

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
MAY 14 2012

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Shelby County Board of Commissioners
129 East Court Street, Suite 100
Sidney, OH 45365

Director's Final Findings
and Orders

Respondent

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:
:

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Shelby 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, 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 and 3745, and the rules promulgated there under.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The Newport area is an unincorporated area in Cynthian Township, Shelby County, Ohio, wherein centralized wastewater facilities are unavailable. For purposes of these Orders, the Newport area consists of those areas depicted in Attachment I. Attachment I is incorporated by reference as if fully rewritten herein.

2. Ohio EPA has been monitoring conditions in the Newport area for years. Water quality sampling was conducted in 2002 and multiple days in 2007.
3. Centralized wastewater treatment facilities are currently unavailable in the area identified in Finding number 2, above.
4. The unsewered area is served by inadequate or failing on-site home sewage disposal systems that discharge untreated or partially treated sewage into drainage ditches and storm sewers ultimately releasing waste discharge into the Miami-Erie Canal and Loramie Creek. The receiving streams constitute "waters of the state" as defined by ORC § 6111.01.
5. Ohio Administrative Code ("OAC") Rule 3745-1-04(F) 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.
6. 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 (either MPN or MF) 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 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.
7. Ohio EPA sampled Miami-Erie Canal, Loramie Creek, and tributaries thereof in the Newport area on October 8, 2002, October 15, 2002, and October 22, 2002 for fecal coliform bacteria. The sample results are below:

Date	# / 100 mL	Location
10/8/2002	60,000	Site #10, Discharge to Loramie Creek
10/15/2002	62,000	Site #10, Discharge to Loramie Creek
10/22/2002	12,000	Site #10, Discharge to Loramie Creek

10/8/2002	60,000	Site #9, Miami-Erie Canal at Walnut Street
10/15/2002	78,000	Site #9, Miami-Erie Canal at Walnut Street
10/22/2002	8,000	Site #9, Miami-Erie Canal at Walnut Street
10/8/2002	60,000	Site #11, High Street West of State Route 66
10/15/2002	60,000	Site #11, High Street West of State Route 66
10/22/2002	52,000	Site #11, High Street West of State Route 66

Ohio EPA sampled Miami-Erie Canal, Loramie Creek, and tributaries thereof in the Newport area on October 8, 2002, October 15, 2002, and October 22, 2002 for E. Coli bacteria. The sample results are below:

<i>Date</i>	<i># / 100 mL</i>	<i>Location</i>
10/8/2002	80,000	Site # 10, Discharge to Loramie Creek
10/15/2002	10,000	Site # 10, Discharge to Loramie Creek
10/22/2002	7,500	Site # 10, Discharge to Loramie Creek
10/8/2002	45,000	Site # 9, Miami-Erie Canal at Walnut Street
10/15/2002	9,400	Site # 9, Miami-Erie Canal at Walnut Street
10/22/2002	10,500	Site # 9, Miami-Erie Canal at Walnut Street
10/8/2002	49,000	Site # 11, High Street West of State Route 66
10/15/2002	30,000	Site # 11, High Street West of State Route 66
10/22/2002	32,000	Site # 11, High Street West of State Route 66

Ohio EPA sampled Miami-Erie Canal, Loramie Creek, and tributaries thereof in the Newport area on April 27, 2007 and April 30, 2007 for fecal coliform bacteria. The sample results are set forth below:

Date / Time	# / 100 mL	Location
4/17/2007 9:10 am	60,000	Site # 1, Fort Loramie Machine
4/30/2007 9:25 am	99,000	Site # 1, Fort Loramie Machine
4/17/2007 9:17 am	60,000	Site # 2, Elm/Walnut Street
4/30/2007 9:30 am	60,000	Site # 2, Elm/Walnut Street
4/17/2007 9:24 am	6,400	Site # 3, High Street
4/30/2007 9:35 am	60,000	Site # 3, High Street

Ohio EPA sample Miami-Erie Canal, Loramie Creek, and tributaries thereof in the Newport area on April 17, 2007 and April 30, 2007 for E. Coli bacteria. The sample results are set forth below:

Date / Time	# / 100 mL	Location
4/17/2007 9:10 am	80,000	Site # 1, Fort Loramie Machine
4/30/2007 9:25 am	36,000	Site # 1, Fort Loramie Machine
4/17/2007 9:17 am	10,000	Site # 2, Elm/Walnut Street
4/30/2007 9:30 am	63,000	Site # 2, Elm/Walnut Street
4/17/2007 9:24 am	250	Site # 3, High Street

4/30/2007 9:35 am	11,000	Site # 3, High Street
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8. The sampling data 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.
9. Based on Ohio EPA's investigation, the Director has found that 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 unsewered area.
10. Shelby County Commissioners met with Ohio EPA in October 2007 to discuss the evidence of the continuing unsanitary conditions in the Newport area. As a result of the meeting, the County indicated by Fall 2008 it would 1) revise the September 2003 general plan focusing on construction costs, and 2) perform an income survey with assistance from the Rural Community Assistance Program.
11. Respondent will be seeking funds from state or federal funding agencies to assist in the financing of this project in an effort to make the overall project affordable on affected ratepayers.
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 and plan approval requirements of ORC §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.
13. Compliance with ORC Chapter 6111 is not contingent upon the availability of financial assurance.
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

The Director hereby issues the following Orders:

1. As soon as possible, but not later than five (5) months 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 for the Newport Area as depicted in Attachment I, 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; and
 - iv. Limiting the discharge to surface waters by constructing controlled discharge lagoons;
 - b. Proposed locations of collection and treatment facilities if deemed appropriate; and
 - c. An implementation schedule for: (1) submitting a complete NPDES permit application, and a complete permit to install application and approvable detail plans, (2) seeking funding, (3) awarding construction bids, (4) starting and completing construction, and (5) attaining compliance with ORC Chapter 6111 and the administrative rules promulgated there under.
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 No. 1. c. If circumstances arise that would threaten or cause Respondent to not meet any of the components of the approved implementation schedule or the completion date set forth by Order No. 3, including issues relating to the funding of the project, Respondent may seek a modification of the timeframe set forth in the approved schedule and/or Order No. 3 in accordance with the Modification provision in paragraph IX.
3. Respondent shall complete the sewage system installation in accordance with the approved permit to install application and achieve compliance

with Ohio's water pollution control laws, no later than six (6) years from the effective date of these Orders.

4. Within fourteen (14) days of completing the requirement in Order No. 3, Respondent shall provide notice, in writing, to the Ohio EPA of the Order's completion. 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(F)(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
Southwest District Office
Division of Surface Water
Attn: DSW Enforcement Unit Supervisor
401 East Fifth Street
Dayton, Ohio 45402

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
Attn: Manager, Stormwater and Enforcement Section
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 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.

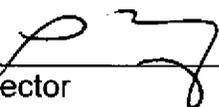
XIII. EFFECTIVE DATE

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**

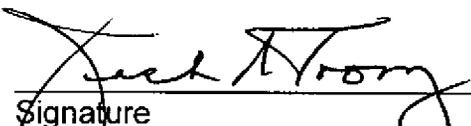


Director

5/19/12

Date

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



Signature

5-1-2012

Date

Jack R Toomey

Printed or Typed Name

Chairman, Board of Commissioners

Title

