

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
AUG -4 2009

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Jefferson County Board of Commissioners :  
301 Market Street :  
Steubenville, Ohio 43952 :

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: Donna Lassiter Date: 8-4-09

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Jefferson 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") §§ 3745.01, 6111.03(H), and 6117.34.

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 thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. The Pottery Addition is an unincorporated area located southeast of State Route 7 and northwest of the Ohio River along Kingsdale Road in Island Creek Township, Jefferson County, Ohio, consisting of approximately one hundred thirty-one (131) residences, fourteen (14) commercial establishments, and one church. Centralized wastewater treatment facilities are unavailable in the Pottery Addition.
2. The Pottery Addition is served by an inadequate or failing centralized sanitary sewerage collection system that discharges untreated sewage to the Ohio River and

unnamed tributaries thereof. The unnamed tributaries and the Ohio River are "waters of the state" as defined in ORC § 6111.01.

3. The sewerage collection system in the Pottery Addition previously flowed to a large septic tank which discharged to the Ohio River. In September 2004, storms destroyed the septic tank and sewer for the Pottery Addition. Since then, raw sewage from the Pottery Addition has discharged to the Ohio River and unnamed tributaries to the Ohio River.
4. Pursuant to ORC § 6111.04, no person shall cause pollution or place or cause to be placed any sewage, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state, except in compliance with a valid, unexpired National Pollutant Discharge Elimination System ("NPDES") permit.
5. Respondent did not apply for, nor obtain, an NPDES permit for the discharge of sewage from the Pottery Addition to waters of the state, either before or after destruction of the septic tank. Therefore, the discharge of sewage from the Pottery Addition to the Ohio River and unnamed tributaries of the Ohio River constitutes a continuing violation of ORC § 6111.04.
6. Ohio Administrative Code ("OAC") Rule 3745-1-04(F) provides that it is a general Ohio water quality criteria, applicable to all surface waters of the state, that, to every extent practical and possible as determined by the Director, surface waters shall be free from public health nuisances associated with raw or poorly treated sewage.
7. 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 (5,000) fecal coliform counts per one hundred (100) milliliters in two (2) or more samples when five (5) or fewer samples are collected, or in more than twenty percent (20%) of the samples when more than five (5) samples are taken; or water samples exceed five hundred seventy-six (576) *Escherichia coli* counts per one hundred (100) milliliters in two (2) or more samples when five (5) or fewer samples are collected, or in more than twenty percent (20%) of the samples when more than five (5) samples are taken.
8. Ohio EPA sampled the unnamed tributaries to the Ohio River in the Pottery Addition area on June 22, 2000 and July 17, 2000 for fecal coliform bacteria. The sample results are set forth below:

<b>Date</b>	<b># / 100 ml</b>	<b>Location</b>
6/22/2000	32,000	Pottery Addition at Jewett Road
7/17/2000	116,000	
6/22/2000	7,182	Ditch in Pottery Addition opposite Briarwood Restaurant at Barium Chemicals, Inc.
7/17/2000	55,000	

9. On October 1, 2004, the Board of Health of the Jefferson County General Health District ("Health District"), by letter to the Director, issued a written complaint under ORC § 6117.34, alleging that unsanitary conditions exist in the Pottery Addition due to untreated sanitary sewage discharges.
10. Pursuant to ORC § 6117.34, whenever the board of health of a general health district, makes a complaint in writing to Ohio EPA that unsanitary conditions exist in any county, the Director forthwith shall inquire into and investigate the conditions complained of in that complaint.
11. Ohio EPA sampled the unnamed tributaries to the Ohio River in the Pottery Addition area on March 28, 2007 for fecal coliform bacteria. The sample results are set forth below:

<b>Date</b>	<b># / 100 ml</b>	<b>Location</b>
3/28/2007	10,000	Site #1, Pottery Addition discharge to Ohio River
3/28/2007	55,000	Site #2, Pottery Addition Sanitary Line
3/28/2007	3,900	Site #3, Pottery Addition Stream at CR 44

12. Ohio EPA sampled the unnamed tributaries to the Ohio River in the Pottery Addition area on March 28, 2007 for E. coli bacteria. The sample results are set forth below:

<b>Date</b>	<b># / 100 ml</b>	<b>Location</b>
3/28/2007	1,100	Site #1, Pottery Addition discharge to Ohio River
3/28/2007	3,500	Site #2, Pottery Addition Sanitary Line
3/28/2007	340	Site #3, Pottery Addition Stream at CR 44

13. On May 23, 2007, the West Virginia Department of Environmental Protection collected a sample of the Pottery Addition discharge as part of an investigation of high fecal coliform levels in the Ohio River. Results of the analysis showed more than 60,000 fecal coliform counts per 100 milliliters.
14. Ohio EPA sampled the discharge to the Ohio River and tributaries of the Ohio River in the Pottery Addition area on June 24, 2008 and July 7, 2008 for fecal coliform bacteria. The sample results are set forth below:

<b>Date/ Time</b>	<b># / 100 ml</b>	<b>Location</b>
6/24/2008 11:10 a.m.	60,000	Site #1, Pottery Addition discharge to Ohio River
7/7/2008 11:10 a.m.	60,000	
6/24/2008 11:30 a.m.	4,300	Site #2, Pottery Addition unnamed tributary at CR 44
7/7/2008 11:15 a.m.	3,900	
6/24/2008 11:25 a.m.	60,000	Site #3, Pottery Addition Sanitary line
7/7/2008 11:20 a.m.	60,000	
6/24/2008 11:55 a.m.	540	Site #4, Drainage at culvert near Buck's truck stop
7/7/2008 11:05 a.m.	150	

15. Ohio EPA sampled the discharge to the Ohio River and tributaries of the Ohio River in the Pottery Addition area on June 24, 2008 and July 7, 2008 for E. coli bacteria. The sample results are set forth below:

<b>Date/ Time</b>	<b># / 100 ml</b>	<b>Location</b>
6/24/2008 11:10 a.m.	80,000	Site #1, Pottery Addition discharge to Ohio River
7/7/2008 11:10 a.m.	110,000	
6/24/2008 11:30 a.m.	3,900	Site #2, Pottery Addition unnamed tributary at CR 44
7/7/2008 11:15 a.m.	3,500	
6/24/2008 11:25 a.m.	80,000	Site #3, Pottery Addition Sanitary line
7/7/2008 11:20 a.m.	80,000	
6/24/2008 11:55 a.m.	580	Site #4, Drainage at culvert near Buck's truck stop
7/7/2008 11:05 a.m.	30	

16. The sampling data and subsequent investigation by Ohio EPA confirmed the existence of unsanitary conditions, documented violations of Ohio's general water quality criteria set forth in OAC Rule 3745-1-04, and demonstrated a public health nuisance in accordance with OAC Rule 3745-1-04.
17. Pursuant to ORC § 6111.07, no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or any order or rule issued or adopted pursuant to these sections. Each day of violation is a separate offense.
18. 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.

19. A lift station was constructed in accordance with permit to install ("PTI") No. 06-5473, issued July 20, 1999, as part of a sewerage system to send sewage from the Pottery Addition to the City of Steubenville's wastewater treatment plant. Respondent, however, failed to construct the necessary additional sewer extension. The lift station reportedly has never been used and has adequate capacity for the sewage flow from the Pottery Addition.
20. 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 Pottery Addition. ORC §6111.03(H) provides that the Director may issue Orders to prevent, control, or abate water pollution by such means as:
  - (a) prohibiting or abating discharges of sewage, industrial waste, or other wastes into waters of the state; and
  - (b) requiring the construction of new disposal systems or any parts thereof, or the modification, extension, or alteration of existing disposal systems or any parts thereof.
21. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
22. 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 Rule 3745-42.
23. 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 abate the water pollution and correct the unsanitary conditions in the Pottery Addition area by construction of a sanitary sewerage system to connect the Pottery Addition to the City of Steubenville's sanitary sewer system in accordance with the following schedule:

- a. Within nine (9) months after the effective date of these Orders, Respondent shall submit a complete PTI application, with approvable detailed plans, for installing separate sanitary sewers in the Pottery Addition area and connecting them to the existing lift station.
  - b. Within twelve (12) months after the effective date of these Orders, Respondent shall advertise for construction bids, receive bids, and award contracts for the installation of the sanitary sewers as approved in the PTI.
  - c. Within fourteen (14) months after the effective date of these Orders, Respondent shall initiate construction, in accordance with the approved PTI, of sanitary sewers in the Pottery Addition and the connection to the existing lift station.
  - d. Within twenty (20) months after the effective date of these Orders, Respondent shall complete construction in accordance with the approved PTI of the sewers in the Pottery Addition and the connection to the existing lift station.
  - e. Notify Southeast District Office ("SEDO") in writing within seven (7) days of commencing construction.
  - f. Notify SEDO within seven (7) days of completion of construction.
2. Respondent shall exercise all authority under ORC § 6117.51 to compel premises in the Pottery Addition area to connect to the wastewater collection system and cease use of currently existing sewage disposal systems within six (6) months after completion of the sewage collection system.
  3. Within fourteen (14) days of completing the requirements in Order 2, Respondent shall provide notice, in writing, to the Ohio EPA of their completion. Notice shall be sent to the address 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 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 in or at the Pottery Addition.

#### **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 or to the Pottery Addition.

#### **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  
Southeast District Office  
Division of Surface Water  
Attn: DSW Enforcement Unit Supervisor  
2195 Front Street  
Logan, Ohio 43138

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**

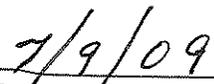
  
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Chris Korleski  
Director

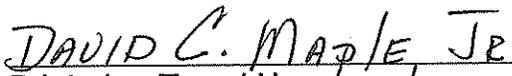
  
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Date

**IT IS SO AGREED:**

**Jefferson County Board of Commissioners**

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Printed or Typed Name

  
\_\_\_\_\_  
Title

Dr. Thomas E. Graham  
Signature

7/9/09  
Date

DR. THOMAS E. GRAHAM  
Printed or Typed Name

COUNTY COMMISSIONER  
Title

THG  
Signature

7/9/09  
Date

THOMAS G. GENTILE  
Printed or Typed Name

COUNTY COMMISSIONER  
Title