

APR 28 2014

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The Dayton Power and Light
Company
745 U.S. Route 52
Aberdeen, Ohio 45101

:
:
:
:
:
:
:

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By:  Date: 4-28-14

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to The Dayton Power and Light Company ("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. No change in the ownership of the Site 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 made the following findings:

1. Respondent is the owner of an approximately 245 acre site located north of State Route 52 and south of Ginger Ridge Road, near Aberdeen, Sprigg Township, Adams County, Ohio (hereinafter known as the "Site.")

2. On June 21, 2011, Ohio EPA received a Notice of Intent ("NOI") for coverage under Ohio EPA's National Pollutant Discharge Elimination System ("NPDES") General Permit for Storm Water Discharges Associated with Construction Activity ("the Construction Storm Water General Permit".) Respondent indicated that a total of 86 acres at the Site would be disturbed in order to construct a landfill. On June 25, 2011 the Director granted Respondent coverage under the Construction Storm Water General Permit (Facility Permit No. 0GC01604*AG.)
3. Storm water from the Site discharges to Carter Hollow and its unnamed tributaries. Carter Hollow and its unnamed tributaries constitute "waters of the state." The sediment contained in the storm water constitutes "other wastes," with placement of this waste into waters of the state constituting "pollution."
4. 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.
5. 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 or adopted by the Director pursuant to those sections. Each day of violation is a separate offense.
6. On April 17, 2012, Ohio EPA conducted an inspection of the Site and observed that approximately 220 acres of the Site had been cleared. Storm water prevention measures were determined by Ohio EPA to be either absent or inadequate. Ohio EPA also observed large amounts of sediment from the Site being transported from disturbed areas of the Site to Carter Hollow.
7. Respondent was authorized per the June 2011 NOI to impact only 86 acres at the Site. The disturbance of an additional 134 acres that were impacted was without authorization under the Construction Storm Water General Permit and were in violation of ORC § 6111.04.
8. Additional inspections of the Site were conducted on April 30, May 14, and May 29, 2012, where Ohio EPA again observed that sediment from disturbed areas of the Site had discharged to Carter Hollow. Beginning on at least April 8, 2012 and continuing until May 29, 2012, Respondent was in violation of ORC §§ 6111.04 and 6111.07.

9. During each inspection Ohio EPA observed the following violations of the Construction Storm Water General Permit:
10. In violation of Part III.G.2.b. of the Construction Storm Water General Permit, and from at least April 8, 2012 and continuing until May 29, 2012, Respondent failed to provide erosion control practices.

Permanent Stabilization

11. In violation of Part III.G.2.b.i. of the Construction Storm Water General Permit, and from at least April 8, 2012 and continuing until May 29, 2012, Respondent failed to stabilize disturbed areas at the Site that were dormant for more than one (1) year within seven (7) days of the most recent disturbance within the area.
12. In violation of Part III.G.2.b.i. of the Construction Storm Water General Permit, and from at least April 8, 2012 and continuing until May 29, 2012, Respondent failed to stabilize disturbed areas at the Site within 50 feet of a surface water of the State and at final grade within two (2) days of reaching final grade.
13. In violation of Part III.G.2.b.i. of the Construction Storm Water General Permit, and from at least April 8, 2012 and continuing until May 29, 2012, Respondent failed to stabilize any other areas at final grade at the Site within seven (7) days of reaching final grade within that area.

Temporary Stabilization

14. In violation of Part III.G.2.b.i. of the Construction Storm Water General Permit, and from at least April 8, 2012 and continuing until May 29, 2012, Respondent failed to stabilize disturbed areas at the Site within 50 feet of a surface water of the State and not at final grade within two (2) days of the most recent disturbance if the area will remain idle for more than 21 days.
15. In violation of Part III.G.2.b.i. of the Construction Storm Water General Permit, and from at least April 8, 2012 and continuing until May 29, 2012, Respondent failed to stabilize disturbed areas at the Site that will be dormant for more than twenty-one (21) days but less than one year; and not within 50 feet of a surface water of the State must be stabilized within seven (7) days of the most recent disturbance within the area.

16. In violation of Part III.G.2.c. of the Construction Storm Water General Permit, and from at least April 8, 2012 and continuing until May 17, 2012, Respondent failed to provide runoff control practices.
17. In violation of Part III.G.2.d. of the Construction Storm Water General Permit, and from at least April 8, 2012 and continuing until May 24, 2012, Respondent failed to provide sediment control practices.
18. In violation of Part III.G.2.d.i of the Construction Storm Water General Permit, and from at least April 8, 2012 and continuing until May 24, 2012, Respondent failed to provide functional sediment control structures throughout the course of earth disturbing activity.
19. In violation of Part III.G.2.d.ii of the Construction Storm Water General Permit, and from at least April 8, 2012 and continuing until May 24, 2012, Respondent failed to provide functional sediment settling ponds at the Site.
20. In violation of Part III.G.2.d.iii. of the Construction Storm Water General Permit, and from at least April 8, 2012 and continuing until May 17, 2012, Respondent failed to provide perimeter controls, including but not limited to, silt fence and diversions at the Site.

Section 401 Water Quality Certification/Section 404 Permit

21. In addition, Respondent was required to obtain a Section 401 Water Quality Certification from Ohio EPA for potential stream and wetland impacts at the Site. Respondent was issued a 401 Water Quality Certification on May 4, 2011.
22. Respondent impacted approximately 2,500 linear feet of riparian buffer along Carter Hollow downstream from the permitted boundaries of impact as identified in Attachment I of the 401 Water Quality Certification. The unpermitted impacts are in violation of Part II.F of the 401 Water Quality Certification and ORC §§ 6111.04 and 6111.07
23. Respondent is in violation of Part II.J of the 401 Water Quality Certification for failing to submit electronic maps of the development and mitigation areas to Ohio EPA.

24. Respondent is in violation of Part II.L.4 of the 401 Water Quality Certification for failing to maintain grass filter strips adjacent to avoided and unculverted waters of the state.
25. Respondent was also required to obtain a Section 404 permit from the United States Army Corps of Engineers ("USACE") prior to any discharge of dredged or fill matter into waters of the United States. Respondent conducted clear-cutting of the Site beginning on at least January 23, 2012, as well as grubbing the Site during approximately the first week of April 2012. The clearing and grubbing was conducted prior to receiving a Section 404 Permit on April 19, 2012 from the USACE. The USACE issued a Cease and Desist Order for all activity at the Site on May 4, 2012 and suspended Respondent's Section 404 Permit on May 10, 2012.
26. The Ohio EPA sent Respondent letters and Notices of Violation ("NOVs") dated April 23, 2012 and May 30, 2012, identifying the above violations.
27. These Orders do not modify Facility Permit No. 0GC01604*AG.
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 purposes of ORC Chapter 6111.

V. ORDERS

1. Respondent shall achieve compliance with the Construction Storm Water General Permit as soon as possible, but not later than thirty (30) days from the effective date of these Orders.
2. Within seven (7) days after the effective date of these Orders, Respondent shall stabilize all remaining areas at the Site, and finish the installation of appropriate runoff and sediment controls including, but not limited to, perimeter controls, silt fencing and sediment settling ponds. If, after thirty (30) days from the effective date of these Orders, Ohio EPA determines that current stabilization efforts have not proven effective, then Respondent shall utilize alternative stabilization techniques approved by Ohio EPA to achieve final stabilization.

3. Within thirty (30) days of the effective date of these Orders, Respondent shall submit the most recent storm water pollution prevention plan ("SWP3") for the Site to Ohio EPA for review and approval. Respondent shall amend the SWP3 for the Site as required by Part III.D. of the Construction Storm Water General Permit, and shall submit a copy of any amendments or revisions of the SWP3 to Ohio EPA, in accordance with Section X of these Orders. Respondent shall include post-construction storm water management requirements in the SWP3. The BMP(s) chosen must be sized to treat the water quality volume (WQv) for any drainage areas that contain impervious surfaces and ensure compliance with Ohio's Water Quality Standards in OAC Chapter 3745-1. Post construction controls are required if the total project, when complete, will contain over 1 acre of impervious area (*i.e.*, buildings, roads, parking lots, etc.) Detail drawings and maintenance plans for all post-construction BMPs shall be provided by Respondent to the post-construction operator of the Site prior to termination of Construction Storm Water General Permit coverage.
4. Respondent shall maintain compliance with the Construction Storm Water General Permit and update the SWP3 as necessary to maintain appropriate post-construction BMPs for the Site. An updated SWP3 shall be submitted to Ohio EPA quarterly per year in accordance with Section X of these Orders. Respondent may request that reports be submitted on a different schedule, and may do so if approved by Ohio EPA in writing.
5. Respondent shall restore, preserve and/or enhance an additional 7,500 linear feet of stream to be located offsite to mitigate the unauthorized stream impacts to Carter Hollow. The offsite stream restoration, preservation and/or enhancement shall be protected in perpetuity through either an environmental covenant or conservation easement. Respondent has submitted to USEPA a stream mitigation plan, which has been incorporated into a USEPA Administrative Consent Agreement and Final Order, Docket No. CWA-05-2013-0016. Compliance with that plan satisfies the requirements of these Orders.
6. Respondent shall pay the amount of one hundred thousand dollars (\$100,000.00) 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 \$80,000.00 of the total amount. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondent 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 Southeast District Office in accordance with Section X of these Orders.

7. In lieu of paying the remaining \$20,000.00 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 \$20,000.00 to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for that amount. The official check and a cover letter identifying the Respondent shall be submitted to Carol Butler, or her successor at:

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

A copy of the 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, OH 43216-1049

8. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 7, Respondent shall immediately pay to Ohio EPA the remaining \$20,000.00 of civil penalty in accordance with the procedures in Order No. 6.

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 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 Respondent.

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 the Site. Nothing in this Order may be deemed, construed or interpreted as an admission of fact or law by Respondent.

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, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Surface Water
2195 Front Street
Logan, Ohio 43138
Attention: 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

Solely 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, through the date of 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

4/23/14
Date

**IT IS SO AGREED:
The Dayton Power and Light Company**


By _____

Michael S. Mizell
Printed or Typed Name

General Counsel
Title

March 24, 2014
Date