

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAY 24 2006

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Seneca County Board of Commissioners :  
81 Jefferson Street :  
Tiffin, Ohio 44883 :  
Respondent :

  
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 Seneca 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 Chapters 6111, 6117 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The Village of Bascom is an unincorporated area located in Hopewell Township, Seneca County, Ohio ("the Village"). The Village consists of approximately two

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

  
Date 5-24-06

hundred (200) residences and non-commercial structures.

2. Centralized wastewater treatment facilities are currently unavailable in the Village.
3. The Village is served by inadequate or failing on-site or aeration sewage disposal systems that discharge untreated or partially treated sewage to roadside ditches, and/or storm drains, and/or storm sewers (referred to as "drainage systems"). The drainage systems discharge to Wolf Creek. The drainage systems and Wolf Creek are defined as "waters of the state" pursuant to ORC § 6111.01.
4. Paragraph 3745-1-04(F) of the Ohio Administrative Code ("OAC") provides that all surface waters of the state, to every extent practical and possible as determined by the Director, shall be free from public health nuisances associated with raw or poorly treated sewage.
5. A public health nuisance shall be deemed to exist when an inspection conducted by, or under the supervision of, Ohio EPA or a sanitarian registered under ORC Chapter 4736, documents any or all of the following: odor, color and/or other visual manifestations of raw or poorly treated sewage in waters of the state; and, water samples exceed five thousand fecal coliform 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; or, water samples exceed five hundred seventy-six *Escherichia 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.
6. Ohio EPA sampled in the Village on September 23, 2004 and September 27, 2004, for fecal coliform bacteria. The sample results for fecal coliform are set forth below:

<b>Date / Time</b>	<b># / 100 mL</b>	<b>Location</b>
09/23/2004 12:10 PM	71,000	East branch of Wolf Creek
09/27/2004 10:05 AM	120,000	E. Branch of Wolf Creek

7. ORC § 6117.34 provides that 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 in said complaint. If, upon investigation of the complaint, the Director finds that it is necessary for 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 that finding and order that corrective action be taken. The Board of County Commissioners shall obey the order and proceed as provided in ORC Chapter 6117, to establish a county sewer district, if required, and to provide the necessary funds, to acquire or construct the facilities, and to maintain and operate the facilities, as required by the order and in a manner that is satisfactory to the Director.

8. On March 24, 2005, the Seneca County General Health District ("Health District") passed Resolution 2005.07, which constitutes a written complaint under ORC § 6117.34. The resolution alleged that unsanitary conditions exist in the Village. Ohio EPA received a copy of this resolution on March 28, 2005. This resolution is set forth in Attachment A, which is attached hereto and incorporated herein, as if fully written within.
9. On November 3, 2005, Ohio EPA conducted a follow up investigation of the conditions alleged in the Health District's letter of complaint. The investigation determined that the unsanitary conditions previously observed and documented on September 23, 2004, and September 27, 2004, continued to exist. Ohio EPA staff observed conditions indicative of untreated sewage in the drainage ways with odors of untreated sewage evident.
10. The sampling data and subsequent investigation by Ohio EPA confirm the existence of unsanitary conditions, document violations of Ohio's general water quality criteria set forth in OAC Rule 3745-1-04, and demonstrate a public health nuisance in accordance with OAC Rule 3745-1-04.
11. Small lot sizes, in conjunction with local soil conditions and local hydrology, make the replacement or repair of existing on-site sewage disposal systems an unacceptable solution to remedy the unsanitary conditions.
12. 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 Village.
13. 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 and 6111.45 and OAC Chapter 3745-42.
14. 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. As soon as possible, but not later than one (1) year from the effective date of these Orders, Respondent shall submit to Ohio EPA for approval, a general plan for sewage improvements or other methods of abating pollution and correcting the unsanitary conditions, pursuant to ORC Chapter 6111. 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;
    - ii. No discharge to surface waters by connecting to existing sewers and directing sanitary sewage flows to the nearest regional wastewater treatment plant;
    - iii. No discharge to surface waters by utilizing land application for wastewater disposal;
    - iv. Limiting the discharge to surface waters by constructing controlled discharge lagoons; and
  - b. Proposed locations of collection and treatment facilities if deemed appropriate.
  - c. Cost estimates for the required improvements and cost effectiveness analysis of the alternatives based on total present worth. The cost effectiveness analysis must include the total construction costs of each alternative as well as operation, maintenance, and replacement costs, and should use the following assumptions:
    - i. The analysis must be for a twenty (20) year period; and
    - ii. Assume an interest rate of 6.5% per annum.
  - d. The financial mechanisms to be used to fund the required improvements, as

well as the operation, maintenance, and replacement costs.

- e. An implementation schedule for submitting a complete NPDES permit application, and a complete permit to install (PTI) application and approvable detail plans, awarding construction bids, starting and completing construction, and attaining compliance with ORC Chapter 6111 and the administrative rules promulgated thereunder.
2. Upon Ohio EPA's approval of the general plan, Respondent shall implement the general plan in accordance with the implementation schedule required by Order 1.e.
3. Respondent shall complete the sewage system installation in accordance with the approved PTI and achieve compliance with Ohio's water pollution control laws, no later than six (6) years from the effective date of these Orders.
4. Respondent shall exercise all authority under ORC § 6117.51 to compel all premises in the unincorporated community to connect sewage flows to the public sanitary sewer and cease use of existing sewage disposal systems.
5. 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 X 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 as part of Respondent's sewer system.

**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. NOTICE**

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

Ohio Environmental Protection Agency  
Northwest District Office  
Division of Surface Water  
Attn: DSW Enforcement Unit Supervisor  
347 North Dunbridge Road [P.O. Box 466]  
Bowling Green, Ohio 43402

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]

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

#### **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. 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 ORDERED AND AGREED:  
Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Joseph P. Konecnik  
Director

5-22-06  
Date

**IT IS SO AGREED:  
Seneca County Commissioners**

  
\_\_\_\_\_  
Signature

5/1/06  
Date

BENJAMIN E. NUTTER  
Printed or Typed Name

PRESIDENT, BOARD OF COMMISSIONERS  
Title

  
\_\_\_\_\_  
Signature

5-1-06  
Date

David B. Sauber  
Printed or Typed Name

Commissioner  
Title



Signature

JOSEPH E. SCHOCK

Printed or Typed Name

COMMISSIONER

Title

5-01-06

Date

# **ATTACHMENT A**

SENECA COUNTY GENERAL HEALTH DISTRICT  
RESOLUTION 2005.07

March 24, 2005

IN THE MATTER OF: RESOLUTION REGARDING SEWAGE NUISANCE

Mrs. Feasel presented and moved the adoption of the following  
RESOLUTION:

WHEREAS, the Board of Health, Seneca County, Ohio, met in regular session on the 24th day of March, 2005, at the Seneca County General Health District with the following members present:

James Burns	Joella Feasel	Carol Lynch	John Ross	Bonnie Boroff
Jerry Dick	Eric Griffin	Dennis Nye	Ken Shellhouse	Chris Willman

WHEREAS, THE SENECA COUNTY BOARD OF HEALTH is charged with the administration and enforcement of laws and regulations to protect the public health and the environment; and

WHEREAS THE BOARD OF HEALTH investigates reports of public health nuisance conditions in the Seneca County General Health District under authority of Ohio Revised Code 3707.01; and

WHEREAS THE BOARD OF HEALTH has investigated and documented public health nuisance conditions in the unincorporated village of Bascom, OH (Hopewell Twp.).

NOW, THEREFORE, BE IT RESOLVED, as per Ohio Revised Code 6117.34, the Board of Health of the Seneca County General Health District is initiating a complaint to the Ohio EPA to investigate these unsanitary conditions as described and issue orders for correction.

ADOPTED by the Board of Health of the Seneca County General Health District this 24<sup>th</sup> Day of March, 2005.

BE IT RESOLVED, that the Secretary of the Board is hereby authorized and instructed to certify copies of this resolution to the Seneca County Auditor in line with this action.

Mr. Dick seconded the motion. The roll call vote being as follows:

yes	<u>Bonnie J. Boroff</u>	Mrs. Bonnie Boroff
	_____	Mr. James Burns
yes	<u>Jerry Dick</u>	Mr. Jerry Dick
yes	<u>Joella Feasel</u>	Mrs. Joella Feasel
yes	<u>Eric Griffin</u>	Dr. Eric Griffin
yes	<u>Carol Lynch</u>	Mrs. Carol Lynch
	_____	Mr. Dennis Nye

  
\_\_\_\_\_  
Signature

5-01-06  
Date

JOSEPH E. SCHOCK  
Printed or Typed Name

COMMISSIONER  
Title