

OHIO E.P.A.

BEFORE THE

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SEP 30 2004

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

**In the Matter of:**

**Highland County Board of Commissioners  
114 Governor Foraker Place  
Hillsboro, OH 45133**

**Director's Final Findings  
and Orders**

**Respondent**

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to the Highland 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, 3745.01, and 3745.08.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in Respondent or change in ownership or operation of the Facility shall in any way alter Respondent's obligations under these Orders.

**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 Respondent owns and operates the Rocky Fork Lake Wastewater Treatment Plant ("Plant") and associated sewage collection system, serving the north shore of Rocky Fork Lake, Highland County, Ohio.
2. The sewage collection system includes a pump station known as the North Shore Pump Station ("Facility" or "NSPS"), located on North Shore Drive, Hillsboro, Ohio.

*Copy this to be a true and correct copy of the official document as filed in the records of the Ohio Environmental Protection Agency.*

*By: [Signature] Date: 9-30-04*

3. The Plant discharges into waters of the state pursuant to Ohio National Pollutant Discharge Elimination System Permit No. 1PS00015\*AD, ("NPDES permit"), with an expiration date of April 30, 2003. A renewal permit (No. 1PS00015\*CD) has been issued. The NPDES permit does not authorize a discharge to waters of the state from NSPS.
4. NPDES permit condition Part III. 12.A, requires that Respondent shall by telephone report the following within 24 hours of discovery: (1) any noncompliance which may endanger health or the environment; (2) any unanticipated bypass which exceeds any effluent limitation in the permit; or (3) any upset which exceeds any effluent limitation in the permit.
5. NPDES permit condition Part III. 12.C requires that said telephone reports shall be confirmed in writing within five days of the discharge.
6. The Ohio EPA received verified complaint No. VC0309W01, filed by the Save the Lake Association, on September 15, 2003, alleging a September 8, 2003 release of untreated sewage from NSPS. The verified complaint further alleged, without documentation, that the overflow of untreated effluent from the Plant is creating a public health nuisance according to Ohio Administrative Code Rule 3745-1-04(F).
7. Pursuant to ORC § 3745.08, upon receipt of a verified complaint, the Director shall cause a prompt investigation to be conducted such as is reasonably necessary to determine whether a violation, as alleged, has occurred, is occurring, or will occur.
8. Ohio EPA inspected the Plant on September 11, 2003 and NSPS on September 17, 2003, and performed a file review of the spills associated with NSPS, to determine whether violations, as alleged, have occurred, are occurring, or will occur.
9. There was no evidence observed during the two inspections identified above to indicate a public health nuisance.
10. NSPS is equipped with dual pumps, each capable of pumping the entire flow. There is a red light visible alarm and dial up telemetry, with the alarm to be triggered whenever there is a power outage, high level or seal failure in the pumps. There is no standby power source, although Respondent has a portable generator which can be used at NSPS if needed.

11. Respondent has reported four NSPS spills, as indicated below:

<i>Date &amp; Time</i>	<i>Estimated Volume (gallons)</i>	<i>Cause</i>	<i>Time / Date Reported</i>
05/16/01 1:00 a.m.	<1000	Storm related power surge; tripped breakers and disabled the dialer.	05/21/01 (letter).
06/13/01 1:00 a.m.	5000-6000	Lightning strike; tripped breakers and disabled the dialer.	Citizen called on 06/13/01 at 9:10 a.m.  Operator faxed report to Ohio EPA on 06/14/01 at 9:10 a.m.
01/12/03 12:30 p.m.	500-1000	Power cycling; tripped breakers.	01/13/03 12:59 a.m. by phone.  01/14/03 by fax.
09/08/03	<500	Breakers tripped.	10/03/03 by e-mail.

12. As detailed in Finding No. 11, above, Respondent has complied with the notification requirements set forth in the NPDES permit for the 01/12/03 spill; partially complied regarding the 05/16/01 and 06/13/01 spills; and failed to comply regarding the 09/08/03 spill.
13. Regarding the 09/08/03 spill, NSPS plant operator received a complaint from a NSPS neighbor between 4:30 and 5:00 p.m., on September 8, 2003. A second operator was contacted by NSPS dial up telemetry system. The plant operator returned NSPS to on-line status between 5:30 and 6:00 p.m., on September 8, 2003. As a result of the spill, untreated sewage entered waters of the state, as that term is defined in ORC § 6111.01.
14. Noncompliance with a NPDES permit condition is a violation of ORC § 6111.07.
15. The overflow from NSPS constitutes a discharge to waters of the state without a valid NPDES permit, which is a violation of ORC 6111.04
16. Each day of the violations cited above represents a separate violation of ORC § 6111.07.

17. At the time of the inspections, NSPS spills could be expected to recur because of the absence of a standby power source to take over during power interruptions, or a standby system to operate the pumps. The hydraulic retention time of the pump station at design flow is 5.1 minutes. At present flow that retention time is approximately 13 minutes, an insufficient amount of time for staff to respond to alarm conditions and reset breakers in time to avoid spill.

18. ORC § 3745.08 provides that if upon completion of the investigation, the Director determines that a violation, as alleged, has occurred, is occurring, or will occur, he may enter such order as may be necessary.

ORC § 3745.08 requires that the verified complaint investigation include a discussion of the complaint with the alleged violator.

20. On April 6, 2004, Ohio EPA meet with representatives of Respondent to discuss the complaint and seek resolution of the violations described above. At that meeting Ohio EPA was informed that Respondent awarded a bid for a RFL Pump Station Diesel portable pump to be used in the event of power outages at NSPS, and has satisfactorily addressed the problem associated with spill notification to Ohio EPA.

On June 23, 2004, Respondent notified Ohio EPA that the RFL Pump Station Diesel portable pump was received on May 19, 2004, and the installation at NSPS is complete and the pump operational.

22. ORC § 3745.08 provides that if the Director enters an order pursuant to ORC § 3745.08(B) without having commenced a hearing, the Director or his delegate, prior to entry of the order, shall provide an opportunity to the complainant and the alleged violator to attend a conference with the Director or his delegate concerning the alleged violation.

The opportunity to attend the conference referred to in Finding No. 21, above, has been provided to the complainant and Respondent.

24. These Orders do not alter or modify Respondent's NPDES permit or any permit to install issued to, or application submitted by, Respondent.

25. These Orders do not constitute authorization of, or approval for, the construction or modification of any physical structure or facilities. Any such construction or modification is subject to the permit to install requirements of ORC Chapter 6111. and the administrative rules adopted thereunder.

26. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.

27. The Director has given consideration to and based his determination on evidence relating to the technical feasibility and the economic reasonableness of complying with these Orders, 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 purpose of RC Chapter 6111.

## V. ORDERS

1. Respondent shall pay Ohio EPA the amount of three thousand seven hundred twenty-six dollars (\$3,726.00), in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Respondent may satisfy this requirement by:

- a. Payment within thirty (30) days of the effective date of these Orders via official check made payable to "Treasurer, State of Ohio" for the above amount. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the site of the spill. A copy of this check and letter shall be submitted to the Ohio EPA, Southwest District Office; or
- b. Submission to Ohio EPA within thirty (30) days of the effective date of these Orders of a written commitment to pursue and fully complete **one** of the following supplemental environmental projects ("SEP"):

Demonstration and/or associate projects with the Highland County Soil and Water Conservation District: Respondent shall provide funding for a "Soil Tunnel" which is a demonstration tent that enables children/students to actually walk "under the soil" and learn about soils, soil structure, drainage etc., and/or other educational projects, which funding shall be of at least \$3,726.00, which money shall be in addition to any other funding provided to the Highland County Soil and Water Conservation District by Respondent.

- ii. Rocky Fork Creek watershed: Respondent shall provide funding for a SEP to be located in said watershed. To receive SEP credit, Respondent shall submit to Ohio EPA, for approval, within the time period established in Order 1.b., above, a SEP project that will restore or improve water quality within the Rocky Fork Creek watershed. Approvable SEP projects may include the purchasing of conservation easements for riparian areas that are threatened by future development or restorative activities on stream segments that have been impacted by development. The funding for said SEP shall be of at least \$3,726.00.

2. Should Respondent chose to pursue the SEP option, within thirty (30) days after completion of the SEP committed to as outlined in Order No. 1.b., above, Respondent shall submit documentation confirming timely and full completion of the SEP to Ohio EPA, together with a certification of the actual cost of performing the SEP.
3. Should Respondent chose to pursue the SEP option and fail to complete, on or before the required time frame, the SEP committed to as outlined in Order No. 1.b., above, Respondent shall pay to Ohio EPA the \$3,726.00 civil penalty set forth in Order No.1. above, within thirty (30) days of receipt of written confirmation from Ohio EPA..
4. All documents required under these Orders, unless specified otherwise, shall be submitted to:

Ohio Environmental Protection Agency  
Southwest District Office  
401 E. Fifth Street,  
Dayton, Ohio 45402-2911  
Attn: DSW Enforcement Group Leader

## **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 defined in OAC Rule3745-33-03(D).

## **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. 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 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.

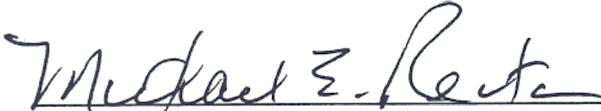
### **XII. EFFECTIVE DATE**

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 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 AGREED:**  
**Highland County Board of Commissioners**

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
08-18-04  
Date

\_\_\_\_\_  
Michael E. Rector  
Printed or Typed Name

\_\_\_\_\_  
President, Board of Commissioners  
Title

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
08-18-04  
Date

\_\_\_\_\_  
Rich Graves  
Printed or Typed Name

\_\_\_\_\_  
V. President  
Title

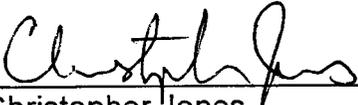
  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
08-18-04  
Date

\_\_\_\_\_  
Russell L. Newman  
Printed or Typed Name

\_\_\_\_\_  
Member  
Title

**IT IS SO ORDERED AND AGREED:  
Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Christopher Jones  
Director

9-27-04  
Date