



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

September 14, 2022

City of Mount Vernon
40 Public Square
Mount Vernon, Ohio 43050

**Re: Mt Vernon WTP
Director's Final Findings and Orders (DFFO)
DFFOs
Beneficial Use
Knox County
BENU024769**

Subject: Final Findings and Orders of the Director

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for **Mount Vernon WTP**.

You are hereby notified that this action of the Director of Ohio EPA (Director) is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00 made payable to "Treasurer, State of Ohio." The Commission, in its discretion, may reduce the fee if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
30 E. Broad St., 4th Floor
Columbus, Ohio 43215

If you have any questions, please contact Teri Finrock at (614) 644-3037.

Sincerely,

Jeri Main

Jeri Main
Division of Materials & Waste Management

Enclosure

cc: Bruce McCoy/Carl Mussenden/Kelly Jeter, DMWM, CO
Connie Livchak/ Matt Boyer, DMWM, CDO
Janine Maney, Legal, CO
Harry Sarvis/Phil Cherosky/Megan Ujvari, DMWM, CO
Nicole Lemin, DMWM, CO
Joseph Goicochea, DMWM, CO

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of

City of Mount Vernon	:	<u>Director's Final Findings</u>
40 Public Square	:	<u>and Orders</u>
Mount Vernon, Ohio 43050	:	
	:	

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Mount Vernon (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 3734.13.

II. PARTIES

These Orders shall apply to and be binding upon the Respondent, and successors in interest liable under Ohio law. No change in ownership of the Property (as hereinafter defined) 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 used in ORC Chapters 3734 and 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner of the property located at 1700 Old Delaware Road, Mt Vernon, Knox County, Ohio, identified by the Knox County Auditor as Parcel Number 66-50427.000 (the "Property") and is an "owner" as that term is defined in Ohio Administrative Code ("OAC") Rule 3745-27-01(O)(7).
2. Respondent is a "person" as that term is defined in ORC § 6111.01(I), ORC § 3734.01(G) and Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).
3. ORC § 3734.03 provides that "[n]o person shall dispose of solid wastes... except as authorized by the director of environmental protection in rules adopted in

accordance with division (V) of section 3734.01, section 3734.02, or sections 3734.70 to 3734.73 of the Revised Code and except for burying or burning the body of a dead animal as authorized by section 941.14 of the Revised Code. No person shall dispose of treated or untreated infectious wastes by open burning or open dumping.”

4. OAC Rule 3745-599-01(A)(1)(b) “authorizes the beneficial use of the following wastes, including instances where the waste is commingled with other materials, that are placed on land or burned unless otherwise excluded as provided in rule 3745-599-05 of the Administrative Code: (b) Material resulting from the treatment of a public water system's source water supply for drinking or industrial purposes that are a solid waste, industrial waste, or other waste.”
5. OAC Rule 3745-599-01(A)(2) states, “(w)hen a beneficial use byproduct has been managed and beneficially used in accordance with this chapter, the beneficial use byproduct that has been beneficially used is not a solid waste under Chapter 3734. of the Revised Code.”
6. On June 2, 2021, the Director issued Ohio EPA Permit No. BUGPDWTM001 (the “General Permit”). The General Permit authorizes the beneficial use of Drinking Water Treatment Material (DWTM) from ground water systems by placement on the land as a replacement for mined lime used for agronomic benefit, in accordance with OAC Chapter 3745-599. The General Permit includes screening level limits for specific metals found within DWTM.
7. On May 23, 2022, the Respondent submitted to Ohio EPA a Notice of Intent (NOI) for coverage under DWTM General Permit. Included in Respondent’s submission was analytical data for DWTM generated by Respondent demonstrating that specific metals identified in the General Permit were below the screening level limits set forth in the DWTM General Permit.
8. On June 1, 2022, the Director granted coverage under the DWTM General Permit to the Respondent for the beneficial use of DWTM through placement on the land as a replacement for mined lime used for agronomic benefit.
9. The General Permit authorizes Respondent to beneficially use DWTM generated by Respondent.
10. The General Permit provides: “Except for storage as authorized by Condition D.7, the Permittee shall obtain a permit to install and any other applicable authorization from Ohio EPA Division of Surface Water prior to dewatering or storing DWTM.”
11. The General Permit Operating Conditions require that Respondent shall store and beneficially use DWTM under the General Permit “in such a manner that the activities will neither cause a nuisance nor adversely affect public health, safety, or the environment.”

12. On June 15, 2022, Ohio EPA received an anonymous citizen complaint regarding DWTM at the Property. The complainant stated that the DWTM was not onsite at the water treatment plant, but across the street several hundred yards away. The complainant also stated that the Property was uphill from homes and businesses and had concerns with citizens who were on private wells and had concerns about runoff.
13. The General Permit requires that Permittee conduct all activities authorized by the Permit in strict accordance with the Permit, the NOI, and OAC Chapter 3745-599.
14. The General Permit requires that Respondent shall comply with among other things the OAC Rule 3745-599-35 legitimacy criteria.
15. OAC Rule 3745-599-35(A) (legitimacy criteria) states: "Any person engaging in beneficial use in accordance with this chapter shall engage in only legitimate beneficial use of the beneficial use byproduct. Upon request by Ohio EPA, a person shall demonstrate legitimate beneficial use of a beneficial use byproduct by providing evidence of the following: The beneficial use byproduct is managed and stored as a valuable commodity and is appropriately managed to prevent releases to the environment."
16. In a letter dated August 25, 2022, Respondent's consultant submitted a compliance schedule with the following narrative: "It is estimated that 30,000 dry tons of lime residuals have been removed from the west lagoon, which is expected to provide vital nutrients to 2,500 acres of farmland at recommended application rates. Furthermore, the City is hoping to utilize a portion of the lime residuals for application at a local park where soil nutrients are low, pending confirmation from OEPA on the appropriate mechanism for approving this non-agricultural land application. While the time frame to remove the residuals from the temporary storage is entirely dependent on successfully marketing the residuals to local farmers, the goal is to have the material removed within two years. Mount Vernon is working with two separate consultants to assist with marketing the lime residuals to help expedite this schedule."
17. On September 7, 2022, the Ohio EPA District Chief, Central District Office met with officials from the City of Mount Vernon regarding their August 25, 2022 Compliance Plan, and identified that the compliance schedule was not acceptable, at which time the District Chief emphasized the need for revisions to the Compliance Plan to include a more expeditious timeline for removal in the Compliance Plan.
18. In a follow up email dated September 8, 2022 to the City of Mount Vernon, Ohio EPA District Chief, CDO requested that the following items be addressed in a revised Compliance Plan:
 - 1) If the City is interested in beneficially using lime material at one of the city parks, initiate the application process with proposed locations and quantity of material to be applied.

- 2) Include a review of the current lime material storage location and ensure no material has been placed within 300' of the private wells. If material is currently within 300 feet, include a prioritization plan to remove the material nearest to the neighbor's property first, with a goal of achieving 300 feet from the nearest private well.
 - 3) A more detailed and succinct timeline for when the lime material will be transferred and more details on the efforts of the city to find beneficial use application sites and specific goals by date, noting that we understand that there may not be guarantees that the material will be taken for beneficial use, so please also include a back-up plan, such as landfilling, if the timeframes are not met.
19. Respondent's August 25, 2022 compliance plan, and updated plan submitted Friday, September 9, 2022, are largely speculative, do not provide for a timely schedule, do not comply with OAC 3745-599-35, and do not adequately demonstrate that the beneficial use byproduct will be managed and stored as a valuable commodity and appropriately managed to prevent releases to the environment.
20. Therefore, Ohio EPA has determined that it is necessary to place Respondent on a compliance schedule with specific milestones such that Respondent shall either beneficially use the DWTM in such quantities and over such timeframes to satisfy the legitimacy criteria required by OAC Rule 3745-599-35 and in accordance with the General Permit No. BUGPDWTM001, or any other individual Beneficial Use Permit obtained by the City, or alternatively dispose of the DWTM in a licensed solid waste landfill, or any combination thereof.

V. ORDERS

Respondent shall achieve compliance with ORC Chapter 3734., 6111. and the rules promulgated thereunder, including OAC Chapter 3745-599 according to the following compliance schedule:

1. Upon the effective date of these Orders, Respondent shall cease acceptance of DWTM at the Property.
2. Upon the effective date of these Orders, Respondent shall appropriately manage the DWTM on the Property to prevent releases to the environment, obtain any necessary authorizations, and manage the materials in such a manner that the activities will neither cause a nuisance nor adversely affect public health, safety, or the environment.
3. Not later than December 31, 2022, Respondent shall remove at least 7,500 cubic yards of DWTM from the Property and manage the DWTM as follows:

- a. For Beneficial Use by placement on the land as a replacement for mined lime used for agronomic benefit in accordance with Ohio EPA Permit No. BUGPDWTM001, or
 - b. If applied for and obtained, pursuant to any other applicable Beneficial Use Individual Permit, or
 - c. Dispose of in a licensed solid waste landfill; or
 - d. By any combination of Order Number 3. a-c.
4. Respondent shall prioritize removal of DWTM located at the Property and within 300 feet of any private wells, when complying with this Order.
5. Not later than March 31, 2023, Respondent shall remove at least an additional 7,500 cubic yards of DWTM from the Property and manage the DWTM as follows:
 - a. For Beneficial Use by placement on the land as a replacement for mined lime used for agronomic benefit in accordance with Ohio EPA Permit No. BUGPDWTM001, or
 - b. If applied for and obtained, pursuant to any other applicable Beneficial Use Individual Permit, or
 - c. Dispose of in a licensed solid waste landfill; or
 - d. By any combination of Order Number 5. a-c.
6. Not later than April 30, 2023, Respondent shall submit a compliance plan for the removal of the remaining DWTM from the Property estimated to be greater than 15,000 cubic yards. The plan shall propose a schedule with interim timeframes that will require that Respondent remove specified quantities of the DWTM from the Property within the scheduled timeframes for Beneficial Use by placement on the land as a replacement for mined lime used for agronomic benefit in accordance with Ohio EPA Permit No. BUGPDWTM001, or pursuant to other authorizations identified as obtained by Respondent from the Director through a separate permit, and the plan shall contain provisions for the disposal of the DWTM in a licensed solid waste landfill for DWTM that is not land applied within those timeframes in accordance with a Beneficial Use Permit or as authorized by the Director. In addition to interim timeframes for the removal of specified quantities of DWTM, the plan shall provide for the removal and lawful disposal or authorized Beneficial Use of all the remaining DWTM on the Property by no later than December 15, 2023.
7. Not later than December 15, 2023, Respondent shall remove all remaining DWTM from the Property:

- a. For Beneficial Use by placement on the land as a replacement for mined lime used for agronomic benefit in accordance with Ohio EPA Permit No. BUGPDWTM001, or
 - b. If applied for and obtained, pursuant to any other applicable Beneficial Use Individual Permit, or
 - c. Dispose of in a licensed solid waste landfill; or
 - d. By any combination of Order Number 7. a-c.
8. Notwithstanding the timeframes in these Orders, upon written request by Respondent, Ohio EPA may approve an extension to a timeframe required by these Orders in writing. Any such extension approved by Ohio EPA in writing, shall be fully incorporated herein without the need to modify these Orders, and the terms and conditions of these Orders shall apply to such extended timeframe as if fully written herein.
9. All removal operations shall be conducted in a manner which is protective of human health, safety and the environment. Respondent shall take measures to control fugitive dust and other air emissions that may result from the removal operation or activities pursuant to these Orders or authorized through EPA Permit No. BUGPDWTM001.
10. Not later than the 10th day of each month, Respondent shall report to Ohio EPA the amount of DWTM removed from the Property, include disposal invoices or receipts, and provide an estimate of the amount of DWTM that remains on the Property.
11. Respondent shall obtain invoices or receipts indicating the weight or volume of any DWTM disposed in a licensed solid waste landfill pursuant to the above orders.
12. Notwithstanding this Order, Respondent shall comply with the recordkeeping and reporting requirements of EPA Permit No. BUGPDWTM001, as applicable to DWTM land applied as a replacement for mined lime used for agronomic benefit in accordance with Ohio EPA Permit No. BUGPDWTM001, and other applicable authorizations.
13. Not later than ninety (90) days after the removal and lawful disposal or authorized Beneficial Use of all the remaining DWTM on the Property in accordance with these Orders, Respondent shall restore, stabilize, grade and reseed the affected areas of the Property, and perform such activities in accordance with requirements in its General Permit Authorization for Storm Water Discharges Associated with Construction Activity Under the National Pollutant Discharge Elimination System.

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 Materials and Waste Management 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/we 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 Respondent.

VII. 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 Respondent or the Property.

VIII. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be emailed to the following: constance.livchak@epa.ohio.gov

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

IX. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against the Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Respondent to perform additional activities pursuant to ORC Chapter 3734. or ORC Chapter 6111. or any other applicable law in the future. Nothing herein shall restrict the right of the Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of the Respondent.

Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

X. EFFECTIVE DATE

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

IT IS SO ORDERED:

A handwritten signature in blue ink, appearing to read "Laurie A. Stevenson", is written over a horizontal line.

Laurie A. Stevenson, Director