

AUG 11 2009

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Village of Phillipsburg
P.O. Box 172
Phillipsburg, Ohio 45354

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Director's Final Findings
and Orders

Respondent

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: 8-11-09

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Village of Phillipsburg ("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 Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is a Village located in Montgomery County, Ohio, consisting of approximately 257 housing units and about ten commercial establishments. The population of the Village is approximately 632 persons.

2. Centralized wastewater treatment facilities are currently unavailable in the Village of Phillipsburg.
3. Many of the homes and commercial businesses located in the Village of Phillipsburg are served by failing on-site sewage disposal systems and home aerators that discharge raw or partially treated sewage to tributaries of Brush Creek. Brush Creek is defined as "waters of the state" pursuant to ORC Section 6111.01.
4. Pursuant to Ohio Administrative Code ("OAC") 3745-1-04, 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 Chapter 4736 of the Revised Code documents odor, color and/or other visual manifestations of raw or poorly treated sewage and
 - (A) Water samples exceed five thousand fecal coliform 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; or
 - (B) Water samples 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.
5. An inspection by Ohio EPA, Division of Surface Water, noted discharges of untreated or partially treated wastewater in and around the Village of Phillipsburg into storm drains on the following dates: February 28, 2008, May 15, 2008, October 7, 2008, October 15, 2008, and October 30, 2008. Samples were taken on October 7, 2008 and October 15, 2008. A report of the sampling results is included as Attachment 1, which is attached to these Orders and incorporated by reference as if fully rewritten within. The sampling data obtained by Ohio EPA demonstrates a public health nuisance in accordance with OAC Rule 3745-1-04.
6. The Village of Phillipsburg was specifically referenced in the Stillwater River Basin Technical Support Document (2001) and the Stillwater River Watershed TMDL Report (2004) as a direct impact to Brush Creek and tributaries to Brush Creek due to inadequate on-site sewage treatment systems.
7. Respondent submitted an application for coverage under the National Pollutant Discharge Elimination System ("NPDES") permit in 1975. Ohio EPA issued a final NPDES permit to the Respondent in 1975 in anticipation of the construction of wastewater improvements. The permit was eventually revoked in 1992 due to the failure of wastewater improvements to be developed.

8. Small lot sizes, in conjunction with local soil conditions and local hydrology, make the replacement or repair of existing on-site sewage disposal systems an unacceptable solution to remedy the unsanitary conditions.
9. 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 §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.
10. 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. As soon as possible, but not later than twelve (12) 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, 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;
 - iv. Limiting the discharge to surface waters by constructing controlled discharge lagoons; and
 - v. Limiting the discharge to surface waters by using constructed wetlands.
 - b. Proposed locations of collection and treatment facilities if deemed appropriate.

- c. Cost estimates for the required improvements and cost effectiveness analysis of the alternatives based on total present worth. The cost effectiveness analysis must include the total construction costs of each alternative as well as operation, maintenance, and replacement costs, and should use the following assumptions:
 - i. The analysis must be for a twenty (20) year period; and
 - ii. Assume an interest rate of 6.5% per annum.
 - d. The financial mechanisms to be used to fund the required improvements, as well as the operation, maintenance, and replacement costs.
 - e. Implementation schedule for submitting a complete NPDES permit application, if necessary, a complete PTI application and approvable detail plans, awarding construction bids, starting and completing construction, and attaining compliance with ORC Chapter 6111 and the administrative rules promulgated thereunder.
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 1.e.

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.

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 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 subject matter of these Orders..

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, Southwest District Office
Attn: DSW Enforcement Unit Supervisor
401 E. Fifth Street
Dayton, Ohio 45402

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, causes of action, and defenses 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.

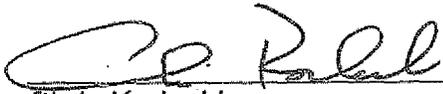
XIII. EFFECTIVE DATE

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 ORDERED AND AGREED:
Ohio Environmental Protection Agency



Chris Korleski
Director

Date 8/10/09

IT IS SO AGREED:
Village of Phillipsburg


By _____

Date July 22, 2009

KENNETH M. HENZ

Print Name

Mayor

Title

Attachment I

Ohio EPA sampled storm sewers tributary to Brush Creek in the Village of Phillipsburg on October 7, 2008 and October 15, 2008 for fecal coliform bacteria. The sample results are set forth below:

<i>Date/Time</i>	<i># / 100 mL</i>	<i>Description</i>	<i>Location</i>
10/07/08 9:00 a.m.	60,000	moderate odor, grayish, sewage fungus, sludge deposits	Site #1, Phillipsburg Elementary catch basin, Main Street
10/07/08 11:00 a.m.	60,000	moderate odor, grayish, sewage fungus, sludge deposits	
10/15/08 9:00 a.m.	60,000	moderate odor, blackish color, sewage fungus, sludge deposits	
10/15/08 11:00 a.m.	60,000	moderate odor, blackish color, sewage fungus, sludge deposits	
10/07/08 9:15 a.m.	60,000	moderate odor, grayish, oily sheen, floating scums, suspended sludge, sludge deposits	Site #2, Catch basin at the corner of Ludlow Street and Main Street in Phillipsburg
10/07/08 11:15 a.m.	60,000	moderate odor, grayish, oily sheen, floating scums, suspended sludge, sludge deposits	
10/15/08 9:15 a.m.	600,000	slight odor, whitish, grayish and blackish color, oily sheen, floating scums, suspended sludge, sludge deposits	
10/15/08 11:15 a.m.	600,000	slight odor, whitish, grayish and blackish color, oily sheen, floating scums, suspended sludge, sludge deposits	
10/07/08 9:30 a.m.	60,000	slight odor, grayish, oily sheen, sewage fungus, sludge deposits	Site #3, Catch basin located in front of 55 East Main Street in Phillipsburg
10/07/08 11:30 a.m.	60,000	slight odor, grayish, oily sheen, sewage fungus, sludge deposits	
10/15/08 9:30 a.m.	60,000	slight odor, grayish and blackish color, oily sheen, floating scums, suspended sludge, sewage fungus, sludge deposits	
10/15/08 11:30 a.m.	60,000	slight odor, grayish and blackish color, oily sheen, floating scums, suspended sludge, sewage fungus, sludge deposits	

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<i>Date/Time</i>	<i># / 100 mL</i>	<i>Description</i>	<i>Location</i>
10/07/08 9:45 a.m.	60,000	slight odor, grayish, oily sheen, sewage fungus, sludge deposits	Site #4, Catch basin located at the end of Maple Street near Walnut Street in Phillipsburg
10/07/08 11:45 a.m.	60,000	slight odor, grayish, oily sheen, sewage fungus, sludge deposits	
10/15/08 9:45 a.m.	60,000	moderate odor, blackish color, floating scums, sludge deposits	
10/15/08 11:45 a.m.	320,000	moderate odor, blackish color, floating scums, sludge deposits	

Attachment I

Ohio EPA sampled storm sewers tributary to Brush Creek in the Village of Phillipsburg on October 7, 2008 and October 15, 2008 for *E. coli* bacteria. The sample results are set forth below:

<i>Date/Time</i>	<i># / 100 mL</i>	<i>Description</i>	<i>Location</i>
10/07/08 9:00 a.m.	80,000	moderate odor, grayish, sewage fungus, sludge deposits	Site #1, Phillipsburg Elementary catch basin, Main Street
10/07/08 11:00 a.m.	80,000	moderate odor, grayish, sewage fungus, sludge deposits	
10/15/08 9:00 a.m.	80,000	moderate odor, blackish color, sewage fungus, sludge deposits	
10/15/08 11:00 a.m.	80,000	moderate odor, blackish color, sewage fungus, sludge deposits	
10/07/08 9:15 a.m.	80,000	moderate odor, grayish, oily sheen, floating scums, suspended sludge, sludge deposits	Site #2, Catch basin at the corner of Ludlow Street and Main Street in Phillipsburg
10/07/08 11:15 a.m.	80,000	moderate odor, grayish, oily sheen, floating scums, suspended sludge, sludge deposits	
10/15/08 9:15 a.m.	800,000	slight odor, whitish, grayish and blackish color, oily sheen, floating scums, suspended sludge, sludge deposits	
10/15/08 11:15 a.m.	800,000	slight odor, whitish, grayish and blackish color, oily sheen, floating scums, suspended sludge, sludge deposits	
10/07/08 9:30 a.m.	80,000	slight odor, grayish, oily sheen, sewage fungus, sludge deposits	Site #3, Catch basin located in front of 55 East Main Street in Phillipsburg
10/07/08 11:30 a.m.	19,000	slight odor, grayish, oily sheen, sewage fungus, sludge deposits	
10/15/08 9:30 a.m.	80,000	slight odor, grayish and blackish color, oily sheen, floating scums, suspended sludge, sewage fungus, sludge deposits	
10/15/08 11:30 a.m.	80,000	slight odor, grayish and blackish color, oily sheen, floating scums, suspended sludge, sewage fungus, sludge deposits	

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<i>Date/Time</i>	<i># / 100 mL</i>	<i>Description</i>	<i>Location</i>
10/07/08 9:45 a.m.	80,000	slight odor, grayish, oily sheen, sewage fungus, sludge deposits	Site #4, Catch basin located at the end of Maple Street near Walnut Street in Phillipsburg .
10/07/08 11:45 a.m.	80,000	slight odor, grayish, oily sheen, sewage fungus, sludge deposits	
10/15/08 9:45 a.m.	80,000	moderate odor, blackish color, floating scums, sludge deposits	
10/15/08 11:45 a.m.	290,000	moderate odor, blackish color, floating scums, sludge deposits	