Ohio Environmental Protection Agency

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

7/28/2016

Walsh Construction Company II, LLC
929 West Adams Street
Chicago, IL 60607

RE: Director's Final Findings & Orders
NPDES
Cuyahoga County
8OU00038

Ladies and Gentlemen:

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

Sincerely,

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
J. Martin, DSW
Fiscal
Compliance Section
M. McCarron, PIC
H. Griesmer, PIC
D. Stoll, NEDO/DSW
B. Fischbein, Legal
M. Horvitz, Legal
P. Fallah, DEFA
Journal Room
File

Ohio EPA Invoice/Receipt

Date Printed: July 28, 2016

Revenue ID: 1098275

Please include this Revenue ID with all correspondence.

Organization ID: 127008

Information: Walsh Construction Co II LLC
929 W Adams St
Chicago, IL 60607-

Due Date: August 27, 2016

Amount Due: $100,000.00

Effective Date: July 28, 2016

Revenue Description: DSW- Findings and Orders-Civil Penalties (FOSW)
Program Name: Surface Water Programs
Reason: FO for Walsh Construction Co II LLC 8OU00038

For some Revenues, Interest and/or Penalties may be charged for late payment.

Next Interest Date (if applicable):

Next Penalty Date (if applicable):

Remittance Advice — Detach Here - Please Return This Portion With Your Payment

Organization ID: 127008

Information: Walsh Construction Co II LLC
929 W Adams St
Chicago, IL 60607-

Due Date: Aug 27, 2016

Amount Due: $100,000.00

Secondary Type/Id: /

Revenue Type: FOSW

Amount Enclosed: $_____

Many Ohio EPA fee invoices are payable online. For online credit card or ACH payment, go to https://eBiz.epa.ohio.gov, login or create an account and from the "Available Services" window choose "Pay Ohio EPA Fees Online".

Please write this number on your check. Revenue ID: 1098275
Make check or money order payable to "Treasurer, State of Ohio"

Remit to: **Ohio Environmental Protection Agency - OFA**
Department L-2711
Columbus, OH 43260-2711

For Ohio EPA use only

Check ID: _____
Check Date: _____
Check Number: _____
Check Amount: $_____

127008	Walsh Construction Co II LLC	10000000	FOSW	1098275

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For Ohio EPA use only

Check ID: _____

Check Date: _____

Check Number: _____

Check Amount: $_____

127008	Walsh Construction Co II LLC	10000000	FOSW	1098276

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Walsh Construction Company II, LLC **c/o CSC-Lawyers Incorporating Service** **50 W. Broad St., Suite 1800** **Columbus, Ohio 43215**	:	**Director's Final Findings and Orders**
and	:	
Super Excavators, Inc. **c/o Corporate Creations Network Inc.** **119 E. Court Street** **Cincinnati, Ohio 45202**	:	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.
and	:	By: Date: 7-28-16
Walsh/Super Excavators, JV II **c/o Walsh Construction Company II, LLC** **929 West Adams Street** **Chicago, IL 60607**	:	
Respondents	:	

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Walsh Construction Company II, LLC and Super Excavators, Inc., doing business as Walsh/Super Excavators, JV II ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("EPA") under Ohio Revised Code (R.C.) §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents and their assigns and successors in interest liable under Ohio law. No change in the ownership of the

Respondents as defined in these Orders shall in any way alter Respondents' obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in R.C. Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent Walsh Construction Company II, LLC, is an Illinois limited liability company registered to do business in Ohio.

2. Respondent Super Excavators, Inc. is a Wisconsin corporation registered to do business in Ohio.

3. Walsh Construction Company II, LLC and Super Excavators, Inc., doing business as Walsh/Super Excavators, JV II, are a joint venture, which has a contract with the Northeast Ohio Regional Sewer District ("NEORSD") for the Dugway West Interceptor Relief Sewer ("DWIRS") worth $57,479,355.30.

4. The DWIRS is part of a three billion dollar, twenty-five year project to reduce and eliminate combined sewer overflows ("CSOs") pursuant to a Consent Decree among NEORSD, the state of Ohio, and the United States entered July 7, 2011 in the United States District Court for the Northern District of Ohio, Case No. 1:10CV2895-DCN ("CSO Project").

5. NEORSD holds a National Pollutant Discharge Elimination System ("NPDES") permit, Ohio EPA Permit No. 3PA00002, which authorizes NEORSD to discharge from certain combined sewer overflows only during wet weather periods when flows exceed the capacity of the sewer collection system, in accordance with conditions in the permit.

6. The contract between NEORSD and Respondents includes the following provisions:

   Section 01 11 00 Work Restrictions, 1.3 Project/Site Conditions, A

Shutdowns, 1. General:

a. Shutdown shall be defined to indicate that a portion of the normal operation of a treatment plant, pump station, sewer, forcemain, or other facility unit, or any of their appurtenances, instrumentation, or control components, must be suspended or taken out of service in order to perform the specified Work. . . . **Contractor shall also submit a "Request for Shutdown" to the Owner for each shutdown a minimum of 30 calendar days prior to the proposed shutdown date.** Shutdown request cannot be initiated until all relevant submittals have been approved. No shutdown shall be initiated until the list of materials and labor is verified on site prior to the proposed start date.

Section 33 01 48 Maintenance of Flow, Part 1 – General, 1.3 Submittals:

B. Maintenance of Flow Plan: **At least 30 days prior to the start of Work at any location, Contractor shall submit a Maintenance of Flow Work Plan** that includes design data showing methods and equipment it proposes to utilize in the maintenance of flow operations. Maintenance of flow includes, but is not limited to, installing temporary dams and flume pipe system through the work area or bypass pumping. . . .

Section 33 01 48 Maintenance of Flow, Part 1 – General, 1.4 Safety Requirements:

A. Coordinate and cooperate with Owner's and the City of Cleveland's utlity department to maintain sewer service and capability.

Section 33 01 48 Maintenance of Flow, Part 3 – Execution, 3.1 General:

A. Provide flow maintenance, as required, around the section in which Work is to be performed. **The flow maintenance system shall be the full responsibility of Contractor**. . . . Prior to starting construction, Contractor shall submit a detailed description of the method proposed for flow maintenance to Owner for review and approval. . . .

E. Perform the Work in a manner that will provide continuous operation of the sewer system, whether this includes special construction techniques, bypass pumping, or other maintenance of flow operations.

N. Do not install temporary dewatering or bypass, connections, and piping across streets except as permitted by Owner.

Section 33 01 48 Maintenance of Flow, Part 3 – Execution, 3.2 Maintaining Existing Facilities in Operation:

A. **Owner shall be notified 48 hours in advance of work to be performed which will take any part of an existing utility out of service.** This work shall be scheduled such that service is disrupted for as short a time as possible.

B. Contractor shall provide temporary facilities where necessary to accommodate the maintenance of dependable service by the affected utilities.

C. Existing Collection System Impacts

1. This project involves diversion of flow from the existing collection system to the Dugway West Interceptor Relief Sewer. Because combined sewer service must be maintained during the construction period, work activities must be properly sequenced to accomplish this. The information on sequencing given in this Section is intended to identify constraints with respect to maintaining service and to assist Contractor in planning the Work. Nothing in this Section shall be construed as relieving Contractor from his responsibility to complete the Work within the Contract Time or his responsibility to prevent bypassing or shutdown of service as a result of his operations.

2. **Contractor shall provide ample notice to Owner in order to obtain approval for any temporary change in operations that may cause the discharge of inadequately treated sewage and which may violate permit requirements.**

3. Adequate facilities shall be kept on line at all times to convey flow. **The Dugway West Interceptor Relief Sewer must be complete and operational prior to taking existing lines out of service.**

(Emphasis added.)

7. On the morning of August 4, 2014, NEORSD staff performed a video inspection of the sewer near Regulator D-6 and observed the weir wall in place. In the

afternoon of the same day, NEORSD staff again inspected Regulator D-6 and found that Respondents had removed the weir wall, which allowed untreated sewage to discharge directly to Dugway Brook through CSO No. 230. Following this discovery, Respondents replaced the weir wall with sandbags to stop the dry weather flow of sewage to Dugway Brook and rebuilt the weir wall that afternoon.

8. On August 4, 2014, untreated sewage flowed directly to Dugway Brook which flows into Lake Erie for approximately four hours, discharging an estimated 38,776 gallons of sewage.

9. Dugway Brook and Lake Erie constitute "waters of the state," as defined in R.C. § 6111.01. Placement of "sewage," as defined in R.C. § 6111.01, into waters of the state constitutes "pollution," as defined in R.C. § 6111.01.

10. R.C. § 6111.04(A) prohibits any person from causing pollution or causing to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of waters of the state.

11. R.C. § 6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violating 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.

12. NEORSD's NPDES permit No. 3PA00002 prohibits dry weather overflows from CSO outfalls. Therefore, the actions of Respondents removing the weir wall in Regulator D-6 on August 4, 2014, violated R.C. §§ 6111.04 and 6111.07, and caused NEORSD to violate its NPDES permit.

13. On August 8, 2014, NEORSD discovered a dry weather flow from Regulator D-61 through CSO No. 230 to Dugway Brook and from there to Lake Erie. It was determined that this discharge had existed since July 8, 2014, when Respondents removed the weir wall in Regulator D-61 and grouted shut the 24-inch sanitary sewer which flows into Dugway West Main Branch D sewer to the Easterly Wastewater Treatment Plant ("WWTP"), resulting in all sewage flowing through Regulator D-61 to discharge through CSO No. 230 into waters of the state.

14. When this discharge was discovered, NEORSD notified Respondents who installed a temporary surface bypass and pumping system which routed the dry

weather flow around Regulator D-61 to the Dugway West Main Branch D Sewer and rebuilt the weir wall in Regulator D-61. The 24-inch sewer could not be reopened because Respondents had grouted its approximately 320 foot length.

15. It is estimated that during the 32-day period, Respondents caused between 15 million and 40 million gallons of untreated sewage to be discharged to Dugway Brook and from there to Lake Erie, in violation of R.C. §§ 6111.04 and 6111.07, and caused NEORSD to violate NPDES permit No. 3PA00002.

16. On July 9, 2014, the project manager for NEORSD's construction management support contractor sent an email to Respondent Walsh Construction Company's project manager and assistant project manager requesting "maintenance of flow" submittals for several areas. The email stated: "As PM-3 is currently being excavated and utilities are being exposed, please provide the PM-3 structure-specific maintenance of flow plan ASAP." Under the DWIRS contract, Junction Chamber PM-3 is designed to replace Regulator D-61.

17. On July 14, 2014, the project manager for NEORSD's construction management support contractor followed up the July 9, 2014 email with another email to Respondent Walsh that stated: "We haven't gotten a response on this. What is the status of the submittals? PM-3 is the immediate need, but the others should follow soon after."

18. On July 14, 2014, Respondent Walsh Construction Company's Assistant Project Manager responded: "Maintenance of Flow submittals are forthcoming. PM-3 has been excavated to expose the #10 brick sewer, but removals are not planned until Super Excavators is closer to micro-tunneling the run between PM-4 and PM-3." However, by July 14, 2014, when this message was sent, Respondents had already removed the weir wall and had removed the 24-inch sanitary sewer from service by grouting it shut.

19. Respondents failed to comply with the contract provisions set out in Finding No. 6 before taking the actions described in Findings Nos. 7 and 13, by failing to submit Maintenance of Flow Plans to NEORSD and by failing to obtain approval of NEORSD prior to removing weir walls and shutting down sewers.

20. The contract provisions prohibit the contractor from modifying or eliminating regulators or taking sewer lines out of service until the new relief sewers are completed. Respondents modified Regulators D-6 and D-61 and removed the 24-inch sanitary sewer from service prior to completion of the DWIRS.

21. On August 18, 2014, Ohio EPA sent a Notice of Violation to Respondent Walsh Construction Company for violating R.C. §§ 6111.04 and 6111.07 by removing the weir wall and grouting the 24-inch sanitary sewer, allowing all sewage flow entering Regulator D-61 to flow directly to Dugway Brook and Lake Erie between July 8 and August 8, 2014.

22. Following the two incidents described above, NEORSD and Respondents have implemented procedures to try to prevent another such occurrence.

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 their relation to the benefits to the people of the state to be derived from such compliance in accomplishing the purposes of R.C. Chapter 6111.

V. ORDERS

1. Respondents shall pay the amount of two hundred thousand dollars ($200,000.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. The penalty shall be paid by tendering an official check in the amount of one hundred thousand dollars ($100,000.00) made payable to "Treasurer, State of Ohio" within thirty (30) days of the effective date of these Orders. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondents, at the following address:

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

2. In lieu of paying the remaining one hundred thousand dollars ($100,000.00) of the civil penalty, Respondents shall fund a supplemental environmental project ("SEP") by making a contribution in the amount of one hundred thousand dollars ($100,000.00) to Ohio EPA's Surface Water Improvement Fund (Fund 5Y30), established in ORC § 6111.0382, to be used for water quality and restoration projects. Respondents shall, within thirty (30) days of the effective date of these Orders, tender an official check made payable to "Treasurer, State of Ohio" for

one hundred thousand dollars ($100,000.00). The official check and a cover letter identifying the Respondents and Fund 5Y30 shall be submitted to Carol Butler, or her successor at the following address:

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

Photocopies of both checks shall be sent to Ohio EPA in accordance with Section X. of these Orders.

3. Should Respondents fail to fund the SEP within the required time frame set forth in Order No. 2, Respondents shall immediately pay to Ohio EPA the remaining one hundred thousand dollars ($100,000.00) of the civil penalty in accordance with the procedures in Order No. 1.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that have not been performed, in which case Respondents 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 Respondents to Ohio EPA and shall be signed by responsible officials of the Respondents. 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 the CSO Project.

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 CSO Project.

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 Respondents pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Surface Water
Attn: DSW Enforcement Supervisor
2110 E. Aurora Road
Twinsburg, Ohio 44087

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
Attn: Manager, Storm water 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 Respondents 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents 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

7/22/16
Date

IT IS SO AGREED:
Walsh Construction Company II, LLC

Signature

6/17/2016
Date

~~By~~ ISSAM BAHOU
Printed or Typed Name

Vice President
Title

IT IS SO AGREED:
Super Excavators, Inc.

_____ _____
Signature Date

_____
Printed or Typed Name

_____
Title

IT IS SO AGREED:
Walsh/Super Excavators, JV II

_____ 6/17/2016
Signature Date

ISSAM BAHOU
Printed or Typed Name

Vice President
Title

IT IS SO AGREED:
Super Excavators, Inc.

Mary Wilcox
Signature

6/17/16
Date

Mary Wilcox
Printed or Typed Name

Secretary / CFO
Title

IT IS SO AGREED:
Walsh/Super Excavators, JV II

Signature

Date

Printed or Typed Name

Title