



3. The WWTP discharges sewage, industrial waste, and/or other wastes to an unnamed tributary of the South Fork of Eagle Creek, which subsequently flows into Eagle Creek and the Mahoning River. The identified watercourses constitute waters of the state.
4. Respondent operates separate sanitary and storm water collection systems. Respondent's sanitary collection system is designed to carry untreated sewage, industrial waste and other wastes to the WWTP and is not designed to carry storm water or significant amounts of infiltration and inflow ("I/I"). During wet weather, I/I causes sanitary sewer overflows ("SSOs"), and bypasses of untreated sewage, industrial wastes and other waste from the WWTP to the unnamed tributary of the South Fork of Eagle Creek.
5. In a letter dated January 19, 2006, Respondent informed Ohio EPA that its:  

WWTP was designed for 1.2 million gallons peak flow per day or approximately 833 gallons per minute. If the WWTP influent flow exceeds 1.2 MGD, the excess flow is directed to the equalization basin (EQ) via the influent control gate [which is] an automatically controlled gate. Excess flow directed to the EQ is elevated into the basin via pumps which have a maximum pumping capacity of 1400 gallons per minute. Therefore, if the plant influent flow exceeds 2233 gallons per minute, it backs up into the system.

The basement backups were not the result of any Village actions, omissions, or negligence. There are no preventative measures that could have been taken. Our WWTP personal operate the WWTP as it was designed and approved by EPA. (Emphasis in original.)
6. Ohio National Pollutant Discharge Elimination System Permit No. 3PC00019\*FD, effective December 1, 2002, authorized the discharge described in Finding No. 3, above, and required, pursuant to a compliance schedule contained therein, the submittal of plans for the East Center Street Interceptor improvements, construction of those improvements, submittal of a Sewer System Evaluation Study, and the elimination of overflows and bypasses in the disposal system.
7. On March 26, 2003, Respondent submitted Permit-to-Install Application No. 02-17784, with detailed plans, to improve the sanitary collection system by eliminating SSOs, residential basement backups, and WWTP bypasses, together referred to as "PTI improvements." Permit-to-Install Application No. 02-17784 was issued on August 20, 2003.

8. Respondent was not able to comply with the remaining requirements identified in Finding No. 6, above, and submitted a request to modify Ohio National Pollutant Discharge Elimination System Permit No. 3PC00019, to revise the compliance schedule milestones.
9. Ohio National Pollutant Discharge Elimination System Permit No. 3PC00019\*GD ("NPDES Permit"), issued to Respondent with an effective date of September 1, 2003 and expiration date of November 30, 2007, provides at Part I.C. a revised compliance schedule for the PTI improvements.
10. Respondent initiated the process to receive funding for the PTI improvements through the United States Department of Agriculture ("USDA") Rural Development.
11. By letter dated October 23, 2003, USDA Rural Development provided the following documentation for the Village to use in its [the Village's] attempt to seek an extension from Ohio EPA due to the delay in funding for the proposed sanitary sewer project.

The Village of Windham had applied to Rural Development for funding for the proposed project and was asked to provide pertinent information, necessary for our Agency to process the loan and grant request. The Village was unable to meet the timeframe established for providing this information and unfortunately, this resulted in another project moving ahead of your village [of Windham] in funding status.

Our office then attempted to seek funding for your project from a National Pool of funds that occurred in August, however you were competing with projects nationwide and we were not successful in securing the funding.

Your file is currently in our Columbus Office awaiting receipt of the Fiscal Year 2004 budget allocation. Receipt of these funds is dependent upon a National budget being approved. Once this allocation has been received by our Agency, the Village of Windham will again be placed in line for funding for this project.

One issue that will need to be resolved prior to obligation of funds is the approval of the Preliminary Engineering Report. We received a letter dated October 17, 2003 from our State Director requesting additional information before approval could be granted on this report.

12. Respondent informed Ohio EPA that it has made good faith efforts to move the project forward within the time frames and has made timely responses to USDA Rural Development requests for information. The Preliminary Engineering Review was approved by USDA Rural Development on May 4, 2004, with Respondent receiving the approval letter on June 3, 2004.
13. As provided for in OAC Rule 3745-42-02(D)(1) & (2), and previous rule OAC 3745-02-02, a permit to install or plan approval shall terminate within eighteen months of the effective date of the permit to install or plan approval if the owner or operator has not undertaken a continuing program of installation or modification or has not entered into a binding contractual obligation to undertake and complete, within a reasonable time, a continuing program of installation or modification.
14. On February 8, 2005, Ohio EPA received a request for a time extension for PTI Application No.02-17784 from Respondent. Ohio EPA granted Respondent's time extension request. The time extension for PTI No. 02-17784 became effective February 10, 2005 and will terminate on February 20, 2006, unless Respondent initiates construction in accordance with the terms therein.
15. On February 9, 2004, Respondent submitted a request to modify the compliance schedule set forth in the NPDES Permit. The modification request contained the following:

the Village has endeavored to complete this process in a timely manner. However, due to delays beyond the Village's control, it is now evident that various steps of the funding process cannot be completed until mid-2004.
16. Respondent's request to modify the compliance schedule set forth in the NPDES permit is currently pending at Ohio EPA.
17. Respondent has violated Part I.C. of its NPDES Permit, in that Respondent has:
  - a. Failed to advertise for construction bids, receive bids, and award contracts for sanitary collection system improvements as soon as possible, but not later than 5 months after the effective date of the NPDES Permit;
  - b. Failed to commence construction of the sanitary collection system improvements as soon as possible, but not later than not later 8 months after the effective date of the NPDES Permit;
  - c. Failed to complete construction of the sanitary collection system improvements as soon as possible, but not later than 12 months after the effective date of the NPDES Permit;

- d. Failed to submit to Ohio EPA for approval, an acceptable Sanitary Sewer Evaluation Survey (SSES) of the Village's sanitary sewer system within 10 months after the effective date of the NPDES Permit; and
  - e. Failed to eliminate all identified overflows and bypasses and attain operational level of the entire disposal system as soon as possible, but not later than 16 months after the effective date of the NPDES Permit.
18. Respondent violated the NPDES Permit and previous permit nos. 3PC00019\*ED and 3PC00019\*FD by unauthorized overflow events and bypasses within the disposal system on April 2, 2004, March 20, 2004, January 10, 2004, July 22, 2003, July 21, 2003, May 31, 2003, May 20, 2003, April 5, 2003, June 14, 2002, May 13, 2002, May 12, 2002, May 2, 2002, April 15, 2002, April 14, 2002, February 1, 2002, April 7, 2001, December 16, 2000, January 1, 2000, January 23, 1999, April 26, 1998, January 8, 1998, and June 1, 1997.
19. The NPDES Permit authorizes one outfall (001). Respondent has violated its NPDES Permit as a result of several unauthorized overflow events and bypasses within the disposal system, documented by Respondent's reporting of such events to Ohio EPA, Division of Emergency and Remedial Response ("DERR") via the spill hotline. The unauthorized overflow events and bypasses are identified in the chart attached hereto as Attachment I, incorporated by reference as if fully rewritten herein.
20. Respondent notified Ohio EPA of unauthorized overflow events and bypasses within the disposal system (violations of the NPDES Permit) via letters dated March 30, 2004, July 28, 2003, June 19, 2002, May 18, 2002, May 17, 2002, May 7, 2002, April 19, 2002, February 6, 2002, April 12, 2001, December 22, 2000, and June 11, 1997. Respondent also notified Ohio EPA of unauthorized overflow events and bypasses via three undated letters received by Ohio EPA on February 8, 1999, May 7, 1998, and January 23, 1998.
21. Respondent has, on at least the dates set forth in the chart attached hereto as Attachment II and incorporated by reference as if fully rewritten herein, experienced non-numerical reporting violations and exceeded the final effluent limitations in Ohio National Pollutant Discharge Elimination System Permit No.3PC00019\*HD.
22. In its letter dated January 19, 2006, Respondent informed Ohio EPA that the problems associated with non-numerical reporting have been corrected.

23. ORC § 6111.04 provides that no person shall cause pollution or place or cause to be placed waste in a location in which such waste causes pollution of any waters of the state unless the person holds a valid, unexpired permit authorizing said discharge, a renewal of a permit, or if the person's application for renewal of such a permit is pending.
24. ORC § 6111.07 provides that no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate 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.
25. On January 3, 2005, Respondent submitted, via email, a revised implementation schedule that will upgrade the disposal system by June 1, 2006. The upgrade was delayed.
26. Respondent will continue to violate its NPDES Permit until Respondent is in compliance with the schedule set forth in the NPDES Permit.
27. These Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any disposal system. Any such construction or modification is subject to the requirements of ORC §§ 6111.44 and 6111.45 and OAC Rule 3745-42-02.
28. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
29. 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 do the following as expeditiously as practicable, but not later than the compliance dates set forth below:
  - a. Complete construction of the PTI improvements as soon as possible, but not later than thirty (30) days of the effective date of these Orders.
  - b. Notify Ohio EPA, Northeast District Office, within seven (7) days of completion of construction of the PTI Improvements.

2. At all times, Respondent shall operate and maintain its disposal system in such a manner as is necessary to minimize the frequency and occurrence of unauthorized overflow events and bypasses, to minimize impacts to the receiving stream resulting from any overflow event or bypass. At a minimum, Respondent shall utilize the following technology and activities to minimize such impacts:
  - a. Provide proper operation and maintenance programs for the sanitary collection system and overflow and bypass points;
  - b. Provide maximum use of the sanitary collection system for storage prior to allowing overflows;
  - c. Maximize flow to the WWTP for treatment; and
  - d. Prohibit dry weather overflows.
3. Respondent shall pay the amount of ten thousand dollars (\$10,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within fourteen (14) 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 eight thousand dollars (\$8,000.00). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and the disposal system, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

A photo copy of the check shall be sent to Ohio EPA, Northeast District Office, in accordance with Section X of these Orders.

4. In lieu of paying the remaining two thousand dollars (\$2,000.00) of the civil penalty, Respondent shall within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of two thousand dollars (\$2,000.00) 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 two thousand dollars (\$2,000.00). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

A copy of each check shall be sent to Mark Mann, Enforcement Coordinator, or his successor, at the following address:

Ohio EPA  
Division of Surface Water  
P.O. Box 1049  
Columbus, OH 43216 - 1049

5. Should Respondent fail to fund the SEP within the required timeframe set forth in Order No.4., Respondent shall immediately pay to Ohio EPA two thousand dollars (\$2,000.00) of the civil penalty in accordance with the procedures in Order No. 3.

#### **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 the Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(D).

#### **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 Facility.

### **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**

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

Ohio Environmental Protection Agency  
Division of Surface Water  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: DSW Enforcement Coordinator

### **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.

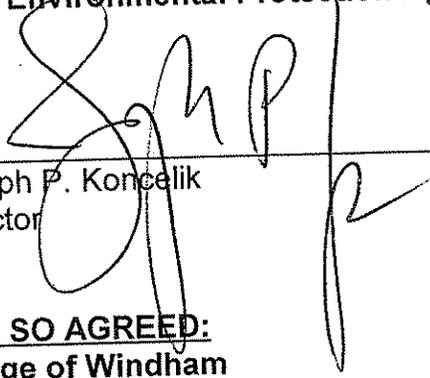
**XIII. EFFECTIVE DATE**

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**

  
\_\_\_\_\_  
Joseph P. Koncelik  
Director

12-13-06  
Date

**IT IS SO AGREED:**  
**Village of Windham**

C. James Moore  
By  
C. JAMES MOORE  
Print Name  
Mayor  
Title

DEC. 4, 2006  
Date

**ATTACHMENT I**  
**DERR Initial Pollution Incident Reports**  
**Unauthorized Overflow Events and Bypasses**

Ohio EPA Spill ID Number	Event Type	Event Date	Date Reported
0404-67-1324//0	WWTP bypass	4/2/2004	4/2/2004
0403-67-1108//0	Sewage bypass	3/20/2004	3/22/2004
0403-67-1090//0	Sewage in basement	-	3/20/2004
0401-67-0293//0	WWTP bypass	1/10/2004	1/21/2004
0307-67-2764//0	Sewage bypass	7/22/2003	7/22/2003
0307-67-2762//0	Sewage in car wash and gas station	7/21/2003	7/22/2003
0307-67-2735//0	Sewage bypass	7/21/2003	7/21/2003
0305-67-1940//0	Sewage backup into business	5/31/2003	5/31/2003
0305-67-1793//0	Sewage backup into car wash	5/20/2003	5/20/2003
0304-67-1128//0	Sewage bypass	4/5/2003	4/7/2003
0204-67-1354//0	Sewage backup	4/5/2003	4/5/2002
0206-67-2397//0	Sewage bypass	6/14/2002	6/14/2002
0205-67-1879//0	Sewage bypass	5/13/2002	5/13/2002
0205-67-1854//0	Sewage backup into car wash	5/12/2002	5/12/2002
0205-67-1857//0	Sewage into Unnamed Tributary	5/12/2002	5/12/2002
0205-67-1676//0	Sewage bypass	5/2/2002	5/2/2002
0205-67-1674//0	Sewage in and around business	5/2/2002	5/2/2002
0204-67-1354//0	Sewage in car wash and around three manholes	4/15/2002	4/15/2002
0204-67-1344//0	Sewage bypass	4/14/2002	4/15/2002
0104-67-1153//0	Sewage bypass	4/7/2001	4/4/2001
0012-67-4584//0	Sewage discharge	12/16/2000	12/17/2000
0012-67-4578//0	Sewage into Unnamed Tributary	12/16/2000	12/16/2000
0205-67-1679//0	Sewage in basement	1/1/2000	5/2/2002

**ATTACHMENT II**  
**NPDES permit No 3PC00019\*GD**  
**Non-Numerical Reporting Violations**

<b>Parameter</b>	<b>Limit</b>	<b>Reported</b>	<b>Date</b>
Fecal Coliform (7 Day)	2,000 colonies / 100 mls	Analytical Data Not Valid	5/1/2000
Fecal Coliform (30 Day)	1,000 colonies / 100 mls	Analytical Data Not Valid	5/1/2000
Fecal Coliform (30 Day)	1,000 colonies / 100 mls	Too Numerous to Count	9/1/2000
Fecal Coliform (7 Day)	2,000 colonies / 100 mls	Too Numerous to Count	9/8/2000
Fecal Coliform (7 Day)	2,000 colonies / 100 mls	Analytical Data Not Valid	9/15/2000
Fecal Coliform (7 Day)	2,000 colonies / 100 mls	Analytical Data Not Valid	8/1/2001
Fecal Coliform (30 Day)	1,000 colonies / 100 mls	Analytical Data Not Valid	8/1/2001
Fecal Coliform (7 Day)	2,000 colonies / 100 mls	Too Numerous to Count	6/12/2002
Fecal Coliform (7 Day)	2,000 colonies / 100 mls	Too Numerous to Count	6/26/2002
Fecal Coliform (7 Day)	2,000 colonies / 100 mls	Too Numerous to Count	7/16/2003
Fecal Coliform (7 Day)	2,000 colonies / 100 mls	Too Numerous to Count	7/22/2003