

EXHIBIT A

18-108

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

County of Summit	:	Director's Final Findings and Orders
1180 South Main Street	:	
Akron, Ohio 44301	:	
Respondent	:	

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the County of Summit ("Respondent") 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 Respondent and its assigns and successors in interest liable under Ohio law. No change in Respondent as defined in these Orders 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 R.C. Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent County of Summit is a political subdivision of the state of Ohio operating under the Charter of Summit County. Respondent owns and operates sanitary sewers located in Summit County, Ohio.

## EXHIBIT A

County of Summit  
Director's Final Findings and Orders  
Page 2 of 9

2. On March 10, 2017, the Deputy Director of Operations for Respondent's Department of Sanitary Sewer Services (hereinafter "DSSS"), called Ohio EPA's 24-hour hotline to report an anticipated bypass at a pump station in Hudson, Ohio, due to a broken force main. The caller reported that the dry well and pumps were flooded and that once bypassing started, it would probably continue for several days.
3. A follow-up email to Ohio EPA less than thirty minutes after the call reported that Respondent's DSSS responded within twenty minutes to a mechanical failure on the force main in the dry well at the Hudson pump station, but found all three pumps and motors already under water.
4. The pump station is at the location of the former Hudson wastewater treatment plant ("WWTP"). The City of Hudson abandoned its WWTP in 1996, but continued to operate it as a pump station until January 2016. At that time, Respondent took over ownership of the entire City of Hudson sanitary sewer system, including this and eight other pump stations, and has connected the sewers to the Northeast Ohio Regional Sewer District ("NEORS") sanitary sewer collection system. The influent from Hudson is collected and pumped to the NEORS system.
5. Thrust rods on the force main failed and the fittings separated, causing a catastrophic failure of the force main. Wastewater filled the drywell over the pumps and motors within twenty minutes. Respondent's DSSS dewatered the pump station by pumping to the old Hudson WWTP tanks and diverted incoming flow to the tanks, but expected the tanks to begin overflowing and, therefore, reported the anticipated bypass.
6. The WWTP tanks began overflowing sewage to Brandywine Creek about 9:00 a.m. on March 11, 2017. Brandywine Creek flows into the Cuyahoga River.
7. Brandywine Creek and the Cuyahoga River 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.
8. Respondent's DSSS provided primary treatment of the sewage flowing into the Hudson pump station through the old Hudson WWTP prior to discharging it to Brandywine Creek.
9. Respondent's DSSS provided regular updates to Ohio EPA about the progress of repairs to the force main and the pumps between March 10, 2017 and March 15, 2017.

## EXHIBIT A

County of Summit  
Director's Final Findings and Orders  
Page 3 of 9

10. On March 15, 2017, Respondent's DSSS reported to Ohio EPA that the overflow to Brandywine Creek had stopped at about 5:00 p.m.
11. 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 except in accordance with a valid unexpired permit.
12. 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.
13. Respondent does not hold a permit authorizing a discharge from the Hudson pump station to waters of the state.
14. The unpermitted discharge of sewage to waters of the state totaled an estimated 4.98 million gallons and continued for five days in violation of R.C. §§ 6111.04(A) and 6111.07(A). Each day of violation is a separate offense.
15. Heavy rain occurred during some or all of the days during which the unpermitted discharge continued and Ohio EPA did not observe any impacts to Brandywine Creek or the Cuyahoga River resulting from the discharge.
16. Respondent holds National Pollutant Discharge Elimination System ("NPDES") permit No. 3PK00012\*KD, effective February 1, 2016, which authorizes Respondent's Fishcreek WWTP #25 to discharge to the Cuyahoga River.
17. Parts I, B.1.c and II, E of Respondent's NPDES permit No. 3PK00012\*KD prohibit all sanitary sewer overflows. Sanitary sewer overflow ("SSO") is defined in Part II, E of the permit as "an overflow, spill, release, or diversion of wastewater from a sanitary sewer system."
18. On April 4, 2017, the Stow pump station experienced an SSO as the result of an electrical failure. The SSO occurred from about 3:30 a.m. until 9:15 a.m. on April 4, 2017, and resulted in about 0.4 million gallons of wastewater flowing over the ground into a storm sewer and then into Fish Creek which flows into the Cuyahoga River.
19. Fish Creek constitutes "waters of the state," as defined in R.C. § 6111.01

## EXHIBIT A

County of Summit  
Director's Final Findings and Orders  
Page 4 of 9

20. The Stow pump station receives electrical power from the Fishcreek WWTP which is located adjacent to it. Although the pump station lost power due to an electrical short, the WWTP did not.
21. Respondent complied with the SSO reporting requirements in Part II, E of its NPDES permit No. 3PK00012\*KD, including immediate notification of Ohio EPA and follow-up written report sent to Ohio EPA.
22. Ohio EPA is not aware of any environmental harm caused by the SSO from the Stow pump station.
23. The SSO from the Stow pump station was a violation of Respondent's NPDES permit No. 3PK00012\*KD and ORC §§ 6111.04(A) and 6111.07(A).
24. 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. Respondent shall implement the following measures to prevent SSOs to the extent possible:
  - a. Within six (6) months after the effective date of these Orders, Respondent shall complete installation of a bypass connection on the force main at the Hudson pump station. The bypass shall be located outside the building to allow auxiliary pumps to continue pumping through the force main even if all three raw pumps are out of service.
  - b. Within nine (9) months after the effective date of these Orders, Respondent shall complete installation of a standby generator at the Stow pump station.
2. Respondent shall pay the amount of thirty thousand dollars (\$30,000.00) 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 five thousand dollars (\$5,000.00) made payable to "Treasurer, State of Ohio" within thirty (30) days of the effective date of these

## EXHIBIT A

County of Summit  
Director's Final Findings and Orders  
Page 5 of 9

Orders. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent, at the following address:

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

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

3. In lieu of paying the remaining twenty-five thousand dollars (\$25,000) of the civil penalty, Respondent shall implement a Supplemental Environmental Project ("SEP") consisting of spending thirty thousand dollars (\$30,000) to prepare and submit permit applications for the replacement and relocation of the Hines Hill trunk sewer. The Hines Hill trunk sewer consists of approximately 9,013 linear feet of sections of ten inch and twelve inch diameter vitrified clay pipe located on easements east of and parallel to State Route 8 between Hines Hill Road and Twinsburg Road. It was constructed in 1970 and crosses several wetlands and other difficult terrain. The relocation will allow for proper maintenance and increased capacity. The SEP shall be considered complete upon Respondent's completion of the following:
  - a. By February 28, 2018, Respondent shall commence design of the Hines Hill trunk sewer project.
  - b. By July 31, 2018, Respondent shall apply for a permit from the Army Corps of Engineers, and if needed, a Water Quality Certification from Ohio EPA.
  - c. By August 31, 2018, Respondent shall submit a complete and approvable application for a permit to install ("PTI") to Ohio EPA in accordance with Section X. of these Orders.
4. If Respondent fails to complete the SEP identified in Order No. 3 by the deadline set forth in Order No. 3.c, Respondent shall pay the remaining twenty-five thousand dollar (\$25,000) penalty to Ohio EPA by tendering an official check, payable to "Treasurer, State of Ohio" as set forth in Order No. 2 by October 1, 2018.

## EXHIBIT A

County of Summit  
Director's Final Findings and Orders  
Page 6 of 9

### 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 Respondent. For purposes of these Orders, a responsible official is as defined in Ohio Administrative Code Rule 3745-33-03(F).

### 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 SSOs.

### 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 SSOs.

### 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.

## EXHIBIT A

County of Summit  
Director's Final Findings and Orders  
Page 7 of 9

### 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 Supervisor  
2110 E. Aurora Road  
Twinsburg, Ohio 44087

and to:

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

## EXHIBIT A

County of Summit  
Director's Final Findings and Orders  
Page 8 of 9

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.



EXHIBIT A

County of Summit  
Director's Final Findings and Orders  
Page 9 of 9

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

\_\_\_\_\_  
Date

**IT IS SO AGREED:**  
County of Summit

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Title