

OHIO E.P.A.  
BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY NOV 27 2006

ENTERED DIRECTOR'S JOURNAL

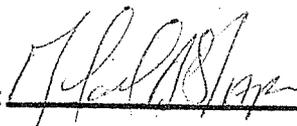
In the Matter of:

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

Director's Final Findings  
and Orders

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.

I. JURISDICTION

By: 

Date: 11/27/06

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 community of Lashley's Addition (a.k.a. Owl's Nest) is an unincorporated subdivision in Wayne Township, Noble County, Ohio. Lashley's Addition consists of approximately sixty (60) residential dwellings.
2. Centralized wastewater treatment facilities are currently unavailable to Lashley's Addition.
3. Lashley's Addition is 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 an unnamed tributary of Seneca Lake which

discharges to Seneca Lake. The unnamed tributary to Seneca Lake, and Seneca Lake, are defined as "waters of the state" pursuant to ORC § 6111.01.

4. Ohio EPA sampling results from September 10, 2003 and September 17, 2003, for fecal coliform 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 A, which is attached hereto and incorporated herein, as if fully written within.
5. On September 13, 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 Lashley's Addition area due to untreated sanitary sewage discharges. Said letter is set forth in Attachment B, 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 February 9, 2005, 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 August 15, 2002, September 10, 2003 and September 17, 2003, continued to exist. Ohio EPA staff observed conditions indicative of untreated sewage in the drainage systems and unnamed tributary of Seneca Lake, and Seneca Lake, 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 § 6117.34, 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) requirements 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 Lashley's Addition. 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 provide notice, in writing, to the Ohio EPA of the completion of each Order. Notice shall be sent to the addresses in Section IX of 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(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 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. 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  
Attn: DSW Enforcement Unit Supervisor  
2195 Front Street  
Logan, Ohio 43138

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Surface Water  
Attn: Manager, Stormwater and Enforcement Section  
122 South Front Street [P.O. Box 1049]  
Columbus, Ohio 43215 [43216-1049]

[For mailings use the post office box number and zip code in brackets]

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

**X. RESERVATION OF RIGHTS**

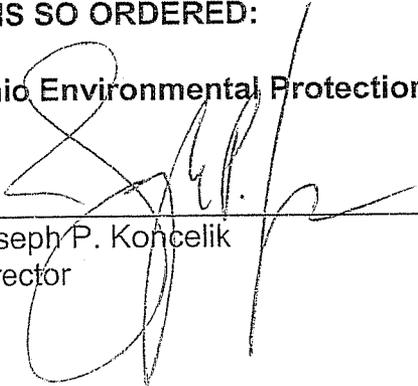
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 6111 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

**XI. EFFECTIVE DATE**

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

**IT IS SO ORDERED:**

**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Joseph P. Koncelik  
Director

11/27/06  
\_\_\_\_\_  
Date

# ATTACHMENT A

**Ohio EPA**  
**Public Health Nuisance Laboratory Results**  
OAC 3745-01-04 (F&G)  
Unsanitary Conditions ORC 6117.34

Sample Area: Lashley Addition, Seneca Lake  
Township: Wayne  
Dates: 09-10-03 & 09-17-03

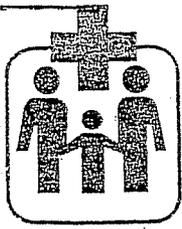
County: Noble  
Collector: S. Schermerhorn  
Table: 1

Sample Location See Map Marker	Date Sampled	Time	Fecal Coliforms # cfu / 100mls
NC 1- Behind 56777 N 39°55' 09.01" x W 81°24' 08.08"	09-10-03	10:15 am	25,000
	09-17-03	10:40 am	60,000
NC 2 - Grate @ 23215 N 39°55' 05.2" x W 81°24' 05.2"	09-10-03	10:50 am	4,800
	09-17-03	10:30 am	60,000
NC 3 - Grate @ Corner N 39°55' 06.2 " x W 81°24' 04.3 "	09-10-03	11:00 am	20,000
	09-17-03	10:25 am	60,000
NC 4- Trib to Lake N 39°55' 05.6" x W 81°23' 57.2 "	09-10-03	11:05 am	11,700
	09-17-03	10:20 am	60,000
NC 5- Ditch in front of 23516 Hideaway Drive N 39°55' 06.0" x W 81°23' 45.8"	09-10-03	11:10 am	23,000
	09-17-03	10:15 am	60,000

OAC 3745-01-04 Criteria Applicable to All Waters (F). A public health nuisance shall be deemed to exist when conditions set forth in F-1 of this rule (3745-01-04) are designated, to wit: an inspection was conducted by a Registered Sanitarian of Ohio EPA which documented odor, color, and other visual manifestations, of raw and poorly treated sewage and water samples exceed 5,000 fecal coliforms per 100 mls sample in two or more samples when five or less are taken in accordance with the sampling collection specifications outlined in OAC 3745-01-04 section G. Sites one, three, four and five exceed the recreational secondary contact levels defined in OAC 3745-01-07. Results indicate that the area an unsanitary public health nuisance and meets Unsanitary Conditions pursuant to ORC 6117.34. See attached figure one for approximate sample locations. See Table 2. For supplemental parameters



# **ATTACHMENT B**



# NOBLE COUNTY HEALTH DEPARTMENT

44069 State Route 821 Caldwell, OH 43724

PHONE: 740.732.4958 • TOLL FREE: 888.70.NOBLE • FAX: 740.732.5043 • E-MAIL: noblecohd@nobleco.net

September 13, 2004

Christopher Jones, Director  
Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, Ohio 43216-1049

2004 SEP 30 AM 10:20  
O.E.P.A.  
S.E.D.O.

**RE: UNSANITARY CONDITIONS**  
**Wayne Township Unincorporated Area of Noble County**

Dear Mr. Jones:

In accordance with 6117.34 of the Ohio Revised Code, the Board of Health of the Noble County General Health District is issuing a written complaint pursuant to a *Public Health Hazard* located at the above-referenced location. More specifically, the area of concern includes:

- Portions of Wayne Township Section 3 which includes the unincorporated subdivision near Seneca Lake known as:  
Lashley's Addition (AKA Owl's Nest)

This office and the SE District Office of Ohio EPA have received numerous complaints concerning sewage problems in the Lashley Addition at Seneca Lake. Since August of 2002, we have investigated the presence of unsanitary conditions in the area and OEPA has sampled discharges where sewage nuisances have been reported. Our investigation indicates that non-existing or malfunctioning sewage systems are creating unsanitary conditions in the area of Noble County. The OEPA sampling results concur with this finding.

It is also our belief that the extreme small size of the existing lots in this subdivision most often prohibits the installation of on-lot non-discharging sewage systems. Seneca Lake upon which this subdivision sits upon its shores serves as a water recreation area, used for boating, fishing, and swimming.

As mandated by the Ohio Revised Code, the Board of Health requests that you finalize your ongoing investigations of this complaint and take all steps necessary to eliminate this public health hazard, including but not limited to, ordering the board of county commissioners to make sewer improvements.

*Successfully serving the families of our community for more than 80 years.*