

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

NOV 30 2004

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Noble County Board of Commissioners
Room 210
Courthouse
Caldwell, Ohio 43724

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 Noble 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") §§ 6117.34 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in the composition of 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. The residential communities located in the following areas: (a) portions of Noble Township, Sections 20, 28, 29, and 33, which include the unincorporated subdivisions known as Parks Heights (and/or Slater's Addition), Florence, Maple Heights, and Terrace Addition; and (b) portions of Olive Township, Sections 3, 4, and 10, which include the unincorporated subdivisions known as Bronze Height and South Acres, are hereinafter referred to as "unincorporated communities." The boundary of the unincorporated communities is set forth in Attachment A; a map is set forth in Attachment B. Attachments A & B are attached hereto and incorporated herein, as if fully written within.

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

Donna Jackson 11-30-04

2. Centralized wastewater treatment facilities are currently unavailable to the unincorporated communities.
3. The unincorporated communities are served by inadequate or 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, (referred to as "drainage systems"). The drainage systems discharge directly to unnamed tributaries to the West Fork of Duck Creek, which are defined as "waters of the state" pursuant to ORC § 6111.01.
4. Ohio EPA sampling results from April 3, 2002 and April 9, 2002, for fecal coliform and E. Coli bacteria 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. The sampling results are set forth in Attachment C, which is attached hereto and incorporated herein, as if fully written within.
5. On May 10, 2004, the Board of Health of the Noble County General Health District ("Health District"), by letter to the Director of Ohio EPA, issued a written complaint under ORC § 6117.34, alleging that unsanitary conditions exist in the unincorporated communities due to untreated sanitary sewage discharges. Said letter is set forth in Attachment D, which is attached hereto and incorporated herein, as if fully written within.
6. Pursuant to ORC § 6117.34, whenever the board of health of a general health district makes a complaint in writing to Ohio EPA that unsanitary conditions exist in any county, the Director forthwith shall inquire into and investigate the conditions complained of in said complaint.
7. On June 23, 2004, Ohio EPA conducted a follow up investigation of the conditions alleged in the Health District's ORC § 6117.34 complaint. The investigation determined that the unsanitary conditions observed and documented on April 3, 2002 and April 9, 2002, continued to exist. Ohio EPA staff observed conditions indicative of untreated sewage in the drainage systems and unnamed tributary to the West Fork of Duck Creek, with odors of untreated sewage evident.
8. The sampling data and subsequent investigation by Ohio EPA 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.

9. 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.
10. Pursuant to ORC § 6111.34, if, upon investigation of the complaint, the Director finds that it is necessary to 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.
11. It is necessary for the public health and welfare that sewer improvements or sewage treatment or disposal works be constructed, maintained, and operated to service the unincorporated communities.
12. 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 (PTI) requirement of ORC §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.

V. ORDERS

1. Within twenty-four (24) months after the effective date of these Orders, Respondent shall submit a complete PTI application, approvable detailed plans, and if necessary and required, an Antidegradation Addendum and a National Pollutant Discharge Elimination System permit application, to sewer the unincorporated communities. The PTI application shall define several phases of the project, with each phase having a specific date for starting and completing construction.
2. Within twenty-four (24) months after the effective date of these Orders, Respondent shall submit a summary report that includes a copy of the financial mechanisms to be used to fund the required improvements, operation and maintenance, and replacement costs, as well as an implementation schedule for awarding bids, starting and completing construction, and all other significant milestones.
3. Within twelve (12) months after the receipt of an approved PTI, Respondent shall initiate construction of the sewage system in accordance with the approved PTI.
4. Within thirty (30) months after the receipt of an approved PTI, Respondent shall complete the sewage system installation in accordance with the approved PTI and achieve compliance with Ohio's water pollution control laws.

5. Respondent shall exercise all authority under ORC § 6117.51 to compel all premises in the unincorporated communities to connect sewage flows to the public sanitary sewer and cease use of existing sewage disposal systems.
6. Within fourteen (14) days of completing the requirements in Orders 3 and 4, Respondent shall notify, in writing, Ohio EPA, Southeast District Office, at the following address, of the completion of each Order:

Ohio EPA
Southeast District Office
2195 Front Street
Logan, OH 43138
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 Rule 3745-33-03(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:
Noble County Board of Commissioners**

Walt McKee
Signature

11-8-04
Date

WALT MCKEE
Printed or Typed Name

PPRS. COMMISSIONER
Title

Danny Harmon
Signature

11-8-04
Date

DANNY HARMON
Printed or Typed Name

COMMISSIONER
Title

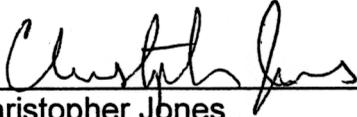
Charles E Cowgill
Signature

11-8-04
Date

Charles E Cowgill
Printed or Typed Name

Commissioner
Title

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



Christopher Jones
Director

11-26-04
Date