

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.

Danya Jackson Date 3/31/04

OHIO E.P.A.

MAR 31 2004

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Village of Morristown  
P.O. Box 80  
Morristown, Ohio 43759

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Director's Final Findings and  
Orders

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders (Orders) are issued to the Village of Morristown (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 its successors in interest liable under Ohio law. No change in Respondent 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 is the Village of Morristown (Morristown) located in Belmont County, Ohio.
2. Respondent is serviced by non-existing and malfunctioning residential and commercial sewage systems.
3. Morristown is an incorporated area of approximately 300 residents in 116 homes.
4. Centralized wastewater treatment facilities are currently unavailable in Morristown.

5. The homes located in Morristown are served by failing on-site or aeration sewage disposal systems that discharge raw or partially treated sewage to roadside ditches and/ or storm drains and/ or storm sewers (hereinafter, drainage systems). The drainage systems discharge directly to McMahan Creek, which is defined as a "water of the state" pursuant to ORC § 6111.01.
6. Investigations and sampling events conducted by Ohio EPA, Division of Surface Water (DSW) on July 1, 1992, October 9, 2001, November 1, 2001, and March 10, 2004 revealed evidence of sewage and unsanitary conditions.
7. Ohio EPA, DSW sampling results from July 1, 1992, October 9, 2001, and November 1, 2001 for fecal coliform confirmed the existence of unsanitary conditions and documented violations of Ohio's general water quality criteria set forth by Ohio Administrative Code (OAC) Rule 3745-1-04.
8. The Ohio EPA, DSW site inspection performed on March 10, 2004 confirmed the continued presence of sewage issues in Morristown. Photographs taken during the inspection evidence the ongoing problem of foam flowing in storm sewers, as well as the presence of sewage in pools between houses, at a storm sewer clay tile outlet, and in McMahan Creek.
9. On December 31, 2001, Ohio EPA, DSW sent a facsimile to Hammontree & Associates, Ltd. (Hammontree), Morristown's consultant, reiterating the importance of sewerage the Morristown area.
10. On February 26, 2002, Ohio EPA, DSW received a letter from Hammontree providing an update on the design and funding of the Morristown wastewater collection system.
11. On October 31, 2002, Ohio EPA, DSW sent an inspection letter to Mayor Todd Graham outlining the results of the sampling events in October 9, 2001 and November 2001.
12. The sampling data collected by Ohio EPA, DSW on October 9, 2001 and November 1, 2001, demonstrates a public health nuisance in accordance with OAC Rule 3745-1-04.
13. On July 14, 2003, Ohio EPA, Division of Environmental and Financial Assistance (DEFA) met with Morristown and Hammontree to discuss funding issues.
14. On November 24, 2003, Ohio EPA, DEFA received a Permit to Install (PTI) application from Morristown for the installation of sanitary sewers to connect to the county sewer system.
15. 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 in Morristown.

16. 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 Morristown.
17. Discharge of pollutants to waters of the state without a National Pollutant Discharge Elimination (NPDES) Permit is a violation of ORC §§ 6111.04 and 6111.07.
18. Compliance with the ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.
19. 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 eight (8) months of the issuance of a PTI by the Director, Respondent shall initiate construction of the sewage system in accordance with the PTI.
2. On or before December 31, 2005, Respondent shall complete the sewage system installation in accordance with the PTI, shall eliminate all unpermitted discharges to waters of the state, and shall achieve compliance with Ohio's water pollution control laws.
3. Within fourteen (14) days of finishing the requirements in Order Nos. 1 and 2, Respondent shall submit written verification to Ohio EPA, DSW of the completion of each Order.

#### **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 Chief of Ohio EPA's DSW, 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.

This 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 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 in Morristown.

#### **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. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

#### **X. NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Southeast District Office, Division of Surface Water  
2195 Front Street  
Logan, Ohio 43138  
Attn: Enforcement Unit Supervisor

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

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations of these Orders. Ohio EPA and Respondent each reserve all other 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 those violations specifically cited

in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek civil or administrative penalties against Respondent for violations of these Orders, which right Ohio EPA does not waive, 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.

### **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 AGREED:**  
Village of Morristown

Robert H. Thomas  
By

3-24-04  
Date

Robert H. Thomas Mayor  
Printed Name and Title

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

Christopher Jones  
Christopher Jones  
Director

3-30-04  
Date