

OHIO E.P.A.

DEC 19 2005

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Columbiana County Commissioners
105 S. Market Street
Lisbon, Ohio 44432
Re: Village of Kensington

Director's Final
Findings and Orders

Respondent

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to the Columbiana County Commissioners ("Respondent") for the unincorporated Village of Kensington ("Village") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law.

III. DEFINITIONS

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

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The Village of Kensington is an unincorporated village in Hanover Township, Columbiana County, Ohio.
2. Centralized wastewater treatment facilities are currently unavailable in the

I certify this to be a true and accurate copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency.

By: Donna J. Jackson date 12-19-05

Village.

3. Many of the home and commercial establishments located in the Village are served by failing on-site sewage disposal systems which discharge raw or partially treated sewage to Sandy Creek and an unnamed tributary of Sandy Creek. Ohio EPA has not authorized these discharges.
4. Sandy Creek and its tributaries constitute "waters of the state" as defined by ORC § 6111.01.
5. On February 24, 2000, March 22, 2000, and July 11, 2000, Ohio EPA, Northeast District Office, held meetings with Respondent's officials to discuss human health concerns and to develop a plan to address the concerns.
6. During the meetings referred to in Finding No. 5 and during discussions with the Columbiana County Health Department, it was established that the small lot sizes in the Village precluded modification and upgrading of the small on-site sewage disposal systems.
7. Pursuant to Ohio Administrative Code (OAC) Rule 3745-1-24, Sandy Creek has been designated as primary contact recreation and flows through the Village. As set forth in OAC rule 3745-1-07, Table 7-13, the following criteria are applicable to Sandy Creek:
 - a. Fecal Coliform - geometric mean fecal coliform content (either MPN or MF), based on not less than five samples within a thirty-day period, shall not exceed 1,000 per 100 ml and fecal coliform content (either MPN or MF) shall not exceed 2,000 per 100 ml in more than ten percent of the samples taken during any thirty-day period.
 - b. E. coli - geometric mean E. coli content (either MPN or MF), based on not less than five samples within a thirty-day period, shall not exceed 126 per 100 ml and E. coli content (either MPN or MF) shall not exceed 298 per 100 ml in more than ten percent of the samples taken during any thirty-day period.
8. On September 13, 2001, Ohio EPA, Northeast District Office, conducted sampling of Sandy Creek at two locations: (1) at a bridge near the Dairy Mart, downstream from a sewage pipe; and (2) at Route 30, under the bridge, downstream of the Village. The results of the sampling event are as follows:

Location	Sampling Results (# per 100 ml)		Sampling Description
	Fecal Coliform	<i>E. Coli</i>	
Dairy Mart Bridge	25,000	410	Sewage sludge was observed in the stream, with a moderate odor, and septic water discharged from the sewage pipe.
Route 30 Bridge	2,600	1,600	Sewage odor and sewage sludge were present.

9. The result of the sampling event described in Findings No. 8 demonstrates violations of the primary contact recreation fecal coliform and *E. coli* criteria set forth in OAC rule 3745-1-07, Table 7-13.

10. The unnamed tributary to Sandy Creek flows adjacent to a park and playground and has a residential use designation of secondary contact recreation, as established in OAC rule 3745-1-24, with the following applicable criteria, as set forth in OAC rule 3745-1-07, Table 7-13:
 - a. Fecal Coliform - shall not exceed 5,000 per 100 ml (either MPN or MF) in more than ten percent of the samples taken during any thirty-day period.
 - b. *E. coli* - shall not exceed 576 per 100 ml (either MPN or MF) in more than ten percent of the samples taken during any thirty-day period.

11. On September 13, 2001, Ohio EPA, Northeast District Office, also conducted sampling of the unnamed tributary of Sandy Creek at two locations: (1) at the bridge near the First Christian Church; and (2) at the mouth, upstream from Route 30. The results of the sampling event are as follows:

Location	Sampling Results (# per 100 ml)		Sampling Description
	Fecal Coliform	<i>E. Coli</i>	
First Christian Church Bridge	1,400	1,400	-
Unnamed Tributary Mouth	89,000	24,000	The water was turbid, but clear immediately upstream.

12. The results of the sampling events described above demonstrate a violation of the secondary contact recreation fecal coliform criteria and violations of the secondary contact recreation E. coli criteria set forth in OAC rule 3745-1-07, Table 7-13.
13. Respondent and Ohio EPA entered into Director's Final Findings and Orders dated March 26, 2002, that required Respondent to submit a general plan for sewage improvements or other methods of abating pollution and correcting the unsanitary conditions in the Village within twelve months of the effective date of the Orders.
14. On October 8, 2003, Respondent submitted the General Plan for Collection and Treatment of Sanitary Sewage ("General Plan") for abating pollution and correcting the unsanitary conditions within the Village. The General Plan included an option for the abatement of unsanitary conditions located within the Village of Hanoverton as well.
15. It is necessary for the protection of the health and welfare of the public that unauthorized discharges of raw or partially treated sewage to Sandy Creek and the unnamed tributary of Sandy Creek be abated.
16. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
17. 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 in 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 abate pollution and the unsanitary conditions within the Village as soon as possible, but not later than the dates established in the following compliance schedule:
 - a. As soon as possible, but not later than thirty-nine (39) months from the effective date of these Orders, Respondent shall submit to Ohio EPA detailed plans, an Antidegradation Addendum, a complete and approvable permit-to-install (PTI) application, and a complete and approvable individual National Pollutant Discharge Elimination System

(NPDES) permit application for the installation of sanitary sewers and wastewater treatment system for the purpose of abating pollution and unsanitary conditions within the Village as recommended in the October 8, 2003 General Plan.

- b. As soon as possible, but not later than forty-five (45) months from the effective date of these Orders, Respondent shall initiate construction on the approved sanitary sewer system and wastewater treatment system for the purpose of abating pollution and unsanitary conditions within the Village as recommended in the October 8, 2003 General Plan.
- c. As soon as possible, but not later than fifty-four (54) months from the effective date of these Orders, Respondent shall complete construction of the approved sanitary sewer system and wastewater treatment system for the purpose of abating pollution and unsanitary conditions within the Village as recommended in the October 8, 2003 General Plan.

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 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 defined in OAC rule 3745-33-03(D)(4) for a municipal, state, or other public facility.

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

Respondent's sewer system.

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. 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
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Enforcement Unit Supervisor

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

X. RESERVATION OF RIGHTS

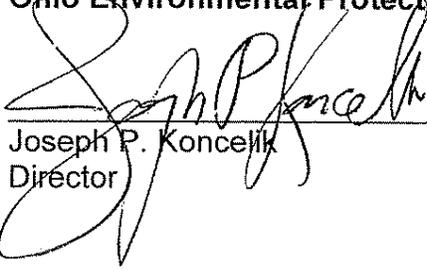
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance 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 Respondent to perform additional activities pursuant to ORC Chapter 6111 or any other applicable law in the future. Nothing herein shall restrict the right of 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 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.

XI. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency



Handwritten signature of Joseph P. Koncelik in black ink, written over a horizontal line.

Joseph P. Koncelik
Director

12-16-05
Date