

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

Clark County Board of Commissioners	:	<u>Director's Final Finding</u>
50 East Columbia Street	:	<u>and Orders</u>
Springfield, Ohio 45502	:	

Respondent.

JURISDICTION

Pursuant to Ohio Revised Code (ORC) Sections 6117.34 and 3745.01, the Director of the Ohio Environmental Protection Agency ("Ohio EPA") hereby makes the following Findings and issues the following Orders.

PARTIES BOUND

These Orders shall apply to and be binding upon the Clark County Board of Commissioners ("Respondent") and its assigns and successors in interest liable under Ohio law. Respondent's obligations under these Orders may be altered only by the written action of the Director of the Ohio EPA.

FINDINGS OF FACT

1. The West Enon Area is an unincorporated area in Mad River Township, Clark County, Ohio, and consists of approximately 220 lots in the West Enon Estates Subdivision and on Stine Road. A map is attached as Attachment 1.
2. Centralized wastewater treatment facilities are currently unavailable in the West Enon Area.
3. By letters dated July 30, 2001 and September 24, 2001, the Clark County Combined Health District requested that Ohio EPA perform an investigation of unsanitary conditions in the West Enon Area pursuant to ORC 6117.34. A copy is attached as Attachments 2 and 3.
4. On May 25 and 28, 2001, a registered sanitarian employed by the Clark County Combined Health District performed sampling in ditches and storm sewers located in the West Enon Area. Sampling results revealed counts of fecal coliform bacteria and E. coli bacteria in excess of Ohio Water Quality Standards in Ohio Administrative Code ("OAC") Rule 3745-1-04.

5. On October 9, 10, and 18, 2001, staff from Ohio EPA's Southwest District Office ("SWDO") investigated the West Enon Area and found evidence indicating that unsanitary conditions exist in the West Enon Area.

6. SWDO staff performed sampling of ditches and storm sewers in the West Enon Area, with the following results:

<u>Sample Location</u>	<u>Date</u>	<u>Fecal Coliform (#/100 ml)</u>	<u>E. coli (#/100 ml)</u>
7109 Tall Timber	10/09/01	3,400	3,300
7109 Tall Timber	10/10/01	1,500	2,100
New Horizon & 7125 Chama	10/09/01	109,000	105,000
New Horizon & 7125 Chama	10/10/01	98,000	101,000
4182 Arrowhead	10/09/01	13,300	5,700
4182 Arrowhead	10/10/01	2,100	3,950
4182 Arrowhead	10/18/01	2,500	2,400
7062 Tall Timber	10/09/01	2,200	1,150
7062 Tall Timber	10/10/01	<10	<10
Tall Timber & West Enon	10/09/01	7,090	5,900
Tall Timber & West Enon	10/10/01	70	70
Tall Timber & West Enon	10/18/01	110	30
6908 New Horizon	10/10/01	7,910	7,700
6908 New Horizon	10/18/01	3,900	2,400
4024 Sylvan Drive	10/10/01	1,340	910
4024 Sylvan Drive	10/18/01	627	450
Stine & New Horizon	10/10/01	10	66,000
Stine & New Horizon	10/18/01	<10	<10

7. In addition, on the dates of Ohio EPA's investigation, SWDO staff observed sewage odors, sewage color (whitish, greyish, blackish), and/or sludge deposits or sewage fungus and algae in ditches and storm sewers of the West Enon Area.

8. Pursuant to Ohio's Water Quality Standards at OAC Rule 3745-1-04(F), a public health nuisance shall be deemed to exist when an inspection by Ohio EPA documents odor, color or other visual manifestations of raw or poorly treated sewage, and water samples exceed 5000 fecal coliform counts per 100 milliliters or 576 E. coli counts per 100 milliliters in two or more samples.

9. Pursuant to OAC Rule 3745-1-04(F), a public health nuisance exists in the West Enon Area.

10. Many of the residences and businesses located in the West Enon Area are served

by failing on-lot wastewater disposal systems which discharge raw or partially treated sewage to ditches and storm sewers that flow into an unnamed tributary of the Mad River.

11. The ditches, storm sewers, and unnamed tributary of the Mad River are "waters of the state" as that term is defined in ORC Section 6111.01(H).
12. The owners of the on-lot wastewater disposal systems discharging raw or partially treated wastewater to ditches or storm sewers in the West Enon Area do not hold National Pollutant Discharge Elimination System permits for the discharges from their systems in violation of ORC Section 6111.04.
13. The lot size in the West Enon Area is generally in the range of .46 acres to .57 acres.
14. The Soil Survey of Clark County (ed. 1999) shows that the soils in the West Enon Area are not acceptable for the installation of on-lot wastewater disposal systems using leach lines. Further, because of the extensive and highly permeable deposits of sand and gravel in the West Enon Area, the potential for such on-lot systems to contaminate the aquifer is high.
15. A potential tie-in location for a sewer line from the West Enon Area to the Clark County Southwest Regional waste water treatment plant is located approximately five hundred sixty (560) linear feet from the West Enon Area.
16. On February 13, 2002, the Director issued to Respondent permit to install ("PTI") No. 05-11917 for the installation of gravity sewers, force main and pump station for the West Enon Area. A copy is attached as Attachment 4.
17. Based upon the public health nuisance and the soils, lot size, and proximity to centralized sanitary sewers, it is necessary for the public health and welfare that Respondent construct, maintain and operate sanitary facilities in the West Enon Area.

ORDERS

1. Respondent shall perform the measures described below to eliminate the unsanitary conditions in the West Enon Area as expeditiously as practicable, but not later than the dates contained in the following schedule:
 - a. No later than six (6) months from the issuance of these Orders, Respondent shall initiate construction of the gravity sewers, force main and pump station in accordance with PTI No. 05-11917.

- b. No later than twelve (12) months from the issuance of these Orders, Respondent shall complete construction of the gravity sewers, force main and pump station in accordance with PTI No. 05-11917. Construction shall be deemed completed when the wastewater collection system is capable of receiving flow.
 - c. No later than eighteen (18) months from the issuance of these Orders, Respondent shall order, pursuant to ORC Chapter 6117, all property owners in the West Enon Area to connect to the wastewater collection system and to cease all other discharges of sewage and other wastes. Respondent shall, as necessary, take timely action to enforce its orders.
 - d. No later than nineteen (19) months from the issuance of these Orders, Respondent shall achieve and maintain full compliance with ORC Chapter 6111.
2. Within fourteen (14) days of the milestone dates in Order Nos. 1.a., 1.b., and 1.c., Respondent shall submit written notification and documentation demonstrating compliance with the Order.
 3. Respondent shall submit a written progress report to the Ohio EPA on a quarterly basis beginning on the ninety-first (91st) day after the issuance of these Orders. The quarterly progress report shall describe the status of the work and actions taken to achieve compliance with Order No. 1 during the reporting period, and any difficulties encountered and actions taken to rectify such difficulties during the reporting period.
 4. Respondent shall submit all documentation, applications, and notifications required under these Orders to Ohio EPA's Southwest District Office at the following address:

Ohio Environmental Protection Agency
Southwest District Office
401 East 5th Street
Dayton, Ohio 45402
(ATTN: Enforcement Group Leader)

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. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to

Respondent.

RESERVATION OF RIGHTS

These Orders do not prevent Ohio EPA from enforcing the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders or for violations identified in these Orders. These Orders do not prevent Ohio EPA from exercising its authority to require Respondent to perform additional activities pursuant to Chapter 6111 of the Ohio Revised Code or any other applicable law in the future. These Orders do not restrict the right of Respondent to raise any administrative, legal or equitable claim or defense for any additional activities that Ohio EPA may seek to require of Respondent. These Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

TERMINATION

The Respondent's obligations under these Orders shall be satisfied and terminate when Respondent demonstrates in writing, and certifies to the satisfaction of Ohio EPA that all obligations under these Orders have been performed, and the Chief of Ohio EPA's Division of Surface Water acknowledges in writing the termination of these Orders.

This certification shall be submitted by the Respondent to the Southwest District Office (Attention: DSW Enforcement Group Leader) and shall be signed by a responsible official of Respondent.

A responsible official is as defined in Ohio Administrative Code (OAC) 3745-33-03(D)(1) for a corporation, OAC 3745-33-03(D)(2) for a partnership, OAC 3745-33-03(D)(3) for a sole proprietorship, and OAC 3745-33-03(D)(4) for a municipal, state, or other public facility. The certification shall contain the following attestation:

"I certify under the penalty of law that I have personally examined and am familiar with the information contained in or accompanying this certification, and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

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 agrees to comply with these Orders, Respondent agrees that these Orders are lawful and reasonable, and Respondent agrees that the time frames provided for compliance herein are reasonable. Compliance with these Orders shall be a full accord and satisfaction of Respondent's liability for the violations specifically cited herein. Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph of these Orders.

Respondent hereby waives the right to appeal the issuance, terms and service of these Orders, and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that 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 agrees to continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

SIGNATORY AUTHORITY

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO AGREED:

Clark County Board of Commissioners

By: John Detrick

Date: June 25, 2008

Printed/Typed Name & Title: John Detrick, County Commissioner

By: James E. Sheehan

Date: June 25, 2008

Printed/Typed Name & Title: James E. Sheehan, County Commissioner

By: Roger D. Tackett Date: June 25, 02

Printed/Typed Name & Title: Roger D. Tackett, County Commissioner

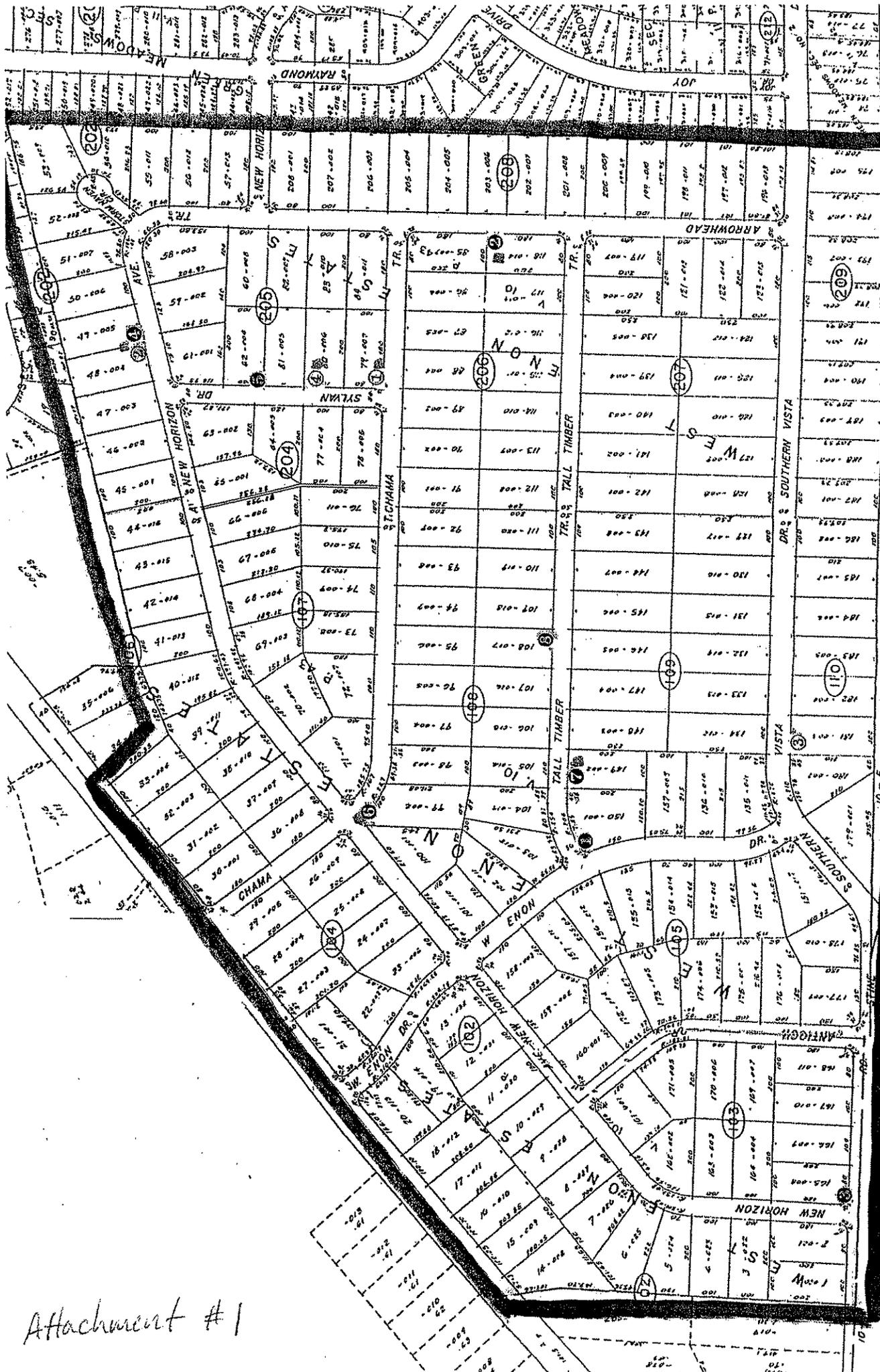
IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency

Christopher Jones
Christopher Jones
Director

Date: 7-23-02

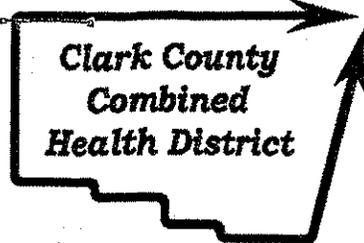
ATTACHMENTS

<u>Number</u>	<u>Description</u>
1	Map of West Enon Area
2	July 30, 2001 letter from Clark County Combined Health District to Director, Ohio EPA
3	September 24, 2001 letter from Clark County Combined Health District to Office of Legal Services, Ohio EPA
4	PTI No. 05-11917



Attachment #1

RIVER TWP. MAD RIVER TWP. MAD RIVER TWP.
 1/4 SEC. 6 T.3 R.8 E. 1/2 NW. 1/4 SEC. 6 T.3 R.8 W. 1/2 NE. 1/4 SEC. 6 T.3 R.8



Health Commissioner
Charles A. Patterson, R.S., MBA

A Community Service Provider

Board of Health
Bonnie Bartos, RN, MS - President
Ronald Spier, MD
Rob Baker, PhD
Rich Foster
Harry Elliott
Sheila Rice
Darrell Kitchen

July 30, 2001

Christopher Jones, Director
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, OH 43216-1049

CERTIFIED MAIL

Re: Verified Complaint - Public Health Nuisance - West Enon Estates, Clark County, Ohio

Dear Mr. Jones:

The Clark County Combined Health District has investigated problems with on-site septic systems in the West Enon Estates subdivision, located outside a municipality, in Mad River Township, Clark County, since the mid-1980's. The Health District recently initiated activities to document a public health nuisance in that subdivision under the guidance of OAC Rule 3745-1-04 (F) & (G).

Synopsis of past activities:

- On June 20, 1989, the Clark County Board of Health declared the West Enon Estates a public health hazard due to home sewage problems. See enclosed.
- On July 17, 1989, the Health District requested an Ohio EPA investigation of the West Enon Estates subdivision.
- On August 24, 1989, the Ohio EPA inspected the area.
- On August 30, 1989, the Ohio EPA issued a statement that the conditions in the West Enon Subdivision "are very conducive to pervasive health hazards in the future if alternative treatment methods are not made available. The limited space for replacement systems coupled with the age of the existing systems and the likelihood of increasing system failures adds to the sense of urgency for action". See enclosed.
- On August 17, 1998, the Board of Health reaffirmed the position taken earlier by the County Board of Health that the West Enon Estates is a public health hazard (R 116-98). See enclosed.
- On June 25, 2001 and June 28, 2001, the Health District collected two (2) sets of two (2) samples from four (4) waters of the states (ditch samples) in the West Enon Estates subdivision, using sampling methods described in OAC Rule 3745-04 (F) & (G). See enclosed.

Attachment #2

The results from the analysis of these samples revealed:

- *E. coli* ranging from <100 CFU/100 mL to 12,000 CFU/100 mL, and
- fecal coliform ranging from <100 CFU/100 mL to >10,000 CFU/100 mL.

This is a violation of ORC 6111.04, discharge to the waters of the state without a permit; OAC 3745-1-04, violation of the five "free-froms": aesthetics, color, odor, turbidity, and sheen; and OAC 3745-1-07: levels of fecal coliforms and *E. coli*; thereby creating a public health threat in the area.

Alice Godsey, Director of Clark County Utilities Department, indicates that this area is immediately adjacent to, and can be tied into, an existing sanitary sewer system.

Please investigate to determine if a public health nuisance exists.

If you have any questions or comments, please contact this office at (937) 390-5600, extension 234.

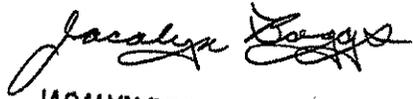
Sincerely,



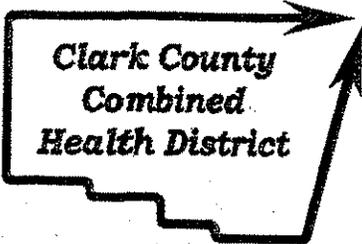
Charles A. Patterson, RS, M.B.A.
Health Commissioner

Enclosures: copy of 1989 Ohio EPA letter
 copies of public health nuisance field forms
 copies of lab results
 map of area
 copies of 1989 & 1998 Board of Health resolutions

cc. Sandy Leibfritz, SWDO, OEPA
 Jeff Johnson, Assistant County Administrator
 Alice Godsey, Director of Utilities
 George Soddors, County Auditor



JACALYN BOGGS, Notary Public
In and for the State of Ohio
My Commission Expires July 31, 2003



Health Commissioner
Charles A. Patterson, R.S., MBA

A Community Service Provider

Board of Health
Bonnie Bartos, RN, MS - President
Ronald Spier, MD
Rob Baker, PhD
Rich Foster
Harry Elliott
Sheila Rice
Darrell Kitchen

September 24, 2001

Mr. Greg Smith
Office of Legal Services
Ohio EPA
P. O. Box 1049
Columbus, Oh 43216-1049

RECEIVED
OHIO EPA
01 SEP 26 AM 8:09
LEGAL OFFICE

Dear Mr. Smith,

I am following up my letter dated July 30, 2001 regarding West Enon Estates. Per our conversation I feel the need to clarify my previous letter. The situation in West Enon Estates should be handled according to the Revised Code 6117.34.

I look forward to working with your office and the Southwest District personnel to verify the ongoing unsanitary conditions of West Enon Estates. Please feel free to call me if you have questions or comments regarding this matter

Sincerely,

A handwritten signature in cursive script that reads "Charles A. Patterson".

Charles A. Patterson, R.S., MBA
Health Commissioner

djt

Attachment #3

Ohio Environmental Protection Agency

Permit to Install

Application No: 05-11917

Applicant Name: Clark County Board of Commissioners
Address: P.O. Box 1303
City: Springfield
State: Ohio, 45501

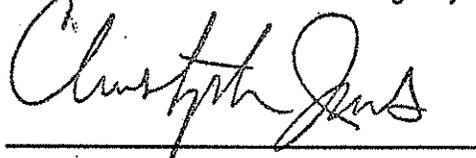
Person to Contact: Ken Heigel
Telephone: 614-464-4500

Description of Proposed Source: Gravity Sewers, Force Main, and Pump Station for West Enon Estates, Clark County Southwest Regional Wastewater Treatment Plant, Mad River Township, Clark County

Issuance Date: February 13, 2002
Effective Date: February 13, 2002

The above named entity is hereby granted a permit to install for the above described source pursuant to Chapter 3745-31 of the Ohio Administrative Code. Issuance of this permit does not constitute expressed or implied approval or agreement that, if constructed or modified in accordance with the plans included in the application, the above described source of environmental pollutants will operate in compliance with applicable state and federal laws and regulations. Issuance of this permit does not constitute expressed or implied assurance that, if constructed or modified in accordance with those plans and specifications, the above described source of pollutants will be granted the necessary operating permits. This permit is granted subject to the following conditions attached hereto.

Ohio Environmental Protection Agency



Christopher Jones
Director
P. O. Box 1049,
122 South Front Street
Columbus, OH 43216-1049

OHIO E.P.A.
FEB 13 2002
ENTERED DIRECTOR'S JOURNAL

Attachment # 4,

This permit shall expire if construction has not been initiated by the applicant within eighteen months of the effective date of this permit. By accepting this permit, the applicant acknowledges that this eighteen month period shall not be considered or construed as extending or having any effect whatsoever on any compliance schedule or deadline set forth in any administrative or court order issued to or binding upon the permit applicant, and the applicant shall abide by such compliance schedules or deadlines to avoid the initiation of additional legal action by the Ohio EPA.

The director of the Ohio Environmental Protection Agency, or his authorized representatives, may enter upon the premises of the above named applicant during construction and operation at any reasonable time for the purpose of making inspections, conducting tests, examining records, or reports pertaining to the construction, modification, or installation of the above described source of environmental pollutants.

Issuance of this permit does not relieve you of the duty of complying with all applicable federal, state, and local laws, ordinances, and regulations.

Any well, well point, pit, or other device installed for the purpose of lowering the ground water level to facilitate construction of this project shall be properly abandoned in accordance with the provisions of this plan or as directed by the director or his representative.

Any person installing any well, well point, pit or other device used for the purpose of removing ground water from an aquifer shall complete and file a Well Log and Drilling Report form with the Ohio Department of Natural Resources, Division of Water, within 30 days of the well completion in accordance with the Ohio Revised code Section 1521.01 and 1521.05. In addition, any such facility that has a capacity to withdraw waters of the state in an amount greater than 100,000 gallons per day from all sources shall be registered by the owner with the chief of the Division of Water, Ohio Department of Natural Resources, within three months after the facility is completed in accordance with Section 1521.16 of the Ohio Revised Code. For copies of the necessary well log, drilling report, or registration forms, please contact:

Ohio Department of Natural Resources
Fountain Square
Columbus, OH 43224-1387
(614) 265-6717

The proposed wastewater disposal system shall be constructed in strict accordance with the plans and application approved by the director of the Ohio Environmental Protection Agency. There shall be no deviation from these plans without the prior express, written approval of the agency. Any deviations from these plans or the above conditions may lead to such sanctions and penalties as provided for under Ohio law. Approval of this plan and issuance of this permit does not constitute an assurance by the Ohio Environmental Protection Agency that the proposed facilities will operate in compliance with all Ohio laws and regulations. Additional facilities shall be installed upon orders of the Ohio Environmental Protection Agency if the proposed sources are inadequate or cannot meet applicable standards.

This permit applies only to the proposed wastewater disposal system. All other aspects of the proposed projects must be approved by the Ohio Department of Health and/or the local health department.

Roof drains, foundation drains, and other clean water connections to the sanitary sewer shall be prohibited by enforcement of legally adopted rules by the authority regulating the use of sanitary sewers.

Sewer and manhole construction joints shall conform to standards of the Ohio Environmental Protection Agency.

Clark County Board of Commissioners
Page 3 of 3
February 13, 2002

When Polyvinyl Chloride or Acrylonitrile Butadiene Styrene pipe is used, it must be tested for maximum deflection of 5 percent under the supervision of a professional engineer at a time when he has determined that the backfill has settled. Pipe with a stiffness of 200 p.s.i. or greater need not be tested for deflection if all pipe between manholes is less than 12 feet below final grade. Results of these tests shall be submitted to the appropriate district office. Any lines which fail the test must be repaired and retested until they meet the requirements.

Provisions shall be made for proper operation of the wastewater pumping facilities.

If the construction area for this project is five acres or more, or is part of a larger development that is five acres or more the applicant must provide assurance that a Notice of Intent (NOI) has been submitted to the appropriate office of the Ohio EPA at least 45 days prior to the start of construction.