

OHIO E.P.A.

JUN 26 2007

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

Fort Scott Development Company, LLC	:	<u>Director's Final Findings</u>
6851 Harrison Avenue, Third Floor	:	<u>and Orders</u>
Cincinnati, Ohio 45247	:	
	:	
<b>Respondent</b>	:	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Fort Scott Development Company, LLC ("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 ownership of the Respondent or of the Site (as hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

Respondent shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to perform any portion of the Work pursuant to these Orders. Respondent shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform Work pursuant to these Orders also comply with the applicable provisions of these Orders.

**I certify this to be a true and correct copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.**

By: *[Signature]* Date: 6-26-07

### 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 made the following findings:

1. Respondent, a for profit corporation in good standing with the Ohio Secretary of State's Office, is the developer of the Fort Scott Subdivision located near River Road and Blue Rock Road intersection in Crosby Township, Hamilton County, hereinafter known as the "Site."
2. On April 16, 2004, Ohio EPA received a Permit to Install ("PTI") Application No. 05-13238 for an influent pump station and extended aeration wastewater treatment plant ("WWTP") to provide wastewater collection and treatment services for Phase 1 of the Site from Douglas H. Meyer, Managing Member of Fort Scott Development Company, LLC.
3. Phase 1 of the Site consists of approximately 404 homes, 550 condominiums and 19 light industrial businesses in the former Catholic Church's Fort Scott Day camp area.
4. On March 4, 2005, the PTI No. 05-13238 for the WWTP was issued to Douglas H. Meyer.
5. On March 4, 2005, the NPDES permit (1PC00016\*AD) for the WWTP was issued to Hamilton County Metropolitan Sewer District of Greater Cincinnati ("MSD").
6. On April 4, 2006, Ohio EPA received an application for a PTI Application No. 549704 for Gravity Sanitary Sewers to serve the Fort Scott Subdivision Phase One Block B from the Hamilton County MSD.
7. On April 18, 2006, Mary Osika, Division of Surface ("DSW"), Ohio EPA sent a comment letter to MSD requesting assurance that no sewage would be generated and discharged to the sanitary sewers before the WWTP was completed.
8. On April 27, 2006, Ohio EPA received a letter from Tom Schwiers, MSD,  
Executive Director

assuring that no tap permits or building permits would be issued until there was some means to handle the sewage that would be approvable by Ohio EPA.

9. On May 10, 2006, Ohio EPA issued PTI Application No. 549704 for the Gravity Sanitary Sewers to MSD for the Fort Scott Subdivision Phase One Block B.
10. On December 5, 2006, MSD sent a letter to Respondent confirming a meeting held November 16, 2006, between Respondent and MSD regarding Respondent's request and MSD's consent for sewer taps for homes in the Ft. Scott Development prior to the WWTP being completed. MSD, in its letter, advised Respondent they would "work with the Respondent but certain things would be required" as detailed in the letter. Item #5 of that letter advised Respondent that "if by the end of March, 2007 you determine that you will need to have sanitary sewer service for homes before the plan is complete, you will have your engineer begin to prepare plans for the installation of a holding tank at the site." Item #6 of the letter advised that a PTI for the holding tank would be required before working could begin on the holding tank.
11. On January 16, 2007, MSD wrote a letter to Ft. Scott confirming Ft. Scott's January 3, 2007 letter requesting sewer tap permits for 25 building lots. MSD stated in its letter that "as stated in our December 5, 2006, we will work with you on moving the project forward. At this time, we will release the building permits for the above lots." The letter concludes that "the well has a capacity of 6,400 gallons. Before it can be used as a holding tank, you will need to submit to OEPA for a holding tank permit...."
12. On February 12, 2007, Ohio EPA received an application for PTI Application No. 603844 for New Haven Road pump station, force main and gravity sanitary sewers to serve the Fort Scott Condominiums "A" from MSD.
13. On February 28, 2007, MSD indicated to Ohio EPA that the WWTP construction would be completed by July 2007.
14. On March 7, 2007, Respondent was first notified by Ohio EPA that use of the wet well or gravity sanitary sewer to hold sewage prior to WWTP completion may not meet holding tank regulatory requirements.
15. On March 16, 2007, Mary Osika, DSW, Ohio EPA again sent a comment letter regarding PTI Application No. 603844 to MSD requesting additional assurance that no sewage would be generated by the developer and discharged into the

sewer system.

16. On March 19, 2007, Ohio EPA received a letter from Respondent stating that no sewage would be generated by the condominium project prior to completion of the WWTP.
17. On March 20, 2007, Mary Osika sent a letter to Respondent stating that the use of sanitary sewers did not meet the holding tank regulations at Ohio Administrative Code ("OAC") Rule 3745-42-11. The letter further stated that a holding tank could be used for two (2) homes due to the flow limitation and that a PTI would be required.
18. On March 20, 2007, Mary Osika sent a letter to MSD stating that a written assurance was received by Respondent regarding the condominium development and that the PTI would be issued for this sewer project. A special condition was added to the PTI requiring that the WWTP be completed before any sewage is generated by the condominium project.
19. On April 3, 2007, MSD sent a letter to Respondent stating that "The Metropolitan Sewer District of Greater Cincinnati is willing to work with you in constructing 25 homes in the above noted subdivision while the Ft. Scott Wastewater Reclamation Facility is under construction. We will allow you to obtain the building permits, tap permits, and rough-in plumbing inspection prior to completion of the treatment plant for these 25 homes prior to the completion of the treatment plant under the following conditions."
20. On April 3, 2007, MSD sent to Respondent MSD's policy which states "An arrangement was made between the Ohio Environmental Protection Agency (OEPA) and the Metropolitan Sewer District (MSD) in 1995, whereas MSD, upon approval, will coordinate, monitor and inspect holding tanks in an area where a planned sewer is proposed in MSD's QUEST Program. A signed sewage holding tank agreement will be recorded and run with the land until the building connects to a sanitary sewer when it becomes available...." In addition, MSD, by same cover letter, provided to Respondent its Sewerage Holding Tank Agreement with temporary easements, all of which were signed by Respondent and provided to MSD.
21. On May 7, 2007, Ohio EPA received PTI Application No. 610086 for a holding tank from MSD on behalf of Respondent. The PTI Application requested the use of the wastewater treatment plant's influent wet well (volume 6,463 gallons) for

storing sewage from 14 homes at approximately 6,000 gallons per day. The wet well would be owned by Respondent and inspected daily by the MSD. Pump outs would have to occur on a daily basis.

22. MSD was notified by letter from Ohio EPA dated May 22, 2007 that PTI application number 610085 was not approvable due to the design flow limitation and minimum storage volume required under the holding tank regulations, OAC Rule 3745-42-11. The PTI would be denied unless MSD withdrew the application.
23. The holding tank proposed in PTI application number 610086 is a "disposal system," as such term is defined in ORC § 6111.01(G).
24. Respondent plans to sell up to 15 homes before the WWTP is constructed and operational. Use of the WWTP influent wet well as a holding tank is an unauthorized use of a disposal system.
25. On June 8, 2007, Ohio EPA met with Parties named in these Findings. It was determined that the wet well could be used as an interim measure as long as the conditions set forth in the following Orders are met.
26. ORC § 6111.45 and OAC Rule 3745-42-02(A)(1) provide that no person may cause, permit, or allow installation of a new disposal system without first obtaining a PTI or plan approval from the Director.
27. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any order, rule, or term or condition of any permit issued or adopted by the Director pursuant to those sections, including OAC Rule 3745-42-02. Each day of violation is a separate offense.
28. 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 not install or modify sewerage systems or treatment works for sewage disposal or disposal systems, including, but not limited to, sanitary sewer lines, at any location in Ohio without first receiving a permit to install or plan approval from the Director as required by OAC Rule 3745-42-02 and ORC § 6111.07(A). Respondent may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondent has maintained compliance with this Order for a period of three hundred and sixty-five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section VI of these Orders. Termination of this Order does not relieve Respondent of its obligation to comply with all applicable laws and regulations, including but not limited to the requirement to obtain a PTI and/or plan approval prior to installation or modification of sewerage systems, treatment works, or disposal systems.
2. Respondent shall be prohibited from allowing connection to its sewer system any additional residential or other sources of sewage, industrial waste, or other waste. This connection prohibition shall not apply to the already connected existing fifteen (15) residential homes at the time of issuance of these Orders. The connection ban shall last until the WWTP is completed and is under operation by the MSD.
3. Within one (1) day of the effective date of these Orders, Respondent will provide for and keep records of daily inspections (including week-ends) of the wet well, to assure the proper operation of the holding tank and shall continue this requirement until the WWTP is completed and is under operation by the MSD. MSD should conduct said inspections.
4. Within one (1) day of the effective date of these Orders, Respondent shall install a high water level alarm in the wet well.
5. Respondent shall properly haul, remove, and/or dispose from the WWTP influent wet well, enough wastewater to maintain the level of wastewater in the WWTP influent wet well at three thousand (3,000) gallons or less.
6. Within one (1) month of the effective date of these Orders, and every month thereafter until completion of the WWTP and acceptance by MSD, Respondent shall report on the 15th day of the following month to Ohio EPA Southwest District Office in accordance with Section X of these Orders, the daily volume

(gallons) of wastewater hauled, removed, and/or disposed from the WWTP influent wet well, and the location to which the wastewater was hauled.

7. Within seven (7) days after the effective date of these Orders, Respondent shall submit to the Southwest District Office of Ohio EPA for approval, in accordance with Section X of these Orders, an Odor Contingency Plan. Respondent shall fully respond to any comments received from Ohio EPA on the documents submitted pursuant to this section within thirty (30) days of receiving the comments (or such longer period as agreed upon by the parties), including modification of the Plan as necessary.
8. Within seven (7) days of the effective date of these Orders, Respondent shall submit to Ohio EPA the names of two separate sewage hauling providers who will haul the wastewater from the WWTP influent wet well and indicate where the wastewater will be disposed.
9. Within seven (7) days of the effective date of these Orders, Respondent shall provide notice to the prospective fifteen (15) home-owners that the Respondent is operating an unauthorized disposal system. Respondent shall submit a copy of each notice to the Southwest District Office, in accordance with Section X of these Orders.
10. On or prior to July 31, 2007, Respondent shall complete construction of the WWTP in accordance with the approved PTI Application No. 05-13238 and achieve compliance with Ohio's water pollution control laws.
11. In settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111, Respondent shall pay a civil penalty in accordance with the following schedule:
  - a. Beginning on June 28, 2007 and everyday thereafter that the holding tank is used as a temporary disposal option pursuant to these Findings and Orders up through July 31, 2007, Respondent shall pay a civil penalty in the amount of \$1,000 per day.
  - b. Beginning on August 1, 2007 and everyday thereafter that the holding tank is used as a temporary disposal option pursuant to these Findings and Orders, Respondent shall pay a civil penalty in the amount of \$2,000 per day.
  - c. By July 15, 2007, Respondent shall make payment of penalties due

and owing to that point. Respondent shall continue to pay penalties due and owing on the 30<sup>th</sup> and 15<sup>th</sup> days of each month so long as the holding tank is in operation.

d. Payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for the total amount. 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 photocopy of the check shall be sent to Ohio EPA Southwest District Office in accordance with 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 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 Respondent.

#### **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 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  
Attention: Enforcement Supervisor  
401 East Fifth Street  
Dayton, Ohio 45402

#### **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 or 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:

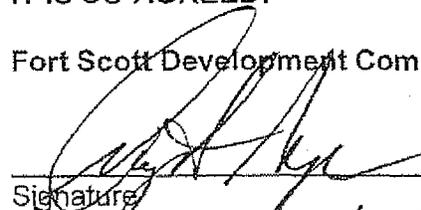
Ohio Environmental Protection Agency

  
\_\_\_\_\_  
Chris Korleski  
Director

6/26/07  
Date

IT IS SO AGREED:

Fort Scott Development Company, LLC

  
\_\_\_\_\_  
Signature  
Douglas H. Meyer  
Printed or Typed Name  
MEMBER  
Title

6-26-07  
Date

