

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Guernsey County Board of Commissioners :
128 East Eighth Street, Suite 101 :
Cambridge, Ohio 43725 :

Respondent

Director's Final Findings
Orders

OHIO E.P.A.
JUL 28 2003
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Guernsey County Board of Commissioners ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03, 6117.34, and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its 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:

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: Danya Jack Date: 7/28/03

1. The communities of Buffalo and Derwent (hereafter, the Buffalo/Derwent Area), are unincorporated areas in Valley Township, Guernsey County, Ohio. The Buffalo area is generally bounded by: Vocational Road and Interstate 77 to the west, Superior Street to the north, Saltzburg Road and Cherry Hill Road to the east, and State Route 313 (a.k.a. Clay Pike) and Iroquois Avenue to the south. The Derwent area is generally bounded by: State Route 821 (a.k.a. Marietta Road) to the west, Chestnut Street, English Road and North Street to the north, Wills Creek and Township Roads 5205 and 5207 to the east and State Route 313 (a.k.a. Clay Pike) to the south. The Derwent area also includes Linwood Road south of State Route 313 (a.k.a. Clay Pike) to the east side of State Route 821 (a.k.a. Marietta Road).
2. Centralized wastewater treatment facilities are currently unavailable in the Buffalo/Derwent Area.
3. Many of the homes and commercial businesses located in the Buffalo/Derwent Area are served by failing on-site sewage disposal systems and home aerators that discharge raw or partially treated sewage to roadside ditches and culverts that ultimately discharge to unnamed tributaries of Wills Creek. These unnamed tributaries and Wills Creek are defined as "waters of the state" pursuant to ORC Section 6111.01.
4. Ohio EPA has received numerous citizen complaints regarding odor and health concerns due to inadequate sewage treatment in the Buffalo/Derwent Area. Both the Cambridge-Guernsey County General Health District and the Trustees of Valley Township have contacted Ohio EPA to voice concerns over this issue.
5. During numerous site visits to this area during August, September and October of 2002, Ohio EPA has observed evidence of unsanitary conditions including greyish/blackish water, algae, aquatic plants indicative of high nutrients, solids in streams, soap suds and odors.
6. Ohio EPA conducted sampling in the Buffalo/Derwent Area on September 25th, October 15th, and October 24th of 2002. These sampling events were conducted in accordance with OAC Rule 3745-1-04. Sampling results, which are attached hereto as "Exhibit 1", confirmed the existence of unsanitary conditions and violations of Ohio's general water quality criteria set forth in OAC Rule 3745-1-04 due to elevated levels of fecal coliform. Exhibit 1 is hereby incorporated into these Findings & Orders as if fully stated herein.
7. Ohio EPA received a letter from the Board of Health for the Cambridge-Guernsey General Health District ("Board of Health") dated December 4, 2002,

in which the Board made a formal complaint regarding the unsanitary conditions in the Buffalo/Derwent Area. A copy of this letter is attached hereto as "Exhibit 2". Exhibit 2 is hereby incorporated into these Findings & Orders as if fully stated herein.

8. Pursuant to ORC Section 6117.34, whenever the board of health of a general health district makes complaint, in writing, to the Ohio Environmental Protection Agency that unsanitary conditions exist in any county, the Director forthwith shall inquire into and investigate the conditions complained of.
9. Pursuant to ORC Section 6117.34, if, upon investigation of the complaint, the Director finds that it is necessary for the public health and welfare that sanitary or drainage facilities be acquired or constructed, maintained, and operated to serve any territory outside municipal corporations in any county, the Director shall notify the board of county commissioners of the county of that finding and order that corrective action be taken. The board shall obey the order.
10. Small lot sizes, in conjunction with local soil conditions and local hydrology make the installation of replacement or repair of existing on-site sewage disposal systems an unacceptable solution to remedy the unsanitary conditions.
11. Based on the observed conditions and sampling results in the Buffalo/Derwent Area, it is necessary for the public health and welfare that sewer improvements or sewerage treatment or disposal works be constructed, maintained, and operated to service the Buffalo/Derwent Area.
12. A general plan was received from GGC Engineers on behalf of the Guernsey County Commissioners on December 20, 2001. The general plan recommends construction of gravity sanitary sewers with treatment at the Village of Pleasant City's wastewater treatment plant to eliminate the unsanitary conditions in the unincorporated areas of Buffalo and Derwent.

V. ORDERS

1. Respondent shall construct sewers in the Buffalo/Derwent Area as expeditiously as practicable, but not later than the dates contained in the following schedule:
 - a. Within ninety (90) days of the effective date of these Orders, submit a complete PTI application and approvable detail plans for the construction of sewers in the Buffalo/Derwent Area.

- b. Within thirty (30) days of issuance of the PTI, Respondent shall make application for any additional funding necessary to complete construction in accordance with the approved PTI in Order No. 1(a). Until such time as funding is secured, Respondent shall submit monthly status reports to Ohio EPA detailing actions, both completed and anticipated, towards obtaining funding, the status of pending application(s), and anticipated date(s) of award;
 - c. Within thirty (30) days of obtaining additional funding referenced in Order No. 1(b) or within twelve (12) months of the completion of construction of the wastewater treatment plant for the Village of Pleasant City, whichever is sooner, Respondent shall issue a bid package for the construction in accordance with the approved PTI;
 - d. Within sixty (60) days of receipt of the bid package, Respondent shall select a contractor for construction;
 - e. Within sixty (60) days of selecting a construction contractor, Respondent shall commence construction in accordance with Respondent's approved PTI; and
 - f. Complete construction as soon as possible but not later than eighteen (18) months of commencing construction.
2. Respondent shall exercise all authority under ORC Section 6117.51 to compel all homes and businesses in the Buffalo/Derwent Area to connect sewage flows to the public sanitary sewer and cease use of currently existing sewage disposal systems.
 3. Within fourteen (14) days of completing the requirements in Orders 1b, 1c, 1d, 1e, and 1f, Respondent shall notify Ohio EPA in writing of the completion of each Order.
 4. All documents required under these Orders, unless specified otherwise, shall be submitted to:

Ohio EPA Southeast District Office
ATTN: DSW Enforcement Group Leader
2195 Front Street
Logan, OH 43138

VI. UNAVOIDABLE DELAYS

Respondent shall cause all work to be performed in accordance with applicable schedules and time frames unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondent which prevents or delays performance of any obligation required by these Orders and which could not be overcome by due diligence on the part of Respondent. Increased cost of compliance shall not be considered an event beyond the control of Respondent.

Respondent shall notify Ohio EPA in writing within five (5) days after the occurrence of an event which Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable under which these measures will be implemented. Respondent shall have the burden of demonstrating that the event constitutes unavoidable delay.

If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondent in writing. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify Respondent in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

VII. 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)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole

proprietorship, and OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility.

VIII. 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 site.

IX. 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.

X. 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.

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.

Guernsey County—Buffalo and Derwent

The following sites had two passes of samples collected within a 30 day period for fecal coliform. The following results were noted.

Site Description	9/25/02	10/15/02
Ditch on South side of SR 313 in Derwent	47,000	60,000
Ditch along west side of Linwood Rd. just off SR 313	7,000	4,600
Culvert at corner of Elm St. and SR 313	60,000	60,000
Ditch at SR 313/I-77 ramp-north side of road	60,000	91,000 *
Ditch at west end of McKinley Ave.	60,000	38,000 *
Culvert along Jerusalem Ave. near Barberry St.	60,000	60,000
Ditch along Iroquois St./Barberry St.	5,800	60,000 *
Stream under Lincoln St. between lot # 136 & lot # 137	46,000	60,000 *

*These samples were collected on 10/24/02 due to elevated flows on 10/15/02.

Unnamed trib. To Wills Creek @ SR 821 in Derwent

Parameter	units	September 25, 2002	October 15, 2002
BOD ₅	mg/l	78	120
Ammonia	mg/l	33.9	25.4
Fecal coliform	#/ 100 ml	28,000	60,000
Nitrate-nitrite	mg/l	<0.10	<0.10
Conductivity	umhos/cm	1760	1580
Dissolved oxygen	mg/l	1.10	0.82
pH	S.U.	7.87	7.49
Temperature	°C	16.55	12.04



CAMBRIDGE-GUERNSEY COUNTY HEALTH DEPARTMENT

A Combined General Health District

"ESTABLISHED - 1950"

Janice Schram-Wayne, D.O.
Health Commissioner

326 Highland Avenue
Cambridge, Ohio 43725
740/439-3577
Fax 740/432-7463

December 4, 2002

Exhibit 2

Jennifer Witte
Ohio EPA Southeast District Office
2195 Front Street
Logan, Ohio 43138

Dear Ms. Witte:

The Guernsey County Board of Health hereby acknowledges on-lot and off-lot sewage problems in the villages of Derwent and Buffalo. Small lot sizes and inadequate or no sewage systems permit raw sewage to discharge into ditches and waterways located in both villages.

Inadequate treatment and off-lot discharge increase mosquito breeding sites and represent an increased health risk to the residents of both communities.

The Board of Health would like to file a formal complaint regarding the above referenced areas.

Voting Aye Thereon:

William J. Blach

Lena Trebas

Nellie L. Bickman

[Signature]

Janice Schram-Wayne
Health Commissioner