2/15/2018

Watson Gravel, Inc.
2728 Hamilton Cleves Road
Hamilton, OH 45013

RE: Director's Final Findings & Orders
NPDES
Hamilton County
8BU00206

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: L. Reeder, DSW
R. Demuth, DSW
S. Sheerin, DSW
M. Burt, SWDO/DSW
J. Martin, DSW
Fiscal
Compliance Section
M. McCarron, PIC
H. Griesmer, PIC
J. Lee, PIC
B. Fischbein, Legal
File
BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY  

In the Matter of:  

Watson Gravel, Inc.  
2728 Hamilton Cleves Road  
Hamilton, Ohio 45013  

:  

Director’s Final Findings  
and Orders  

Respondent  

PREAMBLE  

It is agreed by the Parties hereto as follows:  

I. JURISDICTION  

These Director’s Final Findings and Orders ("Orders") are issued to Watson Gravel, Inc. ("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 the Ohio EPA makes the following findings:  

1. Respondent owns the property ("the Site") located at 10569 Suspension Bridge Road, Hamilton County, Harrison, Ohio, 45030.  

2. The Site discharged gravel wash water directly into the Whitewater River. Whitewater River is considered to be "waters of the state," as defined in ORC § 6111.01(H).
3. ORC Section 6111.04(A) 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 an application for renewal of such permit is pending.

4. 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.

5. On August 23, 2017, Ohio EPA received a complaint into the Southwest District Office by field biologists who were conducting a fish survey on the Whitewater River on August 23, 2017. The biologist stated they viewed a muddy discharge to the Whitewater River from the Respondent’s property.

6. On August 24, 2017, Ohio EPA conducted an inspection of the Site as a result of the August 23, 2017 complaint. It was discovered the discharge was from a broken pipe at a screen unit at the gravel wash station which was directed to the Whitewater River via two pipes. Ohio EPA issued an inspection letter on August 30, 2017.

7. On August 25, 2017, the Ohio EPA county inspector had a telephone conversation with Daryl Varner, Site Superintendent at Watson Gravel. During the phone call, it was stated by Mr. Varner the pipe had been broken for about a month. Mr. Varner also stated that in the past, the pipe had periodically plugged and would have to be cleaned out by a contractor. According to Mr. Varner, a drainage ditch had been dug to direct the discharge to the pit lake by the end of the day August 24, 2017 and as a result, the pipe had ceased discharging to the Whitewater River.

8. On August 30, 2017, Ohio EPA issued the site a Notice of Violation ("NOV") for discharging muddy gravel wash water from a pipe to the edges of the property and ultimately into the Whitewater River. A request included in the NOV asked for the submission of a compliance plan to the district office describing what actions will be taken to cease the discharge and obtain an NPDES permit for this location.

9. On October 5, 2017, OEPA conducted a follow-up inspection and confirmed the muddy wash water spilling from the broken pipe was being directed to an on-site pit lake via an excavated trench.
10. On November 6, 2017, a Resolution of Violation (ROV) letter was issued to the Respondent.

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. Respondent shall pay the amount of two thousand five hundred dollars ($2,500) in settlement of Ohio EPA's claims 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". The official check shall be submitted to Carol Butler, or her successor, together with a letter identify the Respondent, to:

   Office of Fiscal Administration
   Ohio Environmental Protection Agency
   P.O. Box 1049
   Columbus, Ohio 43215-1049

   A copy of the check shall be sent to Larry Reeder, Environmental Manager, Enforcement Section, or his successor, at the following address:

   Ohio EPA
   Division of Surface Water
   P.O. Box 1049
   Columbus, Ohio 43215-1049

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
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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(F)(1) for a corporation, OAC Rule 3745-33-03(F)(2) for a partnership, OAC Rule 3745-33-03(F)(3) for a sole proprietorship, and OAC Rule 3745-33-03(F)(4) for a municipal, state, or other public facility.

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. 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

February 14, 2018

Date

IT IS SO AGREED:

Watson Gravel Inc.

Signature

BRIAN BOTTOMS

Printed or Typed Name

Date

GENERAL MANAGER