OHIO E.P.A.

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

Midwest X, LLC **403 Oak Street** **Spring Lake, MI 49456**	: : : :	**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.

By _____ Date: 3/24/15

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Finding and Orders ("Orders") are issued to the Midwest X, LLC ("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 its successors in interest liable under Ohio law.

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 promulgated there under.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner of property located at 4800 Grove Avenue, Lorain, Ohio in Lorain County ("the Site.")

2. In early 2014, Respondent contacted Ohio EPA about a proposal to install a sanitary sewage holding tank to serve the Site until a planned sanitary sewer project was completed. Ohio EPA informed Respondent that a holding tank could not be approved until all requirements of Ohio Administrative Code ("OAC") 3745-42-11 were satisfied.

3. Despite this notification, Ohio EPA received a permit to install ("PTI") application for a sanitary sewage holding tank on February 4, 2014 for the Site. The PTI application was returned on February 19, 2014 to Respondent with a cover letter indicating why the application could not be processed.

4. In April 2014, Ohio EPA received notice that the holding tank was installed and placed into operation. A site inspection performed on April 18, 2014 confirmed that the holding tank had been installed and placed into operation.

5. On April 18, 2014, Ohio EPA again received the same PTI application for a holding tank. The application was returned on April 23, 2014 with another letter indicating why it could not be processed.

6. Shortly after Ohio EPA documented the installation of the holding tank, Ohio EPA received an additional notice on April 22, 2014 that the holding tank would be converted to a lift station, and a force main would be installed to pump sewage from the holding tank east underneath State Route 57 and into a sanitary manhole located on Fairless Drive. Respondent indicated that the City of Lorain Engineering Department authorized the installation of the lift station and force main although there is no indication of this in writing.

7. Ohio EPA contacted Respondent and indicated that installation of the lift station and force main would still require a PTI from Ohio EPA prior to any work being done. Ohio EPA also contacted the City of Lorain on April 23, 2014, also indicating to the City that a PTI was still required. A follow-up inspection by Ohio EPA on April 25, 2014 confirmed that the lift station and force main had been installed and placed into operation without a valid PTI from Ohio EPA. A PTI application was eventually received by Ohio EPA for the lift station and force main on June 26, 2014.

8. Ohio Administrative Code ("OAC") Rule 3734-42-02 requires the Director's issuance of a permit to install ("PTI") prior to the installation of a new "disposal system," as such term is defined in ORC Section 6111.01 (G).

9. Both the holding tank and lift station/force main are considered a "disposal system" as defined in ORC Section 6111.01(G).

10. ORC Section 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 rule adopted by the Director pursuant to those sections, including OAC Rule 3745-42-02.

11. 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 Ohio Administrative Code ("OAC") Chapter 3745-42.

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

13. 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 purposes of ORC Chapter 6111.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall not cause, permit or allow the installation or modification of a disposal system at any location in Ohio without first receiving a permit to install ("PTI") or plan approval from the Director as required by OAC Rule 3745-42-02 and ORC 6111.45.

2. Regarding any application, plan, form or document submitted to Ohio EPA for review and approval, Respondent shall submit corrections/revisions to address any deficiencies, to Ohio EPA in accordance with Section X. of these Orders, within thirty (30) days of receipt of written notification from Ohio EPA of any correction/deficiencies, unless an earlier time is indicated or additional time is requested and allowed.

3. Respondent shall pay the amount of eight thousand dollars ($8,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) 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 $6,400.00 of the total amount. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondents and the site, to:

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

   A photocopy of the check shall be sent to Ohio EPA, Northeast District Office, in accordance with Section X of these Orders.

4. In lieu of paying the remaining $1,600.00 dollars of the civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $1,600.00 to 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 Carol Butler, or her successor, together with a letter identifying Respondents and the site, to:

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

   A copy of each check shall be sent 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, Ohio 43216-1049

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 4 Respondent shall immediately pay to Ohio EPA the remaining $1,600.00 of the civil penalty in accordance with the procedures in Order No. 3.

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 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 Facility.

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. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

XI. 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.

XII. EFFECTIVE DATE

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

XIII. 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

MAR 2 4 2015
Date

IT IS SO AGREED:

Midwest X, LLC

Signature

2-13-15
Date

Peter Oleszczuk
Printed or Typed Name

Manager
Title