

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JAN 17 2002

ENTERED DIRECTOR'S JOURNAL

In the matter of:

City of Nelsonville  
211 Lake Hope Drive  
Nelsonville, Ohio, 45764

Director's Final Findings  
and Orders

Respondent.

PREAMBLE

Pursuant to Ohio Revised Code (ORC) Sections 6111.03 and 3745.01, the Director of the Ohio Environmental Protection Agency (Ohio EPA) hereby makes the following Findings and issues the following Orders:

PARTIES BOUND

These Orders shall apply to and be binding upon the City of Nelsonville, hereinafter "Respondent," its assigns and successors in interest liable under Ohio law. Respondent's obligations under these Orders may be altered only by the written action of the Director of Ohio EPA.

FINDINGS

1. Respondent, the City of Nelsonville, is located in Athens County, Ohio.
2. Respondent operates a publically owned sanitary sewer collection and treatment system which is authorized to discharge by the Director of Ohio EPA under an effective National Pollutant Discharge Elimination System (NPDES) permit, number OPC00006, effective August 6, 1996. However, not all homes in Nelsonville are serviced by the collection and treatment system.
3. The Dorr Run area of Nelsonville, located along State Route 278, is an unsewered area serviced by individual home sewage disposal systems. Failing and inadequate sewage disposal systems in this area are discharging pollutants to unnamed tributaries of Dorr Run, resulting in unsanitary conditions, exceedances of the water quality standards, and a public nuisance, as defined in Rule 3745-1-04 of the Ohio Administrative Code (OAC).
4. Dorr Run and its tributaries are "waters of the state" as defined in ORC Section 6111.01.

I certify this to be a true and accurate copy of the  
official record of the proceedings of the Ohio  
Environmental Protection Agency

By: James G. [Signature] Date: 1/17/02

5. Respondent's NPDES permit requires the submission of a report on the sewage disposal problem in the Dorr Run area with recommendations on possible corrective actions to abate unsanitary conditions. This report was due not later than May 1, 1997, and Ohio EPA was to provide a schedule of compliance to correct sewage disposal problems upon completing its review of the report.
6. Respondent has never submitted the report in violation of the term and condition of the NPDES permit and ORC Section 6111.07(A).
7. Respondent did submit an application for a permit to install sanitary sewers to serve the Dorr Run area, and the Director issued PTI No. 06-6314 to Respondent on November 6, 2000.
8. Small lot sizes and poor soil conditions prohibit the installation of replacement home sewage disposal systems in the Dorr Run area. The Athens City-County Health District has requested that Respondent provide sanitary sewers as a remedy to the public nuisance.
9. It is necessary for the protection of the health and welfare of the public that Respondent abate the sewage disposal problems, unsanitary conditions, and public nuisance resulting from discharges of raw or partially treated sewage in the Dorr Run area.
10. Compliance with these Orders is not contingent upon the availability or receipt of financial assistance.
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 Chapter 6111 of the Revised Code.

### ORDERS

1. Respondent shall eliminate the aforementioned unpermitted discharges as expeditiously as practicable, but not later than the dates contained in the following schedule:
  - a. By July 15, 2002, Respondent shall begin construction in accordance with PTI No. 06-6314;

- b. By January 15, 2003, Respondent shall complete construction in accordance with PTI No. 06-6314, abate the unauthorized discharge of pollutants from home sewage disposal systems to Dorr Run and its tributaries, and correct the public nuisance in the Dorr Run area.
2. Within seven (7) days of completing the requirements in Orders 1.a. and in 1.b., Respondent shall submit to Ohio EPA written notification of the completion of the requirements.
3. Respondent shall submit all documents required by these orders to the following address:

Ohio EPA, Southeast District Office  
Attn: DSW Enforcement Unit Supervisor  
2195 Front Street  
Logan, OH 43138

#### **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. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Respondent's operation of its Facility.

#### **RESERVATION OF RIGHTS**

These Orders do not prevent Ohio EPA from enforcing the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders. These Orders do not prevent Ohio EPA from exercising its authority to require Respondent to perform additional activities pursuant to Chapter 6111 of the Ohio Revised Code or any other applicable law in the future. These Orders do not restrict the right of Respondent to raise any administrative, legal or equitable claim or defense for any additional activities that Ohio EPA may seek to require of Respondent. These Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

#### **TERMINATION**

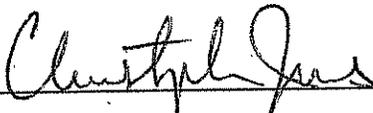
Respondent's obligations under these Orders shall be satisfied and terminate when Respondent demonstrates in writing and certifies to the satisfaction of the Ohio EPA

that all obligations under these Orders have been performed and the Chief of Ohio EPA's Division of Surface Water acknowledges the termination in writing.

This certification shall be submitted by the Respondent to the Southeast District Office (attention: DSW Enforcement Group Leader) and shall be signed by a responsible official of the Respondent. A responsible official is as defined in OAC Rule 3745-33-03(D)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole proprietorship, and OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility. The certification shall contain the following attestation:

*"I certify under the penalty of law that I have personally examined and are familiar with the information contained in or accompanying this certification, and based on inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."*

**IT IS SO ORDERED:**  
**Ohio Environmental Protection Agency**



Date: 1-15-02

Christopher Jones  
Director

**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 agrees to comply with these Orders, Respondent agrees that these Orders are lawful and reasonable, and Respondent agrees that the times provided for compliance herein are reasonable. Compliance with these Orders shall be a full accord and satisfaction of Respondent's liability for the violations specifically cited herein. Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph of these Orders.

Respondent hereby waives the right to appeal the issuance, terms and service of these Orders, and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that 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 agrees to continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

**SIGNATORY AUTHORITY**

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

**IT IS SO AGREED:**

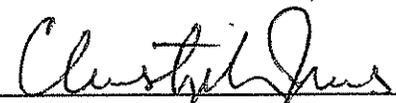
City of Nelsonville

By:  Date: 11/15/01

Name & Title: Mark J. Fiorello City Manager

**IT IS SO AGREED:**

Ohio Environmental Protection Agency

 Date: 1-15-02  
Christopher Jones  
Director