Ohio Environmental Protection Agency

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

7/28/2016

Mayor and Council
City of Norton
4060 Columbia Woods Drive
Norton, OH 44203

RE: Director's Final Findings & Orders
NPDES
Summit County
8OU00036

Ladies and Gentlemen:

Transmitted herewith is one copy of the Director's Final Findings & Orders in the referenced matter.

Sincerely,

Kevin J. Fowler, Supervisor
Permit Processing Unit
Division of Surface Water

KJF/dks

Enclosure

CERTIFIED MAIL

cc: M. Mann, DSW
R. DeMuth, DSW
B. Schuch, DSW
L. Reeder, DSW
Compliance Section
M. McCarron, PIC
H. Griesmer, PIC
D. Stoll, NEDO/DSW
B. Fischbein, Legal
P. Fallah, DEFA
Journal Room
File

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: **City of Norton** **4060 Columbia Woods Drive** **Norton, Ohio 44203**	: : : : :	**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.

By: [signature] Date: 7-28-16

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Norton ("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 Chapters, 6111 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The Nash Heights area is within the corporate boundaries of the City of Norton, Summit County, Ohio wherein centralized wastewater facilities are unavailable. For purposes of these Orders, the Nash Heights area consists of those areas depicted in Attachment A. Attachment A is incorporated by reference as if fully rewritten herein.

2. Homes within the Nash Heights area are served by individual home sewage disposal systems, many of which are failing to adequately treat sewage from these homes.

3. In the summer of 2012, the Summit County Health Department (SCHD) sampled surface waters in the Nash Heights neighborhood. Their sampling results showed elevated levels of fecal coliform ranging from 20 to greater than 240,000 fecal colonies per 100 ml.

4. On April 11, 2013, the Board of Health of the Summit County Combined General Health District passed resolution number 116-13 which declared a Public Health Nuisance in the City of Norton; Nash Heights Neighborhood.

5. The Director of Ohio EPA received a letter dated April 26, 2013 from Summit County Public Health requesting assistance in alleviating a public health nuisance due to poorly operating and antiquated sewage treatment systems.

6. On June 19, 2013, Ohio EPA conducted sampling from the same sites. Ohio EPA sampling showed elevated levels of *E.coli* ranging from 3,600 to 2,400,000 *E.coli*/100 ml.

7. The sampling data and subsequent investigation by Ohio EPA confirmed the existence of unsanitary conditions and documented violations of Ohio's general water quality criteria.

8. In general, the residential lots within the Nash Heights area exhibit characteristics unsuitable for or detrimental to, new or upgraded on-lot individual sewage disposal systems due to their respective size and soil conditions. Accordingly, the replacement or repair of existing on-site sewage disposal systems is an unacceptable solution to remedy the unsanitary conditions.

9. On November 14, 2013, the Director of Ohio EPA and the Mayor of the City of Norton signed Director's Final Findings and Orders establishing the following three-phase schedule to construct sewage improvements for abating pollution and correcting the unsanitary conditions:

   A. Phase 1 - Nash Heights East

      i. Submit PTI to Ohio EPA - November 15, 2013
      ii. Begin Construction - May 15, 2014
      iii. Final Completion - June 1, 2015

B. Phase 2 - Greenwich Road/SR 21 Pump Stations & Force Mains

i.	Submit PTI to Ohio EPA	-	April 30, 2014
ii.	Begin Construction	-	March 30, 2015
iii.	Final Completion	-	May 30, 2016

C. Phase 3 - Nash Heights West

i.	Submit PTI to Ohio EPA	-	April 30, 2015
ii.	Begin Construction	-	March 30, 2016
iii.	Final Completion	-	May 30, 2017

10. On January 29, 2014 the City of Norton requested a 90 day extension for the Phase I and Phase II sewer improvements, which Ohio EPA granted on February 10, 2014.

11. The City of Norton entered into negotiations with Summit County and the City of Barberton in which the assets, sewer lines, pump stations and treatment plants in the City of Norton would be owned and operated by the City of Barberton, which would also assume responsibility for the 2013 Director's Final Findings and Orders.

12. The City of Norton, Summit County and the City of Barberton entered into an MOU on April 22, 2015 to effectuate the eventual transfer of ownership of assets but the City of Norton failed to take steps necessary to effectuate the terms and conditions of the MOU and as a result, the status quo remains regarding ownership of infrastructure and legal obligations under the Director's 2013 Orders.

13. Respondent failed to take timely action to submit permit applications and begin and complete construction to address the unsanitary conditions within the Nash Heights Area and specifically is in violation of Order 1.A,i-iii (Phase 1 – Nash Heights East), Order 1.B.i-iii (Phase 2, Greenwich Road/SR 21 Pump Stations and Force Mains) and Order 1.C.i-ii (Nash Heights West).

14. On December 1, 2015 the Ohio EPA sent the City of Norton a Notice of Violation for failure to comply with the November 2013 Director's Final Findings and Orders.

15. On December 15, 2015 the City of Norton proposed a revised project schedule to construct all three phases of the sewage improvements with a final completion date on November 28, 2017.

16. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.

17. 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.

18. The Director has given consideration to the factors set forth in ORC Sections 6111.03 and 6111.60, 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. The Director's November 14, 2013 Final Findings and Orders are hereby terminated.

2. Respondent shall construct sewage improvements for abating pollution and correcting the unsanitary conditions in the Nash Heights area consistent with the applicable 208 areawide plan, pursuant to the following schedule:

   A. Begin construction in accordance with an approved PTI as soon as possible but no later than November 28, 2016; and

   B. Complete construction as soon as possible but no later than November 28, 2017.

3. Should Respondent fail to implement Order 2 within the deadlines set therein, Respondent shall pay civil penalties to Ohio EPA, which shall be assessed pursuant to ORC Chapter 6111. Payment shall be made by an official check(s) submitted to Carol Butler, or her successor, together with a letter identifying the Respondent to:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to Mark Mann, Environmental Manager, Compliance and Enforcement Section, or his successor, at the following address:

Ohio EPA Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

Payment shall be made in the appropriate amount(s) as follows:

A. Respondent shall be liable for and shall pay a penalty of one hundred dollars ($100.00) per day for the first sixty (60) days for failure to meet any of the deadlines set forth in Order 2 and thereafter, a penalty of two hundred dollars ($200.00) per day for failure to meet the deadline(s).

B. The penalties stipulated in Order 3 for failure to meet the deadlines in Order 2A or 2B shall not exceed the amount of ten thousand dollars ($10,000.00) per each milestone deadline.

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.

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 the affected area.

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.

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
Northeast District Office
Division of Surface Water
Attn: Enforcement Supervisor
2110 East Aurora Road
Twinsburg, Ohio 44087

and to:

Ohio Environmental Protection Agency
Division of Surface Water
Attn: Enforcement Section
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 and causes of action, except as specifically waived in Section XII of these Orders. If Respondent fails to comply with the schedule set forth in Order 2 and as a result of those violations is liable for the maximum stipulated penalty set forth for a particular milestone in Order 3, Ohio EPA specifically reserves its rights to seek civil penalties for violations that continue subsequent to reaching the maximum stipulated penalty for that milestone.

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 or addressed 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

Craig W. Butler
Director

7-21-16
Date

IT IS SO AGREED:

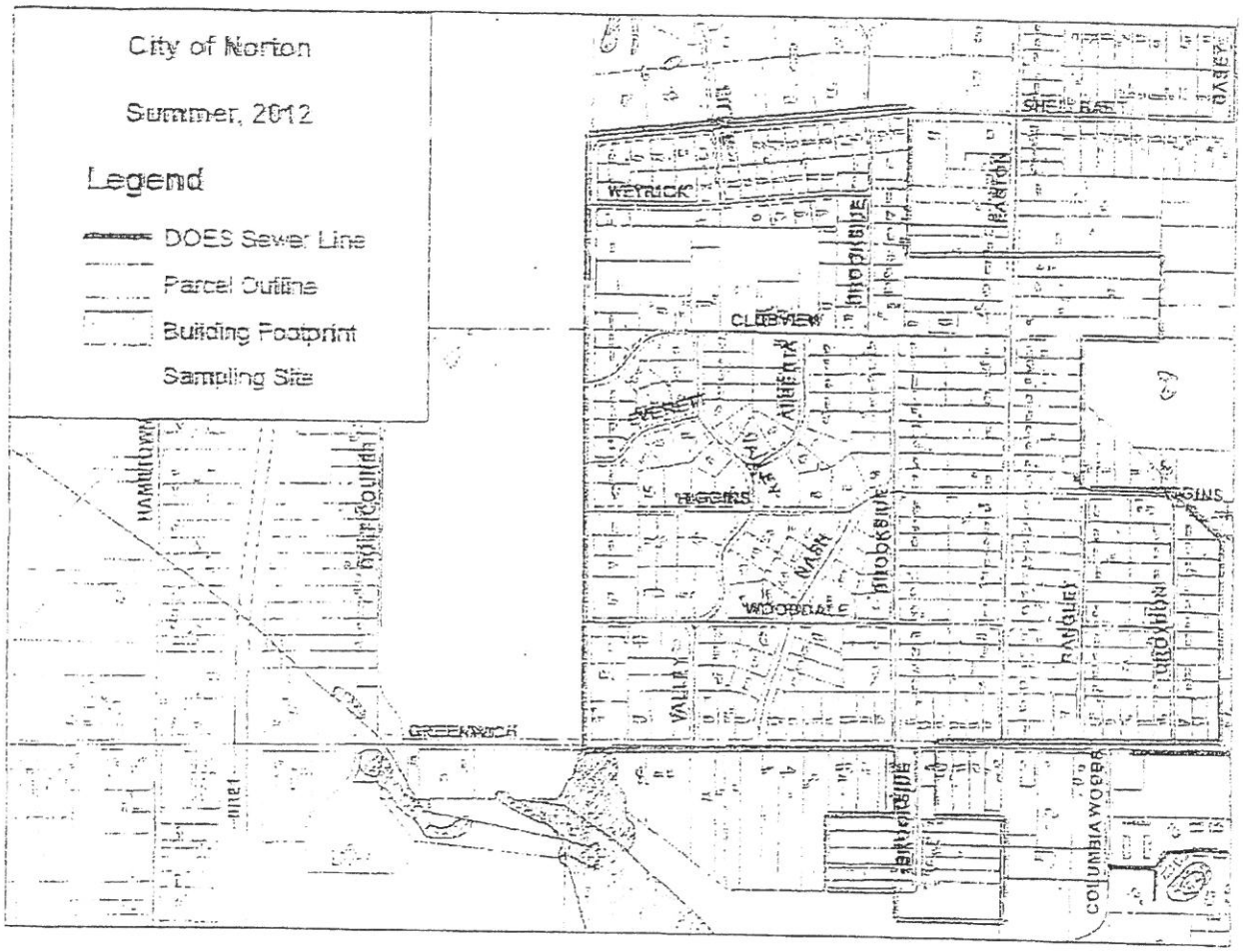
City of Norton

Signature

July 5, 2016
Date

Mike Zita
Printed or Typed Name

Mayor
Title

Attachment A:

Area proposed to be included in the nuisance resolution and where sewer is proposed. The area is enclosed by the blue line.