

A. Conway

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY OHIO E.P.A.

MAR 22 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Key Bank, NA :
2025 Ontario Street, Fourth Floor :
Cleveland, Ohio 44115 :
Respondent :

Director's Final Findings
and Orders

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By: [Signature] Date: 3-22-07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Key Bank, NA ("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 or composition of Respondent or the ownership of the Site 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 Chapter 6111. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent is the developer of the Key Commons Development, hereinafter known as the "Site," in the City of Brooklyn, Cuyahoga County, Ohio.
2. Ohio Administrative Code ("OAC") Rule 3745-42-02(A)(1) provides that no person may cause, permit, or allow installation of a new disposal system without first obtaining a permit to install ("PTI") or plan approval from the Director.
3. 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 rule adopted by the Director pursuant to those sections, including OAC Rule 3745-42-02.

4. On October 24, 2005, on behalf of Respondent, D. J. Neff Enterprises, Inc., d.b.a. Neff & Associates, submitted to Ohio EPA, PTI Application No. 526041, together with detailed plans, ("PTI Application"), for the installation of one thousand sixteen (1,016) feet of sanitary sewer extension to serve the Site.
5. The sanitary sewer extension proposed in the PTI Application is a "disposal system."
6. On December 12, 2005 and August 30, 2006, Ohio EPA notified Neff & Associates that revisions were necessary to the PTI Application.
7. On October 11, 2006, Ohio EPA conducted an inspection at the Site, at which it was confirmed that the installation of the sanitary sewer extension was completed prior to the approval of the plans and issuance of a PTI by Ohio EPA.
8. By letter dated October 16, 2006, Respondent was notified that the installation of the sanitary sewer extension was in violation of ORC Chapter 6111. and the administrative rules.
9. On January 24, 2007, as built plans for the sanitary sewer extension were submitted.
10. Respondent has previously (September 15, 2004) entered into Orders with Ohio EPA for violations of ORC Chapter 6111. and the administrative rules regarding the installation of a disposal system prior to receiving approved detailed plans and a PTI from Ohio EPA.
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 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 Chapter 6111. and OAC Rule 3745-42-02.
2. Respondent shall pay to Ohio EPA the amount of two thousand one hundred ten dollars (\$2,110.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the full amount

within thirty (30) days of the effective date of these Orders, to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Site.

A photocopy of the check shall be sent to Ohio EPA Northeast District Office, at the address set forth in Section X.

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 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

Unless otherwise specified herein, all documents required to be submitted by Respondent shall be addressed to:

Ohio Environmental Protection Agency
Division of Surface Water
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: DSW Enforcement Coordinator

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.

