

OHIO E.P.A.

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY 7 2003

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Rita Kapp  
4011 Briarwood Drive  
Urbana, Ohio 43078

Director's Final Findings  
and Orders

and

Sherman Kapp  
329 Mount Vernon Avenue  
Springfield, Ohio 45503

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.

Respondents

By: *M.A. Shapiro* Date: 11/17/08

OHIO ENVIRONMENTAL PROTECTION AGENCY

NOV 17 2008

OHIO E.P.A.

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Rita Kapp and Sherman Kapp ("Respondents") 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 Respondents 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 made the following findings:

1. Respondent Rita Kapp is the owner and operator of the wastewater treatment system for the Ogden Road Apartment Complex, located at 447 Ogden Road, Springfield, Clark County, Ohio ("the Site").
2. Respondent Sherman Kapp is a former co-owner of the Site and by judicial degree date August 12, 2008, will act as General Contractor on the following Orders.
3. The current onsite wastewater treatment system consists of a series of septic tanks and dry wells which discharge directly to ground water. The ground water constitutes "waters of the state" as defined in ORC ' 6111.01. There is no disinfection prior to discharge.
4. Ohio EPA conducted an inspection of the Site on August 21, 2006. During the inspection, Ohio EPA observed that the wastewater treatment system was discharging to waters of the state without an NPDES permit in violation of ORC ' 6111.04. Ohio EPA obtained samples of observed sewage pooling on the eastern side of the Site. The sample results indicated the presence of *E. coli* in excess of the public health nuisance standards set forth in Ohio Administrative Code ("OAC") Rule 3745-1-04. In addition, Ohio EPA inspectors observed sewage fungus, sewage odors, and greyish and black sewage deposits in the nearby unnamed tributary of Buck Creek.
5. By letter dated January 17, 2007, Respondent Rita Kapp was notified via mail that the wastewater treatment system discharge was in violation of ORC Chapter 6111 and OAC Rule 3745-1-40.
6. By letter dated January 16, 2007, the Clark County Combined Health District declared nuisance conditions at the Site.
7. Pursuant to ORC section 6111.04(A), no person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state. Such an action is prohibited under ORC section 6111.04(A) and is declared to be a public nuisance unless the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in ORC sections 6111.01 to 6111.08 or if the person's application for renewal of such a permit is pending.
8. Respondents have not applied for, nor obtained, a permit governing the causing or placement of sewage into waters of the state.

9. Pursuant to ORC section 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC sections 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
10. 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 sections 6111.44 and 6111.45 and OAC Chapter 3745-42.
11. 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 Sherman Kapp shall complete connection of the Site to the City of Springfield's sanitary sewer collection system in accordance with OAC Chapter 3745-42 and ORC Chapter 6111. Respondent Sherman Kapp shall do the following as expeditiously as practicable, but not later than the milestone dates set forth below:
  - a. Within seven (7) days of the effective date of these Orders, Respondent Sherman Kapp shall initiate construction in accordance with the approved PTI issued by the Director;
  - b. Within sixty (60) days of the effective date of these Orders, Respondent Sherman Kapp shall complete construction in accordance with the approved PTI issued by the Director; and
  - c. Within ninety (90) days of the effective date of these Orders, Respondent Sherman Kapp shall make connection to the City of Springfield's sanitary sewer collection system and cease discharge to waters of the state in accordance with the approved PTI issued by the Director.
2. Respondents Rita Kapp and Sherman Kapp (as General Contractor) shall properly abandon the wastewater disposal system in accordance with all federal, state and local rules and requirements including, but not limited to,

those imposed by the Clark County Combined Health District and the provisions of these Orders. Respondents Rita Kapp and Sherman Kapp shall complete the abandonment in accordance with the following schedule:

- a. Within thirty (30) days of the effective date of these Orders, Respondents Rita Kapp and Sherman Kapp shall submit for approval, in accordance with OAC rule 3745-34-07, a written closure plan to Ohio EPA, Division of Drinking and Ground Waters, Underground Injection Control Unit, at the address listed in Section X of these Orders. The closure plan shall describe procedures for removing the dry wells, septic tanks and associated piping and shall, at a minimum, include:
  - i. Procedures for disposing or managing any soil, gravel, sludge, liquids or other materials removed from or adjacent to the wells in accordance with all applicable federal, state or local rules and requirements;
  - ii. Procedures to notify Ohio EPA, Division of Drinking and Ground Waters, Underground Injection Control Unit, in accordance with Section X of these Orders, of the intent to close the dry wells at least thirty (30) days prior to plugging and abandoning the wells;
  - iii. Procedures for closing the dry wells including removing the casing of the dry wells and the specifications of the material that may be used as backfill during the closure; and
  - iv. An estimate of the costs to close the dry wells per the procedures listed within the plan.
- b. Respondent Rita Kapp shall cease discharge to waters of the state from the Site=s wastewater disposal systems within sixty (60) days after the completion of the tie-in of the Site to the City of Springfield=s sewer system.
- c. In accordance with the approved closure plan, Respondent Rita Kapp shall permanently plug and abandon the dry wells and all associated structures, such as septic tanks and piping, within sixty (60) days from the completion of the tie-in of the Site to the City of Springfield=s sewer system.

## **VI. TERMINATION**

Respondents= obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that have not been performed, in which case Respondents 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 Respondents to Ohio EPA and shall be signed by a responsible official of the Respondents. For purposes of these Orders, a responsible official is as defined in OAC rule 3745-33-03(D).

## **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 other statutes or regulations applicable to Respondents.

## **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 Respondents 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, Storm water and Enforcement Section  
50 West Town Street, Suite 700 [ P.O. Box 1049]  
Columbus, Ohio 43215 [43216-1049]

Documents required to be sent to the Ohio EPA Division of Drinking and Ground Waters shall be addressed to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Drinking and Ground Waters  
ATTN: Val Orr, Underground Injection Unit  
50 West Town Street, Suite 700 [ P.O. Box 1049]  
Columbus, Ohio 43215 [43216-1049]

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

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondents 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, Respondents consent to the

issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents 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**



Laura Powell  
Assistant Director

11/13/08

Date

**IT IS SO AGREED:**

**Respondents**

Rita Kapp

Sherman Kapp

  
Signature

  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

October 27, 2008  
Date

October 27, 2008  
Date