

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

SEP 16 2005

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

City of Delaware	:	<u>Director's Final Findings and</u>
Department of Public Utilities	:	<u>Orders</u>
3080 US Route 23 North	:	
Delaware, Ohio 43015	:	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders (Orders) are issued to the City of Delaware, Department of Public Utilities (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 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 made the following findings:

1. Respondent is the permit applicant for a sewer extension serving the Glenross Club House development in the City of Delaware, Delaware County.
2. Ohio Administrative Code (OAC) Rule 3745-42-02(A)(1) provides that no person may cause, permit, or allow installation of a new disposal system without first

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: Janet Spicils Date 9-16-05

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obtaining a permit to install (PTI) or plan approval from the Director.

3. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any rule adopted by the Director pursuant to those sections, including OAC Rule 3745-42-02.
4. Respondent completed construction of an extension of the Southeast Highland Sanitary Sewer to serve the Glenross Club House on March 3, 2005.
5. PTI Application No. 01-11534, together with detailed plans for the installation of this sanitary sewer line to serve the Glenross Club House, were received at Ohio EPA Central District Office on April 11, 2005, after construction of the sewer extension had been completed.
6. The sanitary sewer extension proposed in the PTI Application No. 01-11534 is a "disposal system," as such term is defined in ORC § 6111.01 (G), and OAC Rule 3745-42-01(G).
7. On June 2, 2005, Ohio EPA conducted an inspection at the Glenross Club House. The inspection confirmed that the installation of the new sanitary sewer line had been completed prior to the approval of the plans and issuance of a PTI by Ohio EPA.
8. By letter dated June 6, 2005, Respondent was notified via mail that the sanitary sewer line installation was in violation of ORC Chapter 6111 and PTI regulations.
9. 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 purposes of ORC Chapter 6111.

**V. ORDERS**

1. Respondent shall not install or modify sewerage systems or treatment works for sewage disposal or disposal systems, including, but not limited to, sanitary sewer lines, at any location in Ohio without first receiving a permit to install or plan approval from the Director as required by OAC Rule 3745-42-02 and ORC § 6111.07(A). Respondent may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondent has maintained compliance with this Order for a period of three hundred and sixty five (365) days

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from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section VI. of these Orders. Termination of this Order does not relieve Respondent of its obligation to comply with all applicable laws and regulations, including but not limited to the requirement to obtain a PTI and/or plan approval prior to installation or modification of sewerage systems, treatment works, or disposal systems.

2. Respondent shall pay to the Ohio EPA the amount of one thousand dollars (\$1,000.00) in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the full amount within thirty (30) days of the effective date of these Orders, to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the project (Glenross Club House).

A photocopy of the check shall be sent to Ohio EPA Central District Office at the address below:

Ohio Environmental Protection Agency  
Central District Office  
3232 Alum Creek Drive  
Columbus, Ohio 43207  
Attn: Enforcement Supervisor, Division of Surface Water

## 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.

### **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 Glenross Club House project.

### **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 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. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI. of these Orders.

### **XI. 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

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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.

**XII. EFFECTIVE DATE**

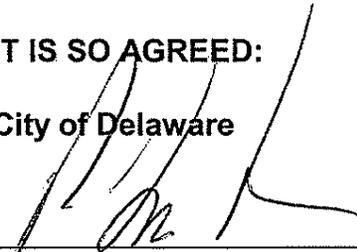
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

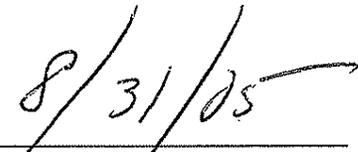
**XIII. SIGNATORY AUTHORITY**

Each undersigned representative or 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.

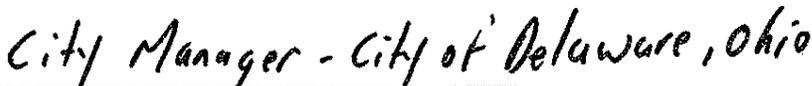
**IT IS SO AGREED:**

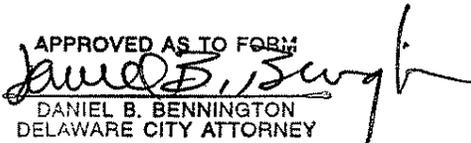
**City of Delaware**

  
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Signature

  
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Date

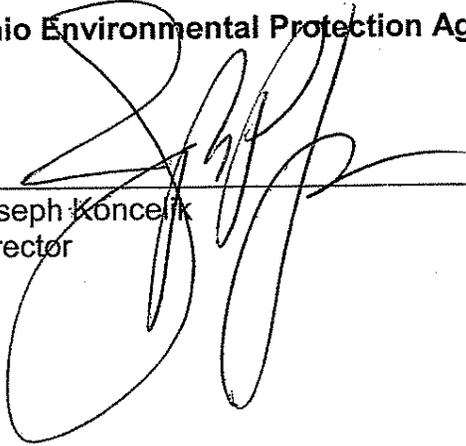
  
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Title

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
DANIEL B. BENNINGTON  
DELAWARE CITY ATTORNEY

**IT IS SO ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Joseph Koncek  
Director

Date

9/15/05