

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY OHIO E.P.A.

JAN 27 2012

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Perry County Board of Commissioners  
121 W. Brown Street  
New Lexington, OH 43764

**Director's Final Findings  
and Orders**

Respondent

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

**PREAMBLE**

It is agreed by the parties hereto as follows:

By: Danya Kossler Date: 1/27/12

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to the Perry 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 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 adopted thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

***Background***

1. The areas of Rehoboth, Old Rainer Road, and Moore's Junction<sup>1</sup> are unincorporated areas within Perry County. (See Attachment 1.)
2. The Rehoboth area consists of approximately 30 homes located along State Route 345 and two alleys, with the discharges flowing into Rush Creek.

<sup>1</sup>Moore's Junction is sometimes known as "6 Mile Turn."

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3. The Old Rainer Road area consists of approximately 25 homes, nearly all located along Old Rainer Road, with the discharges flowing to an unnamed tributary of Moxahala Creek.
4. The Moore's Junction area consists of approximately 50 homes and a few businesses, located along east / west State Routes 13/37/93, at the intersection with north / south State Routes 93/13, with the discharges flowing to an unnamed tributary of Moxahala Creek.
5. Many of the homes in the Rehoboth, Old Rainer Road, and Moore's Junction areas are served by inadequate or failing on-site sewage disposal systems which discharge untreated or partially treated sewage into waters of the state (Rush Creek and unnamed tributary of Moxahala Creek), as identified above.
6. Many of the homes in the Rehoboth, Old Rainer Road, and Moore's Junction areas are situated on lots which are too small to either install properly operating on-site sewage disposal systems or to properly modify existing systems.

**ORC § 6117.34**

7. Pursuant to ORC § 6117.34, whenever the board of health of a general health district makes complaint in writing to Ohio EPA that unsanitary conditions exist in any county, the Director shall inquire into and investigate the conditions complained of. If, upon investigation of the complaint the Director finds that it is necessary for the public health and welfare that sanitary or drainage facilities or prevention or replacement 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 commissioners shall obey the order.
8. On June 27, 2007, pursuant to ORC § 6117.34, the Perry County Health Department transmitted to the Director written complaints of unsanitary conditions in the Rehoboth and Old Rainer Road areas, and requested that the Director investigate and take all steps necessary to eliminate the unsanitary conditions.

**ORC 6111.03(H)**

9. ORC § 6111.03(H), in pertinent part, provides that the Director may issue orders to prevent, control, or abate water pollution by such means as:
  - a. Prohibiting or abating discharges of sewage, industrial waste, or other wastes into the waters of the state; and

- b. 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.

***Sampling***

- 10. Ohio Administrative Code ("OAC") Rule 3745-1-04(F) provides that it is 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.
- 11. A public health nuisance is deemed to exist when an inspection documents odor, color and/or other visual manifestations of raw or poorly treated sewage; and
  - a. 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; or
  - b. Water samples exceed five hundred seventy-six E. coli counts per one hundred milliliters 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.
- 12. On September 4 and 16, 2008, Ohio EPA performed sampling in the Rehoboth area, with the following results and observations:

<b><i>Location**</i></b>	<b><i>Date</i></b>	<b><i>E. coli*</i></b>	<b><i>Fecal Coliform*</i></b>	<b><i>Field Observations</i></b>
State Route 345, at the stream crossing at the south end of the area (Site 7)	9/4	<10	<10	
	9/16	<10	<10	
First side street on the left of SR 345 heading north ((Site 6)	9/4	80,000	60,000	Grey water with sewage odor
	9/16	74,000	60,000	Grey water with heavy sewage odor

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\* (#cfu/100mls) Bacteria quantities are generally reported as colonies or colony forming units (cfu) per 100 milliliters (ml) of sample.

\*\*Attachment 2 is a map of the Rehoboth area sampling locations.

- 13. Site 7 is upstream, site 6 is downstream, of the Rehoboth area.
- 14. In September, 2008, Ohio EPA performed sampling in the Old Rainer Road area, with the following results and observations:

<i>Location**</i>	<i>Date</i>	<i>E. coli*</i>	<i>Fecal Coliform*</i>	<i>Field Observations</i>
Watt Hall Road bridge (Site No. 10)	9/4	50	60	
	9/9	220	240	
	9/16	20	60	
Old Rainer Road eastern most stream crossing between blue trailer and house 10012 (Site No. 12)	9/4	<10	20	
	9/9	<10	60	
	9/16	20	80	
Old Rainer Road stream crossing between houses 12222 and 12250 (Site No. 9)	9/4	1,100	1500	very gray water
	9/9	700	700	
	9/16	1,000	1,500	grey water with sight sewage odor
Old Rainer Road, road side ditch (Site No. 11)	9/4	30	30	
	9/9	20	180	

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	9/16	10	90	heavy algae with slight sewage odor
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Old Rainer Road western most stream crossing between houses 12042 and 12043 (Site No. 8)	9/4	<10	20	
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	9/16	10	10	slight algae
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\* (#cfu/100mls) Bacteria quantities are generally reported as colonies or colony forming units (cfu) per 100 milliliters (ml) of sample.

\*\*Attachment 3 is a map of the Old Rainer Road area sampling locations.

15. Site 9 is downstream of the Old Rainer Road area.
16. In September, 2008, Ohio EPA performed sampling in the Moore's Junction area, with the following results and observations:

<b>Location**</b>	<b>Date</b>	<b>E. coli*</b>	<b>Fecal Coliform*</b>	<b>Field Observations</b>
State Routes 13/37/93 west, road side ditch in front of Wolf Auto (Site No. 14)	9/4	2,500	25,000	sewage odor
	9/9	16,000	33,000	
	9/16	9,200	140,000	sewage odor
State Routes 13/37/93 west, road side ditch near house 11227 (Site No. 15)	9/4	<10	110	grey water with sewage odor
	9/9	26,000	60,000	
	9/16	2,700	110,000	grey water with sewage odor
Drainage grate at Sunoco lot on State Route 13 east (Site No. 13)	9/4	<10	30	

<i>Location**</i>	<i>Date</i>	<i>E. coli*</i>	<i>Fecal Coliform*</i>	<i>Field Observations</i>
	9/9	150	10,000	
	9/16	470	8,300	
State Route 13 south of Six Mile Turn at stream crossing (Site No.16)	9/4	<10	40	
	9/16	10	40	

\* (#cfu/100mls) Bacteria quantities are generally reported as colonies or colony forming units (cfu) per 100 milliliters (ml) of sample.

\*\*Attachment 4 is a map of the Moore's Junction sampling locations.

- 17. Site 16 is upstream of the area.

**Sampling Analyzed**

- 18. The sampling was conducted by, or under the supervision of, Ohio EPA, with the data demonstrating that:
  - a. A public health nuisance, as defined in OAC Rule 3745-1-04, existed and exists in the areas of Rehoboth, Old Rainer Road, and Moore's Junction; and
  - b. Pollution, in the form of sewage, was and is entering the waters of the state from the areas of Rehoboth, Old Rainer Road, and Moore's Junction.
- 19. Individual household sewage disposal systems are inherently more dangerous to the public health than sanitary sewage systems and must be replaced when possible.
- 20. Septic systems pose a potential hazard to the public health, and are a potential nuisance to be prevented when possible.
- 21. A policy of favoring centralization of wastewater treatment pervades the Clean Water Act.

***Determinative Findings***

22. In the areas of Rehoboth, Old Rainer Road, and Moore's Junction; it is necessary for the public health and welfare and to prohibit and abate discharges of sewage or other wastes into waters of the state that:
  - a. sanitary or drainage facilities or prevention or replacement facilities be acquired or constructed, maintained, and operated; and/or
  - b. sewer improvements be constructed, maintained, and operated.
23. ORC § 6111.03(H) provides that in making orders thereunder, the Director shall give consideration to, and base the determination on, evidence relating to the technical feasibility and economic reasonableness of complying with those orders and to evidence relating to conditions calculated to result from compliance with those orders, and their relation to benefits to the people of the state to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.
24. ORC § 6111.03(H) does not require that the Director inquire into the financial status of a particular party before issuing an order to that party.
25. ORC § 6111.03(H) does not provide that financial difficulties experienced by the party receiving an order will excuse compliance with state water pollution control laws, or that such difficulties bar the Director from issuing orders enforcing pollution control laws.
26. Compliance with ORC Chapter 6111 is not contingent upon the availability of financial assurance.
27. ORC § 6111.03(H) provides that regarding the issuance of Orders, it is not Respondent alone that is to be considered, but also the benefits to the people of the entire state and also the conditions of any waters of the state.
28. The people of the state of Ohio and the waters of the state will benefit from the resolution of the water pollution concerns in the areas of Rehoboth, Old Rainer Road, and Moore's Junction.
29. 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 purpose of ORC Chapter 6111.

30. 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(A) and 6111.45 and OAC Chapter 3745-42.

#### **V. ORDERS**

1. As soon as possible, but not later than one hundred eighty (180) days from the effective date of these Orders, Respondent shall submit in accordance with Section X. of these Orders, to Ohio EPA for the Agency's review and approval, a general plan for sewage improvements or other methods of correcting the unsanitary conditions and pollution concerns, pursuant to ORC Chapters 6111 and 6117, in the Rehoboth, Moore's Junction, and Old Rainer Road areas. The general plan shall address, at a minimum, the following items:
  - a. Alternatives for treating sewage from the affected areas including, but not limited to, the following options:
    - i. Centralized treatment with a permitted discharge to waters of the state;
    - ii. No discharge to surface waters by connecting to sewers and directing sanitary sewage flows to the nearest regional wastewater treatment plant; and
    - iii. A decentralized wastewater treatment works system with or without a permitted discharge to waters of the state.
  - b. Proposed locations of collection and treatment facilities if deemed appropriate; and
  - c. An implementation schedule for submitting a complete NPDES permit application, if necessary, and a complete permit to install application(s) and approvable detail plan(s), awarding construction bids, starting and completing construction, and attaining compliance with ORC Chapters 6111. and the administrative rules adopted thereunder, and ORC Chapter 6117.
2. Upon Ohio EPA's approval of the general plan, Respondent shall implement the general plan in accordance with the approved implementation schedule.
3. Respondent shall respond in writing to any questions or comments Ohio EPA may have on the general plan within thirty (30) days of the date on the correspondence from Ohio EPA.

4. 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.

#### **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 described in these Orders.

#### **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, with any such modification in writing and 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 Group Leader)

**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. DUTY TO COMPLY**  
**COMPLIANCE NOT DEPENDENT ON GRANTS, LOAN OR FUNDS**

Nothing in these Orders shall affect Respondent's obligation to comply with all applicable federal, state or local laws, rules, regulations or ordinances. Respondent shall obtain any and all federal, state or local permits or other authorizations necessary to comply with these Orders. Performance with the terms of these Orders by Respondent

is not conditioned on the receipt of any federal or state grant, loan or funds. In addition, Respondent's performance is not excused by the failure to obtain any federal or state grant, loan or funds, or by the processing of any application for the same.

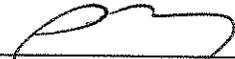
**XIV. EFFECTIVE DATE**

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**XV. 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**

  
\_\_\_\_\_  
Scott J. Nally  
Director

1/27/12  
\_\_\_\_\_  
Date

**IT IS SO AGREED:  
Perry County Board of Commissioners**

  
\_\_\_\_\_  
Signature

1-6-12  
\_\_\_\_\_  
Date

Lonnie Wood  
\_\_\_\_\_  
Printed or Typed Name

PRESIDENT  
\_\_\_\_\_  
Title



Signature

1-6-12

Date

ED KEISTER

Printed or Typed Name

MEMBER

Title

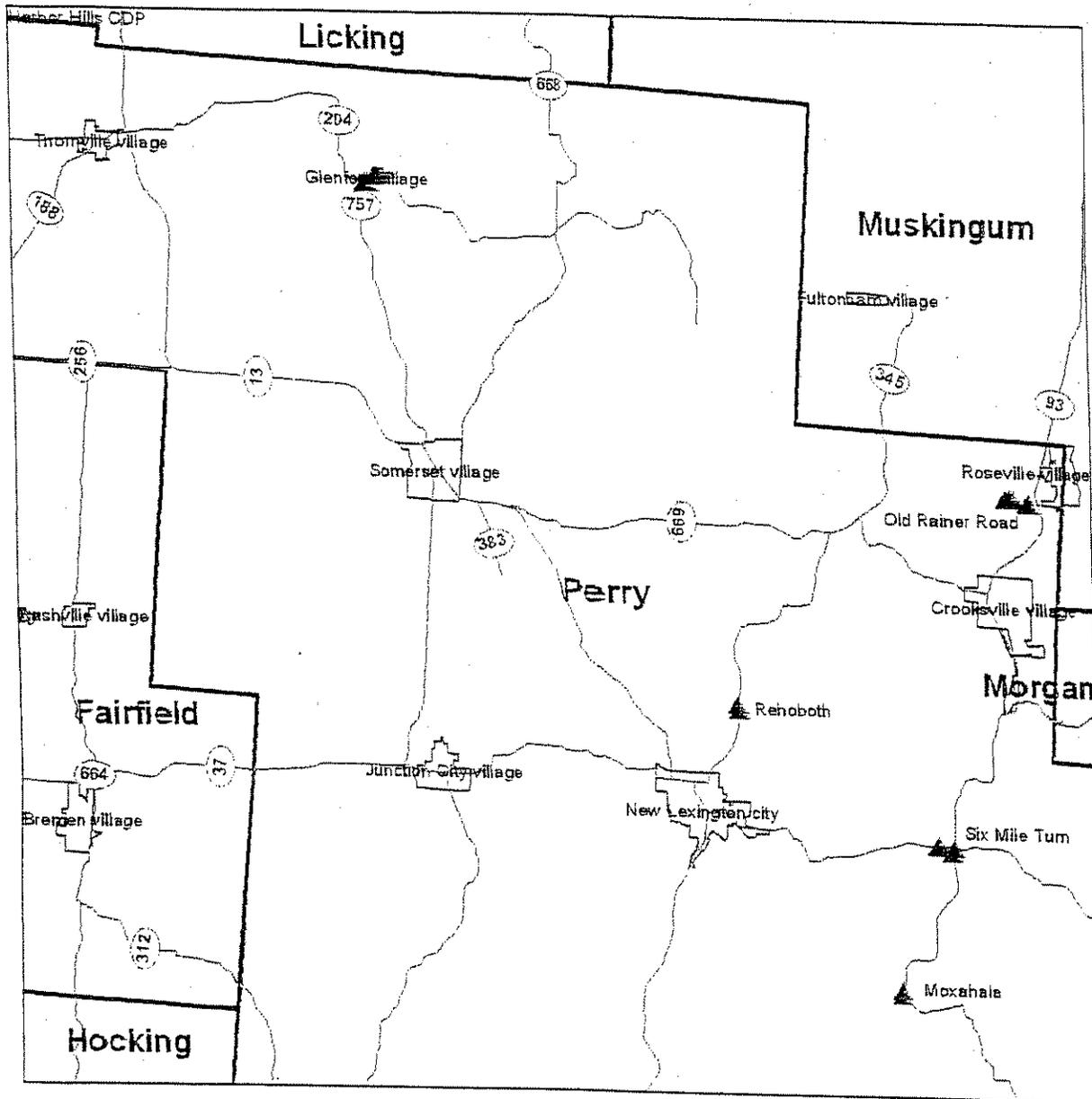
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Title

# Perry County Sampling Locations



**Legend**

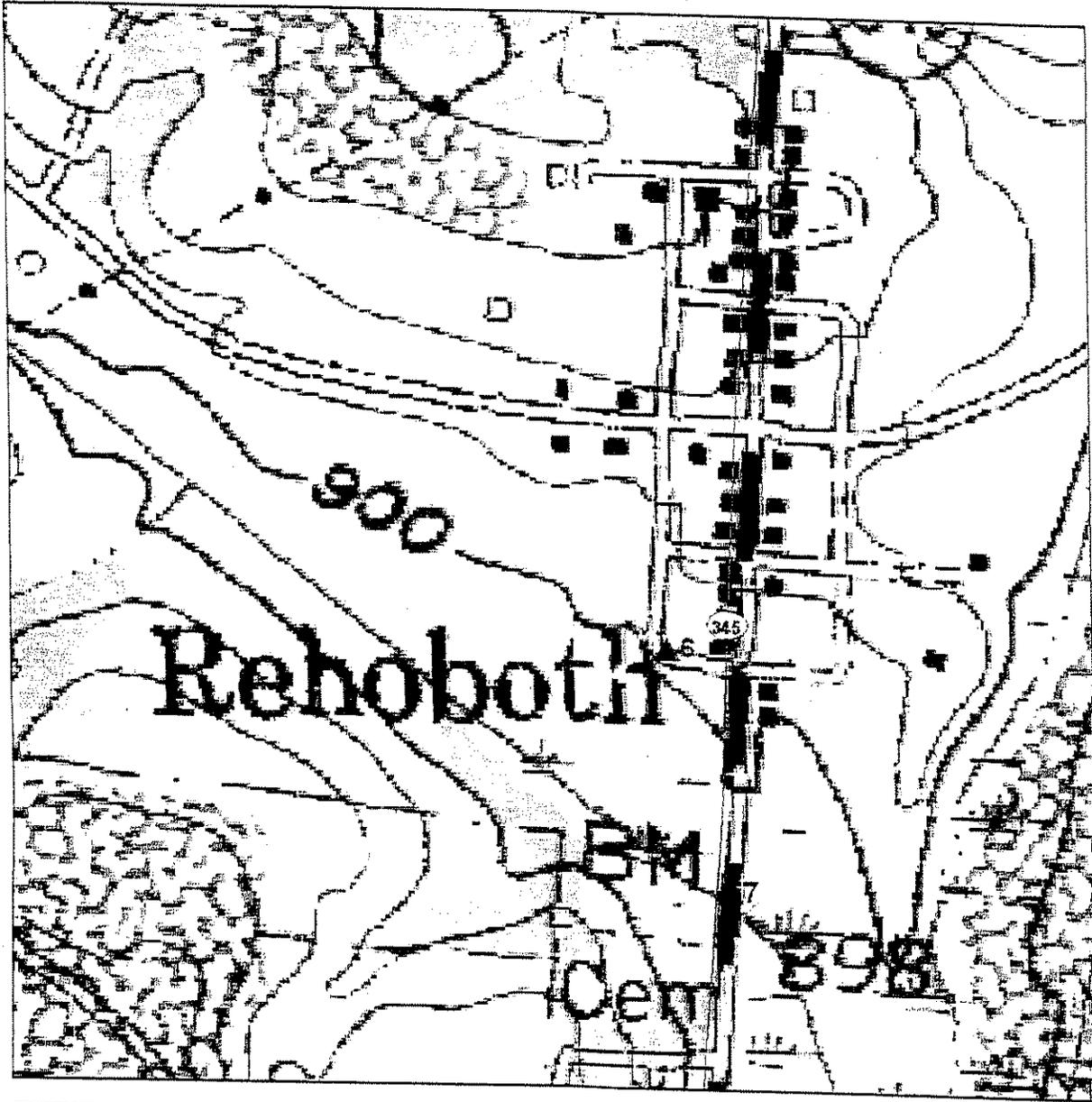
- ▲ Sampling Locations
- Ohio Highways
- ▭ Villages
- ▭ County Boundaries



**OhioEPA**  
Division of Surface Water

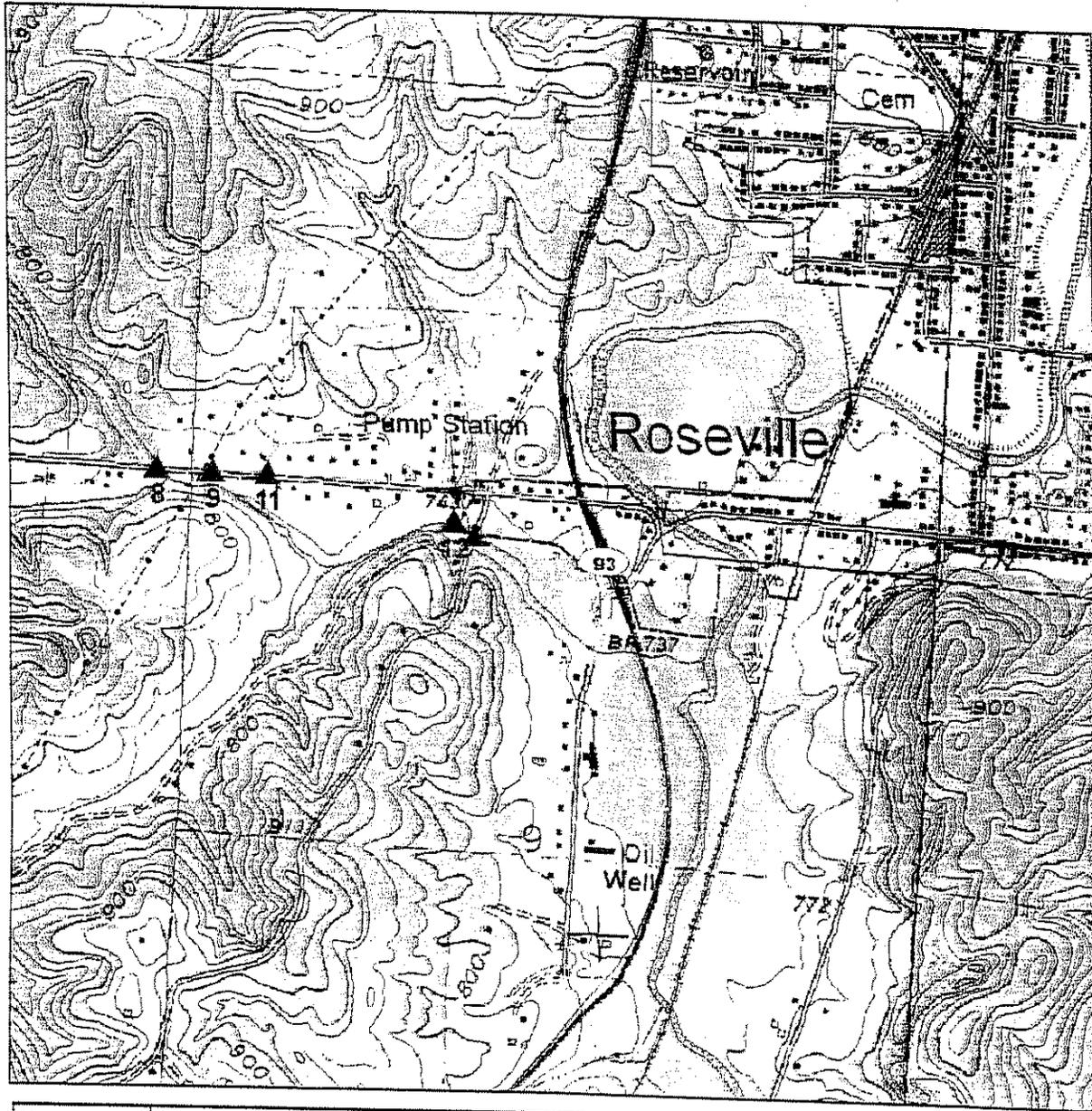


# Rehoboth Sampling Locations



ID	Location
6	Rehoboth: 1 <sup>st</sup> side street on left off SR 345 heading north
7	Rehoboth: SR 345 stream crossing at south end of town

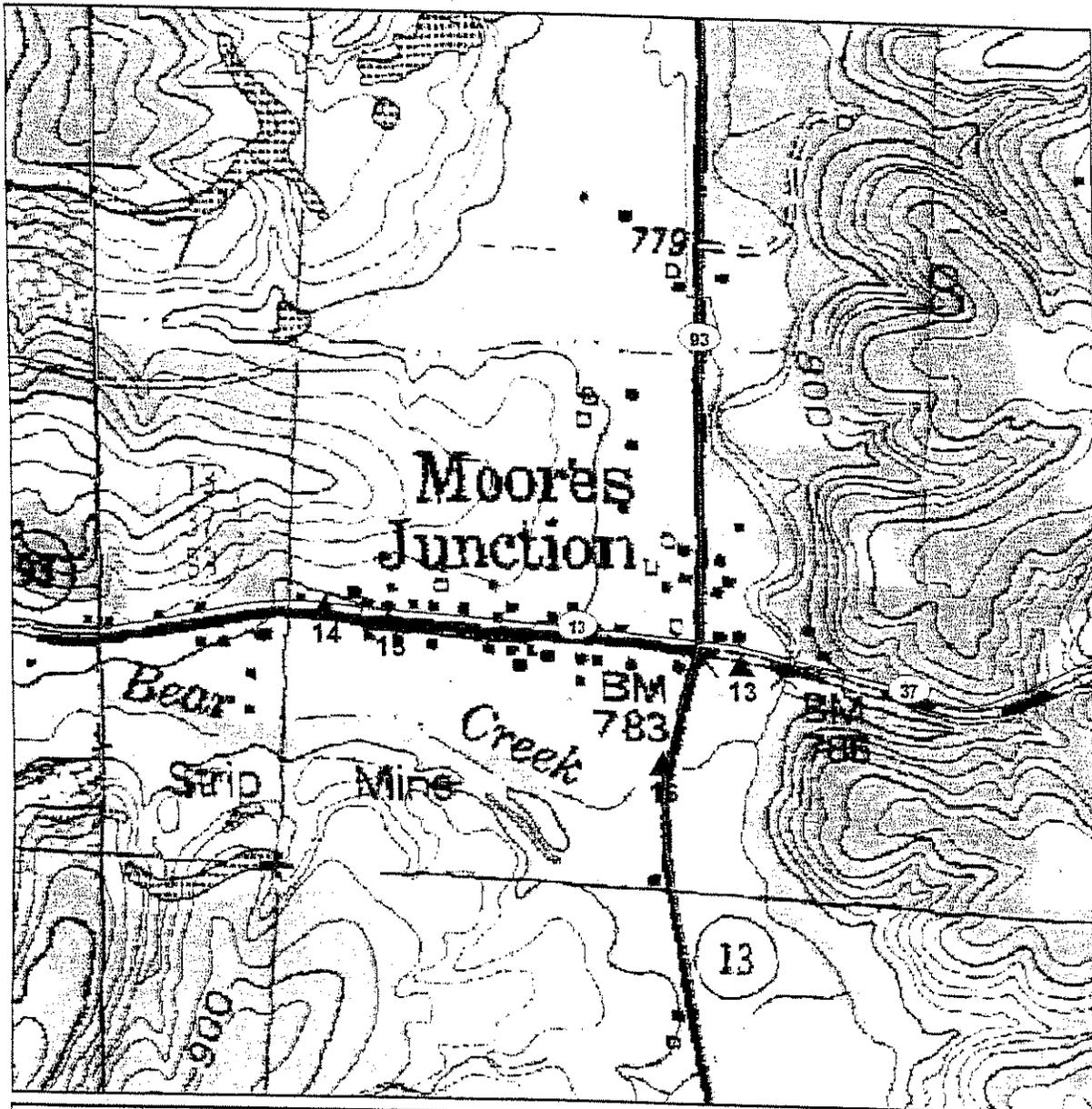
# Old Rainer Road Sampling Locations



ID	Location
8	Old Rainer Rd: western most stream crossing, btw houses 12042 & 12043
9	Old Rainer Rd: stream crossing btw houses 12222 & 12250
10	Old Rainer Rd: Watt Hill Rd bridge
11	Old Rainer Rd: road side ditch @ gravel driveway w/ 8 mail boxes
12	Old Rainer Rd: eastern most stream crossing btw blue trailer and house 10012

— MOORE'S JUNCTION —

# Sampling Locations



ID	Location
13	Six Mile Turn: drainage grate in Sunoco lot on SR 37 East
14	Six Mile Turn: SR 13/37/93 west, road side ditch in front of Wolfe Auto
15	Six Mile Turn: SR 13/37/93 west, road side ditch near house 11227 small grate
16	Six Mile Turn: SR 13 south of Six Mile stream crossing