

Village of Helena

Director's Final Findings and Orders

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4. On October 16, 2003, Ohio EPA met with Respondent regarding a proposed wastewater treatment plant ("WWTP") to serve the Village. At the meeting, it was agreed that stream flow data was to be submitted to Ohio EPA regarding the proposed WWTP discharge location.
5. An investigation into unsanitary conditions in the Village was conducted during the summer of 2004.
6. During the 2004 inspection, Ohio EPA representatives observed that storm sewer effluent had a grey to black color and distinctive "rotten egg" odor due to anaerobic decomposition of organic matter and resulting hydrogen sulfide emissions. Substrates in the mixing zones were covered with sludge and growths of bacteria.
7. Surface water samples, with the results set forth below, were collected:

Location	Date	Time	Fecal Coliform cfu/100ml
Ditch adjacent to U.S. Rt 6 (North Side of the Village)	09/23/04	1245 hrs	>200,000
	09/27/04	1035 hrs	71,000
Ditch adjacent to Church Street and the railroad tracts (South Side of the Village)	09/23/04	1300 hrs	>200,000
	09/27/04	1040 hrs	96,000

8. On January 3, 2007, Ohio EPA performed a reconnaissance of the sampling sites and observed that the unsanitary conditions were not abated. At the U.S. Rt. 6 ditch, sludge accumulation was observed. At the ditch adjacent to Church Street and the railroad tracts, septic odor and filamentous sludge growth were observed.
9. OAC Rule 3745-1-04(F) provides that it is a general Ohio water quality criteria, applicable to all surface waters of the state, that, to every extent practical and possible as determined by the Director, surface waters shall be free from public health nuisances associated with raw or poorly treated sewage.
10. A public health nuisance shall be deemed to exist when an inspection conducted by, or under the supervision of, Ohio EPA or a sanitarian registered under ORC Chapter 4736. documents odor, color and/or other visual manifestations of raw or poorly treated sewage; and, in pertinent part, water samples exceed five thousand fecal coliform counts per one hundred milliliters (either MPN [most probable number] or MF [membrane filter]) in two or more samples when five or fewer samples are collected, or in more than twenty per cent of the samples when more than five samples are taken.

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11. The Ohio EPA inspection and sampling results confirmed the existence of unsanitary conditions, documented violations of Ohio's general water quality criteria set forth in OAC Rule 3745-1-04, and demonstrated a public health nuisance in accordance with OAC Rule 3745-1-04.
12. Small lot sizes, in conjunction with local soil conditions and local hydrology, make the replacement or repair of existing on-site sewage disposal systems an unacceptable solution to remedy the unsanitary conditions.
13. It is necessary for the public health and welfare that sewer improvements or sewage treatment or disposal works be constructed, maintained, and operated to serve the Village.
14. Pursuant to ORC § 6111.03(H), the Director may issue, modify, or revoke orders to prevent, control, or abate water pollution by such means as requiring the construction of new disposal systems or any parts thereof, or the modification, extension, or alteration of existing disposal systems or any parts thereof.
15. The following Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Any such construction or modification is subject to the permit to install and plan approval requirements of ORC §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.
16. Compliance with ORC Chapter 6111 is not contingent upon the availability of financial assurance.
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 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. Within twenty-four (24) months after the effective date of these Orders, Respondent shall submit to Ohio EPA a complete permit-to-install ("PTI") application and approvable detailed plans, stamped by a professional engineer licensed to practice in the state of Ohio, for the construction of a sewerage system and/or treatment works to serve the Village, to abate the unsanitary conditions.
2. Respondent shall respond, in writing, to any questions or comments Ohio EPA may have on the PTI and detailed plans submitted under Order No. 1, within thirty (30) days of the date on the correspondence from Ohio EPA.

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3. Within eighteen (18) months after the receipt of a PTI approved by the Director of Ohio EPA (Respondent may request a twelve (12) month extension under OAC Rule 3745-42-02(D)(3)), Respondent shall initiate construction of the sewerage system and/or treatment works in accordance with the approved PTI.
4. Within forty-eight (48) months after the receipt of a PTI approved by the Director of Ohio EPA, Respondent shall complete the construction of the sewerage system and/or treatment works in accordance with the approved PTI, and achieve compliance with ORC Chapter 6111.
5. Respondent shall exercise all authority under ORC § 6117.51 to compel all premises in the Village to connect sewage flows to the sewerage system and/or treatment works and cease use of existing sewage disposal systems.
6. Within fourteen (14) days of completing the requirement in Order No. 3 and Order No. 4, Respondent shall provide notice, in writing, to the Ohio EPA of the completion of the Order. Notice shall be sent to the address in Section X of these Orders.
7. Upon request by Respondent and good cause shown, the Director may, at his sole discretion, extend in writing any time periods established by these Orders.

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 as 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 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

Unless otherwise stated herein, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Surface Water
Attn: DSW Enforcement Unit Supervisor
347 North Dunbridge Road
Bowling Green, Ohio 43402

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

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MAR 12 2007

OHIO E.P.A.
N.W.D.O.

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**

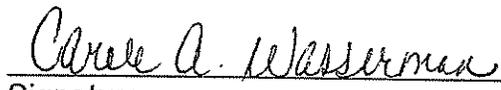


Director

4/4/07

Date

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



Signature

Mar. 9, 2007

Date

CAROLE A. WASSERMAN

Printed or Typed Name

MAYOR

Title