

OHIO E.P.A.

APR 21 2004

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

Mayor and Council  
Village of Rising Sun  
P.O. Box 47  
Rising Sun, OH 43457

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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 Rising Sun ("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.

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

1. Respondent is the Village of Rising Sun located in Wood County, Ohio.
2. The Village of Rising Sun consists of approximately 233 homes. The community does not have a sewage collection or treatment system. Lot sizes in the Village of Rising Sun, in general, are too small to facilitate on-lot replacement systems for failing sewage systems.

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.

By Janice Jackson on 4-21-04

3. In response to previously documented evidence of unsanitary conditions, the Director of Ohio EPA issued Final Findings and Orders in 1993 requiring the Village to submit a general plan for the installation of sewers.
4. A proposed schedule for design, financing and construction was received from the Village in 1996 (hereafter "the General Plan"). This General Plan was approved by Ohio EPA in February of 1996, however, since that time, no major progress has been made toward the installation of a sanitary sewer system.
5. Sampling was conducted by Ohio EPA, Division of Surface Water, in August and September of 2003. Several water quality violations as well as septic odors were noted in Sugar Creek and Hoover Ditch.
6. On October 3, 2003, a letter was sent to the Village documenting the findings of the water sampling. A copy of this letter is attached hereto as "Exhibit 1" which is hereby incorporated into these Findings & Orders as if fully stated herein. The letter stated that the Village should take adequate steps to prevent further unsanitary discharges to Sugar Creek and Hoover Ditch.
7. The sampling data collected by Ohio EPA demonstrates a public health nuisance in accordance with Ohio Administrative Code Rule 3745-1-04.
8. In an April 3, 2003 letter to Ohio EPA, the Village indicated that its 1996 General Plan had been updated and that the Village was ready to proceed with its project to install sewers.
9. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
10. 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. Respondent shall implement the updated 1996 General Plan for sewage improvements pursuant to ORC Chapter 6111. The General Plan shall be implemented within the following timeframes:

- a. As soon as possible, but no later than October 31, 2004, complete the design set forth in the General Plan for construction of sewage improvements;
- b. As soon as possible, but no later than October 31, 2004, submit a Permit to Install for the construction of sewage improvements;
- c. As soon as possible, but no later than January 31, 2006, commence construction of the sewage improvements in accordance with the approved PTI; and
- d. As soon as possible, but no later than January 31, 2007, complete construction of sewage improvements in accordance with the approved PTI.
- e. Respondent shall submit all documents required by these Orders to the following address:

Ohio EPA, Northwest District Office  
Attn: DSW Enforcement Unit Supervisor  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

## **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)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole proprietorship, and 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 site.

#### **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 XII 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 ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

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

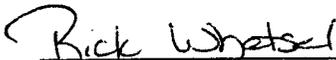
4-15-04  
Date

**IT IS SO AGREED:**

**Village of Rising Sun**

  
\_\_\_\_\_  
Signature

3-23-04  
Date

  
\_\_\_\_\_  
Printed or Typed Name

Mayor  
\_\_\_\_\_  
Title

**EXHIBIT 1**



State of Ohio Environmental Protection Agency

Northwest District Office

347 North Dunbridge Road  
Bowling Green, OH 43402-9398

TELE: (419) 352-8461 FAX: (419) 352-8468

Bob Taft, Governor  
Christopher Jones, Director

October 3, 2003

Re: Wood County  
Village of Rising Sun  
Sewerage

Rick Whetsel, Mayor  
Village of Rising Sun  
P.O. Box 47  
Rising Sun, Ohio 43457

Dear Honorable Mayor Whetsel:

On August 14, and September 16, 2003 the Ohio EPA conducted water sampling in Hoover Ditch and Sugar Creek near the Village of Rising Sun. The results are summarized in the table below.

Sample Date	Parameter	#/100mL	Location
8/14/03 11:10 a.m.	Fecal Coliform	28000	Hoover Ditch @ Bradner and Bays Rd
	E. Coliform	28000	
8/14/03 11:30a.m.	Fecal Coliform	130	Sugar Creek Upstrm. of Cassidy Rd.
	E. Coliform	81	
8/14/03 11:50 a.m.	Fecal Coliform	28000	Sugar Creek @ Salem Rd. Park
	E. Coliform	21000	
9/16/03 9:20 a.m.	Fecal Coliform	40000	Hoover Ditch @ Bradner and Bays Rd
	E. Coliform	22000	
9/16/03 9:30 a.m.	Fecal Coliform	68	Sugar Creek Upstrm. of Cassidy Rd.
	E. Coliform	49	
9/16/03 9:35 a.m.	Fecal Coliform	120000	Sugar Creek @ Salem Rd. Park
	E. Coliform	98000	
9/16/03 11:30 a.m.	Fecal Coliform	41000	Hoover Ditch @ Bradner and Bays Rd
	E. Coliform	21000	
9/16/03 11:40 a.m.	Fecal Coliform	54	Sugar Creek Upstrm. of Cassidy Rd.
	E. Coliform	41	
9/16/03 11:50 a.m.	Fecal Coliform	18000	Sugar Creek @ Salem Rd. Park
	E. Coliform	15000	

Mayor Rick Whetsel  
October 3, 2003  
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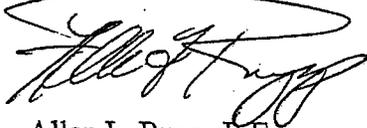
Ohio Administrative Code 3745-1-04 paragraph F, defines that a public health nuisance shall be deemed to exist if two or more samples show that fecal coliform exceeds 5000 counts per 100mL or if E. Coli. exceeds 576 counts per 100mL. As you can see from above, the sampled waters contain bacteria well above these limits which would indicate failed septic tanks in the surrounding area.

Village officials have been aware of the need to construct a sanitary sewer system for many years. Previously, the Director of Ohio EPA had issued Findings and Orders requiring the Village to submit a General Plan for installation of sewers. This General Plan was approved in February of 1996. However, since that time, no major progress has been made towards the installation of a sanitary sewer system.

We will begin immediately preparing a referral to our Director requesting that Final Findings and Orders be issued to Rising Sun requiring the construction of a sanitary sewer system.

If you have any questions please call Walter Ariss at 419-373-3070.

Yours truly,



Allen L. Rupp, P.E.  
District Engineer/Section Manager  
Division of Surface Water

/csl

pc: Jerry Greiner, Northwestern Water and Sewer District  
Wood County Health Department  
NWDO-DSW file