Administrative Code ("OAC") Rule 3745-33-04(C)(1) provides that an NPDES permittee who wishes to continue to discharge after the expiration date of its permit must file for permit reissuance at least one hundred eighty days prior to the permit's expiration.
9. The most recent issued NPDES permit (OPX00007*BD) expired on July 31, 2008. An NPDES permit renewal application was filed by the Association on May 15, 2009, which filing date was not timely, in that it was not at least one hundred eighty days prior to the permit's expiration.
10. As a result of said untimely filing, a renewal application is not pending before the Ohio EPA. Respondent does not have a valid, unexpired permit and is discharging pollutants to waters of the state in violation of ORC §§ 6111.04 and 6111.07.

NPDES Permit Violations

11. On April 7, 2008, Ohio EPA inspected the WWTP, with Yost, representing the Association, present during the inspection, and made the following observations or provided the following information, memorialized in a May 1, 2008 letter to the Association:
 - a. Monthly discharge monitoring reports have not been submitted by the Association, as are required by the NPDES Permit;
 - b. The WWTP did not have the appropriate certified operator (Class 1), as is required by the NPDES permit;
 - c. The plant had not, at all times, been maintained in good working order and operated as efficiently as possible, as is required by the NPDES permit, in that sand filters exhibited vegetation growth in the bed and required cleaning; and
 - d. Discussions should commence with the Washington County Commissioners regarding connection to the County's collection system.
12. The sand filters were cleaned within several days of the report. Additional discussions were promptly held with Washington County Commissioners Grimes and Ohio EPA's local inspector.
13. On September 17, 2008, a letter was sent to the Association informing it that Ohio EPA has not received the monthly discharge monitoring reports for the period of January through June, 2008. The letter stated that the failure to submit the reports were violations of the NPDES permit and requested that the Association inform Ohio EPA within ten days as to the reasons for its noncompliance as well as a description of the actions taken or proposed to prevent future violations.
14. No response was received from the Association.
15. On July 29, 2009, Ohio EPA inspected the WWTP and made the following observations or provided the following information, memorialized in an August 17, 2009 letter to the Association:
 - a. Monthly discharge monitoring reports have not been submitted;
 - b. The aeration tank blower was not operating and must be returned to operation as soon as possible;
 - c. The WWTP did not have the appropriate certified operator (Class 1);
 - d. Plant sand filters exhibited vegetation growth in the bed and required cleaning; wastewater was ponded in the one operating sand filter; and
 - e. Discussions should commence with the Washington County Commissioners regarding connection to the County's collection system.

16. The blower was repaired within forty-eight (48) hours of the inspection, and the Ohio EPA inspector notified. The sand filters were cleaned and rotated immediately. Discussions were promptly held with Washington County Commissioner Grimes and the Ohio EPA inspector.
17. On September 1, 2009, Ohio EPA met with Yost as representative of the Association in his capacity as its President, to discuss the operation of the plant, submittal of monthly discharge monitoring reports and connection of the plant to the County collection system.
18. On December 15, 2009, Ohio EPA inspected the WWTP and observed that the plant was not in good operational condition, in that the aeration tank blowers were not operating and raw sewage was discharging into the South Fork of Wolfe Creek.
19. The blower was repaired within forty-eight (48) hours.
20. To date, the required monthly discharge monitoring reports have not been submitted, the appropriate certified operator (Class 1) has not been hired to operate the plant, and the plant has not, at all times, been maintained in good working order and operated as efficiently as possible, as is required in the NPDES permit.

Connection to Washington County Sewers

21. Best available demonstrated control technology requires the greatest degree of effluent reduction technologically feasible including, where practicable, an effluent limit of no discharge of pollutants.
22. OAC Rule 3745-1-05, requires the Director to consider alternative control strategies to achieve the desired effluent limitations.
23. As the desired effluent limitation is zero, the Director must consider alternative control strategies which would result in zero discharge to the receiving stream.
24. One such alternative is for Respondent to connect to the Washington County collection system, which is within one hundred (100) feet of the WWTP's property boundary.
25. On or about May 7, 2010, Ohio EPA contacted the Washington County sewer consultant, who stated that it would take approximately a month and a half to connect to the Washington County sewers.

Order to Prevent, Control or Abate Water Pollution

26. ORC § 6111.03(H) authorizes the Director to issue orders to prevent, control, or abate water pollution by such means as:
 - a. Prohibiting or abating discharges of sewage, industrial waste, or other wastes into the waters of the state; and

- b. Requiring the construction of new disposal systems or any parts thereof, or the modification, extension, or alteration of existing disposal systems or any parts thereof
27. ORC § 6111.0(H) orders require the Director to give consideration to, and base the determination on, evidence relating to the technical feasibility and economic reasonableness of complying with those orders and to evidence relating to conditions calculated to result from compliance with those orders, and their relation to benefits to the people of the state to be derived from such compliance in accomplishing the purposes of this chapter.

Director's Consideration

28. 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. Within ninety (90) days of receiving final consent from Washington County, Respondent shall connect to the Washington County collection system and cease all wastewater discharges to waters of the state from the WWTP. In no event shall such connection and cessation of wastewater discharges be later than one (1) year after the effective date of these Orders.
2. Within seven (7) days of receiving the final consent as set forth in Order No. 1, Respondent shall provide written notification of such receipt to Ohio EPA, Southeast District Office, in accordance with Section X of these Orders.
3. Within seven (7) days of connecting to the Washington County collection system, as required in Order No.1, Respondent shall provide written notification of the connection to Ohio EPA, Southeast District Office, in accordance with Section X of these Orders.
4. Within sixty (60) days of the effective date of these Orders, Respondent shall submit to the Ohio EPA, Southeast District Office, in accordance with Section X of these Orders, for its review and approval, a complete and approvable plan detailing, with compliance schedule, the abandonment of the WWTP and area cleanup.
5. Respondent shall respond in writing to any questions or comments Ohio EPA, Southeast District Office, may have on the plan submitted under Order No. 4, within thirty (30) days of the date on the correspondence from Ohio EPA.
6. Upon modification and/or approval by Ohio EPA, Southeast District Office, Respondent shall implement the approved plan for the abandonment of the WWTP and area cleanup.

7. Respondent, having demonstrated that it is without assets sufficient to pay a greater assessment, and Respondent's president and statutory agent having demonstrated an inability to pay a greater assessment, shall pay the amount of ten thousand dollars (\$10,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within sixty (60) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for eight thousand dollars (\$8,000.00) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, at:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

8. In lieu of paying the remaining two thousand dollars (\$2,000.00) of the civil penalty, Respondent shall within sixty (60) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of two thousand dollars (\$2,000.00) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondents shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, at:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

Photocopies of each check shall be sent to the Ohio EPA, Southwest District Office, in accordance with Section X of these Orders, and to Mark Mann, 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

9. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 8, Respondent shall immediately pay to Ohio EPA the remaining two thousand dollars (\$2,000.00) of the civil penalty in accordance with the procedures in Order No. 7.

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.

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 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

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

Ohio Environmental Protection Agency
Southeast District Office
2195 Front Street
Logan, Ohio 43138
(ATTN: Enforcement Supervisor)

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.


XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

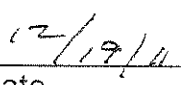
XIV. SIGNATORY AUTHORITY

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 J. Nally
Director



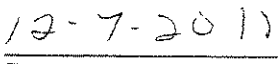
Date

White Oak Sewer Association, Inc.

By: 

Charles Jean Yost
President

Title



Date