

OHIO E.P.A.

MAR 24 2006

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

INTERIM DIRECTOR'S JOURNAL

In the Matter of:

County of Summit, Ohio
175 Main Street
Akron, Ohio 44308

:
:
:

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 County of Summit, Ohio ("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 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

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates 12 waste water treatment plants countywide.
2. On December 11, 2003, Ohio EPA received a complaint pursuant to ORC § 3745.08. The complaint alleged that the Respondent had pumped sanitary sewage into the storm sewers in the City of Stow, resulting in a sewage release into waters of the State as well as residential properties in

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 3-24-06

violation of ORC Chapter 6111.

3. Ohio EPA reviewed the complaint referenced in Finding No. 2. of these Orders and by letter dated January 2, 2004 informed the complainant that the complaint met the requirements under ORC § 3745.08. Accordingly, Ohio EPA commenced an investigation into the complaint to determine whether violations, as alleged, had occurred, were occurring or would occur. Ohio EPA's investigation included a discussion of the complaint in the form of a meeting with the Respondent on January 14, 2004.
4. During the meeting referenced in Finding No. 3. of these Orders, Respondent stated that it did pump sewage from the sanitary sewers to the storm sewers at the intersection of Kenneth Road and Samira Drive in the City of Stow on July 21, 2003, July 27, 2003, and January 4, 2004. Respondent claimed that the pumping was done to prevent sewage backups in residents' basements. Respondent also claimed all bypasses were reported to Ohio EPA. Also, Respondent stated that some sections of the sanitary sewer may need to be repaired or replaced, but that the main reason for the surcharged sanitary sewer appears to be homes' foundation drains being illegally connected to the sanitary sewer.
5. The sanitary sewer overflows/bypasses which occurred on July 21, 2003, July 27, 2003 and January 4, 2004 are unpermitted discharges to waters of the state. Discharges to waters of the state without a valid permit constitute violations of ORC §§ 6111.04 and 6111.07.
6. On February 26, 2004, Respondent submitted to Ohio EPA a preliminary schedule for improvements to address the overflows.
7. 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. Within three hundred and sixty-five (365) days after the effective date of these Orders, Respondent shall submit to Ohio EPA, for review and approval, a completed Sanitary Sewer Evaluation Study (SSES) addressing the specific sanitary sewer overflows at Kenneth Road and

Samira Drive as referenced in these Orders. The SSES shall include a schedule for the construction and completion of sewer repair projects to eliminate the sanitary sewer overflows at Kenneth Road and Samira Drive.

2. Within thirty (30) days of receipt of any written comments from Ohio EPA regarding the SSES required under Order No. 1., Respondent shall make any requested changes or modifications and/or submit any additional requested information to Ohio EPA.
3. Respondent shall pay to the Ohio EPA the amount of twenty two thousand seven hundred and seventy-seven dollars (\$22,777) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111., in accordance with the following provisions:
 - a. In lieu of paying five thousand dollars (\$5,000) of civil penalty, Respondent shall within 30 days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of five thousand dollars (\$5,000) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for five thousand dollars (\$5,000). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of each check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, OH 43216 - 1049"

- b. Should Respondent fail to fund the SEP within the required time frame established in Order No. 3.a., Respondent shall pay to Ohio EPA the amount of five thousand dollars (\$5,000) by tendering an official check made payable to "Treasurer, State of Ohio" no later

than seven (7) days after the payment in Order No. 3.a. was due to the following address:

Office of Fiscal Administration
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43215-1049

A photocopy of the check shall be sent to Ohio EPA Northeast District Office (Attn: DSW Enforcement Group Leader).

- c. In lieu of paying the remaining seventeen thousand, seven hundred and seventy-seven dollars (\$17,777) of the civil penalty settlement, Respondent shall complete, no later than December 31, 2006, a SEP by expending at least seventeen thousand, seven hundred and seventy-seven dollars (\$17,777) on the Munroe Falls Dam Project for the purpose of streambank restoration in the area of the Munroe Falls Dam. No later than July 1, 2006, Respondent shall submit a detailed project description and plans for the Munroe Falls Dam streambank restoration project to Ohio EPA. Upon approval of Ohio EPA, Respondent shall implement the Munroe Falls Dam streambank restoration in accordance with the specifications and schedules contained therein.
- d. Within thirty (30) days after completion of the Munroe Falls Dam streambank restoration project, Respondent shall provide to Ohio EPA a written final itemized summary of the money expended.
- e. Should Respondent fail to fund the SEP within the required time frame established in Order No. 3.c., Respondent shall pay to Ohio EPA the amount of seventeen thousand, seven hundred and seventy-seven dollars (\$17,777) by tendering an official check made payable to "Treasurer, State of Ohio" no later than seven (7) days after the payment in Order No. 3.c. was due to the following address:

Office of Fiscal Administration
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43215-1049

A photocopy of the check shall be sent to Ohio EPA Northeast District Office (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 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.

This 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 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, the Respondent's WWTP and 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 the Respondent.

IX. MODIFICATIONS

These Orders may be modified by the 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 EPA, Northeast District Office
Attn: DSW Enforcement Unit Supervisor
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969

and to:

Ohio EPA, Division of Surface Water
Attn: DSW Enforcement Coordinator
P.O. Box 1049
Columbus, Ohio 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 those 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

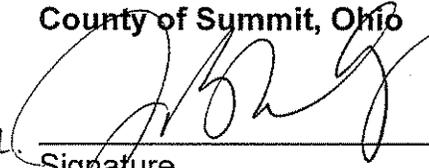
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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 AGREED:

County of Summit, Ohio

J.M. 

Signature

3/10/06

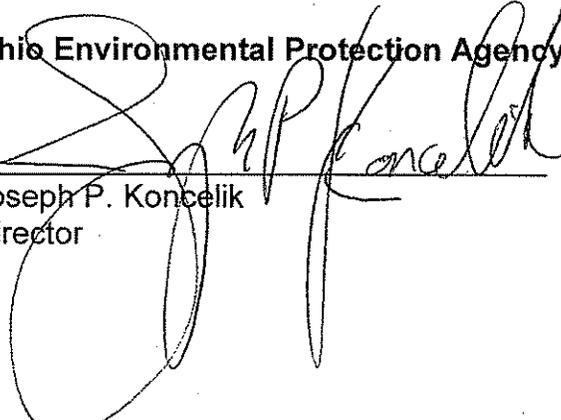
Date

JAMES B. MCCARTHY
EXECUTIVE

Title

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Joseph P. Koncelik
Director

March 24, 2006

Date