

OHIO E.P.A.

Effective Date APR 27 2007

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ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:  
Michael E. Smith  
PO Box 16  
160 W. Robinson St.  
Shreve, OH 44676

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

Respondent,

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Findings and Orders (Orders) are issued to Michael E. Smith (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Chapters 6109 and 6111 and § 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 6109 and 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent attended the November 7, 2006 Wastewater Treatment Class II examination held in the Lausche Building at the Ohio State Fairgrounds in Columbus, Ohio.

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: [Signature] Date: 4-27-07

2. In accordance with Ohio Administrative Code (OAC) Rule 3745-7-18(A), no person shall engage in conduct that subverts or attempts to subvert the examination or review process. Any such action shall cause a person's scores to be withheld and declared invalid.
3. In violation of OAC Rule 3745-7-18(A)(2), Respondent brought a calculator with formulas written in pencil on the back of the calculator's protective cover.
4. Respondent's actions indicated in paragraph 3 above, constitute a violation of ORC § 6109.31 which prohibits any person from violating any rule adopted under ORC Chapter 6109.

#### **V. ORDERS**

1. Respondent's examination score has been withheld and will be declared invalid in accordance with OAC Rule 3745-7-18.
2. Respondent shall be prohibited from taking a certification examination for a period of two (2) years in accordance with OAC Rule 3745-7-18.

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate two (2) years from the effective date of these orders. In accordance with OAC 3745-7-12, Respondent may not apply for certification during this period. Respondent may apply for the spring of 2009 examinations to become a certified operator.

#### **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 Respondent's operation of a treatment works.

Director's Office  
1000 North High Street  
Columbus, Ohio 43260-1000  
(614) 467-2000

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### **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. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

### **X. NOTICE**

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

Ohio Environmental Protection Agency  
Operator Certification Unit  
Division of Drinking and Ground Waters  
PO Box 1049  
Columbus, Ohio 43216-1049  
Attn: Andrew Barienbrock, Environmental Supervisor, DDAGW

### **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.

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**

  
\_\_\_\_\_  
Chris Korleski, Director

4/25/07  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Michael E. Smith**

  
\_\_\_\_\_  
Signature

4-11-07  
\_\_\_\_\_  
Date