



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Craig W. Butler, Director

4/19/2016

Gary Norton, Jr., Mayor  
14340 Euclid Ave  
East Cleveland, OH 44112

RE: Director's Final Findings & Orders  
NPDES  
Cuyahoga County  
8DU00113

Ladies and Gentlemen:

Transmitted herewith is one copy of the Director's Final Findings & Orders in the referenced matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Fowler".

Kevin J. Fowler, Supervisor  
Permit Processing Unit  
Division of Surface Water

KJF/dks

Enclosure

**CERTIFIED MAIL**

cc: M. Mann, DSW  
R. DeMuth, DSW  
B. Schuch, DSW  
L. Reeder, DSW  
Compliance Section  
M. McCarron, PIC  
H. Griesmer, PIC  
D. Stoll, NEDO/DSW  
B. Fischbein, Legal  
M. Horvitz, Legal  
Journal Room  
File

OHIO E.P.A.

APR 19 2016

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of East Cleveland, Ohio  
14340 Euclid Avenue  
East Cleveland, Ohio 44112

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: [Signature] Date: 4-19-16

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of East Cleveland, Ohio ("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 of Ohio EPA has made the following findings:

1. Respondent is a municipality with a population of approximately 17,500 residents located in Cuyahoga County, Ohio.
2. Storm water from Respondent's municipal separate storm sewer system discharges to Dugway Brook and Nine Mile Creek, both of which flow into Lake Erie. Dugway Brook, Nine Mile Creek, and Lake Erie constitute "waters of the state," as defined in ORC § 6111.01(H). Urban storm water discharges commonly contain total suspended solids, gross solids (trash and debris), oil and grease, bacteria, heavy metals, and excess nutrients, which constitute "sewage," "industrial waste," or "other wastes," as defined in ORC § 6111.01(B), (C), and (D). Placement of these wastes into waters of the state constitutes "pollution," as defined in ORC § 6111.01(A).
3. Ohio Administrative Code (OAC) Rule 3745-38-02 provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without either applying for and obtaining an Ohio National Pollutant Discharge Elimination System ("NPDES") individual permit in accordance with requirements of OAC Chapter 3745-33, complying with the indirect discharge permit program pursuant to OAC Chapter 3745-36 or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of OAC Chapter 3745-38.
4. ORC § 6111.03(J)(1) authorizes the Director to set the terms and conditions of the permit. That section further provides that any permit terms and conditions set by the director shall be designed to achieve and maintain full compliance with mandatory requirements of the Federal Water Pollution Control Act that are imposed by regulation of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"). Pursuant to Section 402(p) of the federal act, the Administrator of U.S. EPA imposed by regulation requirements to regulate storm water discharges.
5. U.S. EPA developed a program to address storm water discharges from municipal separate storm sewer systems ("MS4s") generated by runoff from land and impervious areas such as paved streets, parking lots, and building rooftops during rainfall and snow events.
6. U.S. EPA's municipal storm water program addressed storm water runoff in two phases. Phase I addressed runoff from large MS4s (serving a population greater than 250,000) and medium MS4s (serving a population between 100,000 and 250,000). Large and medium MS4s were initially required to apply for National Pollutant Discharge Elimination System ("NPDES") permits to discharge storm water, and to develop a storm water management program ("SWMP") by

November 16, 1992 and May 17, 1993, respectively.

7. Phase II addresses storm water runoff from small MS4s (serving a population less than 100,000). Small MS4s were required to apply for permit coverage and submit an SWMP by March 10, 2003.
8. The General NPDES Permit for Small MS4s requires the development, implementation, and enforcement of a storm water management program which includes the six minimum control measures specified in OAC 3745-39-03(C)(2). The six minimum control measures are: public education and outreach on storm water impacts; public involvement and participation; illicit discharge detection and elimination; construction site storm water runoff control; post-construction storm water management in new development and redevelopment; and, pollution prevention and good housekeeping for municipal operations.
9. Respondent is a small MS4. On March 7, 2003, Respondent submitted a request for a waiver from permit coverage pursuant to OAC 3745-39-03(A)(3) and (5) instead of applying for coverage under the General NPDES Permit for Small MS4s.
10. On January 5, 2011, the Director proposed to deny Respondent's waiver request because Respondent failed to meet the criteria for granting a waiver in OAC 3745-39-03(A)(5), specifically because Respondent's small MS4 served a population over 10,000. Respondent did not request an adjudication hearing and on February 22, 2011, the denial of the waiver became final.
11. On February 24, 2011, a letter was sent to Respondent with instructions for obtaining permit coverage. Respondent had options to either submit a Notice of Intent ("NOI") to be covered by the General NPDES Permit for Small MS4s and an SWMP, or to submit an MS4 co-permittee NOI form and an updated SWMP to become a co-permittee with another regulated MS4. Under either option, the NOI and SWMP were required to be submitted within 180 days of the date of the letter.
12. On April 23, 2013, a meeting was held at the Ohio EPA, Northeast District Office, to discuss Respondent's obligations under the MS4 program. The meeting was attended by Ohio EPA, Respondent, the Cuyahoga County Department of Public Works, the Cuyahoga County Board of Health, and the Northeast Ohio Regional Sewer District. The last three agencies were invited to the meeting because they were willing to assist Respondent in implementing its MS4 program. During the meeting, Ohio EPA explained to Respondent the requirements for small MS4s, including the SWMP and the six minimum control measures, and the other agencies provided Respondent with information on how they could assist

Respondent in developing its SWMP and implementing the six minimum control measures.

13. In a follow-up letter dated May 28, 2013, Ohio EPA notified Respondent that it must submit an NOI and an SWMP within sixty days of the date of the letter. The letter gave Respondent the option of notifying Ohio EPA by June 5, 2013 if Respondent could not submit the documents within sixty days.
14. Respondent did not respond to the May 28, 2013 letter.
15. On December 16, 2013, Ohio EPA sent Respondent a Notice of Violation ("NOV") for Respondent's failure to obtain NPDES permit authorization to discharge storm water from its MS4 in violation of OAC Chapter 3745-39 and ORC § 6111.04. The NOV also notified Respondent that the matter had been referred for enforcement action.
16. On September 23, 2014 and again on December 4, 2014, Ohio EPA sent proposed Director's Final Findings and Orders to Respondent but received no response to them.
17. On December 15, 2015, Ohio EPA made a presentation about the MS4 program to Respondent's Mayor and City Council.
18. On January 19, 2016, Ohio EPA met with the Respondent's Law Director, a Councilman, Building Commissioner and Economic Development Director to further explain the requirements of the MS4 program and the actions the City must take to come into compliance.
19. 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, and 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 in excess of the permissive discharges specified under an existing permit.
20. 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.
21. By way of storm water discharges Respondent is discharging wastes and pollutants into waters of the state without an appropriate permit or authorization

in violation of ORC §§ 6111.04 and 6111.07, OAC § 3745-38-02(A), and OAC § 3745-39-03(B).

22. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
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 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.

### ORDERS

1. By June 1, 2016, Respondent shall submit, in accordance with Section X. of these Orders, an NOI to be covered under the General NPDES Permit for Small MS4s and an SWMP for review and comment by Ohio EPA.
2. Respondent shall begin implementing the six minimum control measures required by the General NPDES Permit for Small MS4s and OAC 3745-39-03(C)(2) upon receipt of notification from Ohio EPA of coverage under the General NPDES Permit for Small MS4s.
3. By October 1, 2016, Respondent shall enact an ordinance to prohibit illicit discharges to the MS4.
4. By November 2, 2016, enact an ordinance that meets or exceeds the requirements of the Ohio EPA General NPDES Permit for Storm Water Associated with Construction Activities #OHC000004 to regulate runoff from construction activities where the larger common plan of development or sale disturbs one or more acres of land.
5. By December 15, 2016, enact an ordinance that meets or exceeds the requirements of the Ohio EPA General NPDES Permit for Storm Water Associated with Construction Activities #OHC000004 to require the implementation of permanent post-construction water quality and quantity practices on all new development or redevelopment where the larger common plan of development or sale disturbs one or more acre of land.
6. By December 31, 2016, develop and implement a storm water pollution prevention plan for municipal facilities where industrial activities are exposed to

precipitation, such as the service yard.

7. By September 10, 2019, fully implement the six minimum controls requirements of the NPDES permit which are summarized in Attachment I to these Orders and incorporated by reference as if fully rewritten herein.
8. Each year by April 1, Respondent shall submit to Ohio EPA an annual report that documents program development and implementation during the preceding year.
9. Respondent shall comply with all terms and conditions of the General NPDES Permit for Small MS4s and any renewals thereof.

## **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).

## **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 in relation to Respondent's MS4.

### **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  
Northeast District Office  
Division of Surface Water  
Attn: DSW Enforcement Unit Supervisor  
2110 East Aurora Road  
Twinsburg, Ohio 44087

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Surface Water  
Attn: Manager, Stormwater 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 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.

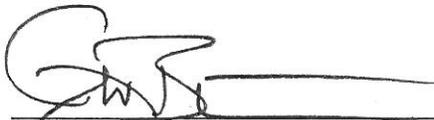
#### **XIII. EFFECTIVE DATE**

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

**XIV. SIGNATORY AUTHORITY**

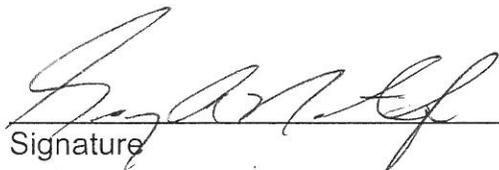
Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:  
Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Craig W. Butler  
Director

4/15/16  
\_\_\_\_\_  
Date

**IT IS SO AGREED:  
City of East Cleveland**

  
\_\_\_\_\_  
Signature

3/22/16  
\_\_\_\_\_  
Date

GARY A. NORTON, JR  
\_\_\_\_\_  
Printed or Typed Name

MAYOR  
\_\_\_\_\_  
Title

## **Attachment I**

### **Public Education Program**

- Develop a storm water pollution prevention education program for the public that delivers at least 5 messages or themes over the 5-year permit term and cumulatively reaches at least 50% of your population.
- You must use more than one mechanism to deliver messages (You can't just keep putting an article in the community newsletter. You would have to also put information on your website, cable station, place a brochure in the water bill, do a direct mailing, etc.)

### **Public Involvement Program**

- Provide at least 5 opportunities for public involvement in the development and/or implementation of the SWMP over the 5-year permit term.

### **Illicit Discharge Program**

- Develop an MS4 system map that includes catch basins, pipes, road ditches, flood control facilities (detention/retention ponds), publicly-owned post-construction water quality practices and any privately-owned post-construction water practices installed to satisfy the Ohio EPA General NPDES Permit for Storm Water Associated with Construction Activities #OHC000003 and its successors.
- Perform a dry weather screening of MS4 outfalls at least once over the 5-year permit term.
- Based on findings from the dry weather screening, prioritize outfalls for follow-up investigation and take action to eliminate confirmed sources of illicit discharge.
- Develop an on-going systemwide surveillance program of the MS4 to identify and eliminate sources of illicit discharge as they are discovered.
- Take enforcement action per the local ordinance, as needed, to ensure illicit discharges are eliminated.

### **Construction Site Runoff Control Program**

- Require the submittal of an erosion and sediment control plan for construction sites where the larger common plan of development or sale disturbs 1 or more acre of land. The plan must also provide pollution prevention and control measures for non-sediment pollutants that will be onsite during construction.

- Review and approve the plan prior to the commencement of construction activities. Technical aspects of the plan must meet or exceed the requirements of the Ohio EPA General NPDES Permit for Storm Water Associated with Construction Activities #OHC000003 and its successors.
- Conduct an initial site inspection and follow-up at a frequency of at least once per month as long as the site remains active (could also say "as long as the site retains NPDES permit coverage from Ohio EPA").
- Develop and implement an enforcement program per the local ordinance to ensure compliance with the approved plan.

#### **Post-Construction Storm Water Management Program**

- Require the submittal of a post-construction storm water management plan for new development and redevelopment where the larger common plan of development or sale disturbs 1 or more acre of land. Ensure that long-term operation and maintenance plans are developed and agreements are in place for all sites.
- Review and approve the post-construction storm water management plan prior to the commencement of construction activities. Technical aspects of the plan must meet or exceed the requirements of the Ohio EPA General NPDES Permit for Storm Water Associated with Construction Activities #OHC000003 and its successors.
- Conduct a site inspection to ensure the post-construction practices have been installed per the approved plan.
- Develop and implement an enforcement program to ensure that BMPs are installed and long-term maintenance occurs.

#### **Pollution Prevention & Good Housekeeping for Municipal Operations**

- Develop maintenance activities and schedules for the MS4, including procedures for the proper disposal of waste removed from the system and the facilities where municipal operations occur.
- Implement controls to reduce or eliminate the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas you operate.

- Identify the municipal facilities you own and/or operate that are subject to the industrial storm water NPDES program and ensure that these facilities have obtained an NPDES permit and have developed and implemented a storm water pollution prevention plan (SWPPP) in compliance with the permit or submitted a No Exposure Certification to Ohio EPA.
- Develop and implement an SWPPP for all municipal facilities where industrial activities described in 40 CFR 122.26(b)(14) occur, but are not subject to NPDES permitting under the industrial storm water NPDES program, e.g., the service yard. The SWP3 shall be developed in accordance with the requirements of the Ohio EPA General NPDES Permit for Storm Water Associated with Industrial Activities #OHR000005.
- Provide employee training at least once per year on storm water pollution prevention practices.
- Develop procedures to ensure new flood management projects are assessed for impacts on water quality and existing flood management structures are assessed for incorporation of water quality protection devices or practices.