

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
MAR 26 2002
ENTERED DIRECTOR'S JOURNAL

In the matter of:

Mayor Gerald Boldt and Council
City of Parma
6611 Ridge Road
Parma, Ohio 44129

Director's Final Findings
and Orders

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 Parma, hereinafter "Respondent," its assigns and successors in interest. Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

FINDINGS OF FACT

1. Respondent is the City of Parma located in Cuyahoga County, Ohio.
2. Respondent is serviced by both separate sanitary sewers and discharging household septic tank systems.
3. Parma Land Development Company LLC, hereinafter "Complainant," is the owner of property on Broadview Road in the City of Parma.
4. The Complainant filed a verified complaint with the Ohio EPA on August 2, 2000, VC0008W01, alleging that the forty-one residences in adjacent subdivisions have been unlawfully discharging the flow from their septic tank systems into streams which flow through the Complainant's property in violation of the Clean Water Act, and that these discharges have caused said streams to become contaminated with refuse, waste and other hazardous substances rendering the streams unfit for human use and/or consumption, thus degrading the property.

I certify this to be a true and accurate copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency

By: Donna Jackson date 3/26/02

5. The report, "*Analysis of West Creek Watershed Water Quality Report*", Revised March 1999, prepared by the Cuyahoga County Board of Health, documents widespread contamination and impairment of streams in the West Creek watershed from sewage from household sewage disposal systems. The report identifies 502 residences in the city of Parma and 362 residences in the City of Seven Hills which are served by home sewage disposal systems, and identified most of these systems as discharging to the West Creek Watershed.
6. The Complainant's property is located within the West Creek watershed area which includes the communities of Parma, Seven Hills, Brooklyn Heights and Independence. West Creek is part of the Cuyahoga River basin. An unnamed tributary of West Creek transverses the northern portion of Complainant's property adjacent to the subdivision with discharging septic tank systems. The Cuyahoga River, West Creek, and its tributaries are defined as waters of the state in accordance with the ORC Chapter 6111.01.
7. The forty-one residences cited in the verified complaint are located on four streets in the City of Parma; Thorncliffe Boulevard, Sagamore Road, Maple Drive and Broadview Road.
8. On August 29, 2000, the Ohio EPA Northeast District Office (NEDO) and the Cuyahoga County Board of Health (CCBH) conducted a site inspection of the area cited by the verified complaint.
9. The discharge from septic tank systems enters complainant's property from three storm sewer culverts at two locations on said property. Two of the storm sewers, north and east culvert pipes, discharge into the unnamed tributary directly behind the homes on Sagamore Road. The third storm sewer culvert discharges into a wetlands area on Complainant's property at Broadview Road.
10. Of the forty-one residences cited in the verified complaint with discharging septic tank systems affecting Complainant's property the four residences on Thorncliffe Blvd. (7328, 7334, 7338, 7344) and the nine residences on Sagamore Rd. (1324, 1300, 1274, 1250, 1225, 1301, 1275, 1251, 1224) do not discharge into the unnamed tributary on Complainant's property. However, these residences do discharge to West Creek downstream of Complainant's property.
11. In addition to the residences cited in the verified complaint which were found to be discharging to the streams crossing Complainant's property, several other residences not cited by the verified complaint were found to have discharges to the unnamed tributary on Complainant's property: two residences on Maple Dr. and residences on Broadview Rd., north of Maple Dr., discharge to the east storm sewer culvert and three residences on Broadview Rd. have discharging septic tanks systems tributary to the Broadview Rd. storm sewer culvert which discharges on Complainant's property.

12. The CCBH and Ohio EPA completed water quality monitoring on the West Creek watershed. Analytical data from the CCBH West Creek Watershed Water Quality Report, representing samples collected at the north and east storm sewer culvert pipes between July 7, 1998 and August 13, 1998, indicates fecal coliform levels exceeding water quality criteria of 5000 counts per 100 milliliters (5000/100 ml) for secondary contact and applicable to all waters of the state in accordance with Ohio Administrative Code (OAC) Rule 3745-1-04.
13. A sample was collected by the Ohio EPA on July 26, 2000, and two samples were collected on October 2, 2000 from three locations identified as PLD (Parma Land Development) #1 @ Broadview Rd., downstream from storm sewer culvert; PLD Ust @ SS, 2 meters downstream from the north and east storm sewer culvert pipes; and PLD Dst @ Mouth, from the unnamed tributary downstream of the Complainant's property just upstream of the confluence with West Creek. All samples exceeded the water quality criteria for secondary contact, 5000/100 ml, except for the samples collected at PLD Dst @ Mouth.
14. Visual and olfactory observations at the culvert outlets include sewage odors, grayish to blackish color discharge from the pipes, sludge deposits, sewage fungus and algae growth.
15. The sampling data collected by Ohio EPA and CCBH demonstrates a public health nuisance in accordance with OAC Rule 3745-1-04.
16. Discharge of pollutants to waters of the state without a National Pollutant Discharge Elimination Permit is a violation of ORC Sections 6111.04 and 6111.07.
17. Small lot sizes and poor soil conditions prohibit the abatement of these discharges through the installation of replacement home sewage treatment systems.
18. It is necessary for the protection of the health and welfare of the public that Respondent abate the sewage disposal problems and unsanitary conditions resulting from discharges of raw or partially treated sewage in the aforementioned area.
19. Compliance with the ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
20. 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.

ORDERS

1. Not later than twelve (12) months from the effective date of these Findings and Orders, Respondent shall submit a general plan to the Northeast District Office of the Ohio EPA for review and acceptance, describing the alternatives for the abatement of pollution resulting from the discharging septic tanks in the West Creek watershed.
2. Respondent shall implement its General Plan, as accepted by Ohio EPA, and eliminate its unpermitted discharges as expeditiously as practicable, but not later than the schedule contained in these Orders:
 - a. Within eighteen (18) months from the effective date of these Orders, Respondent shall submit a complete Permit to Install (PTI) application, approvable detail plans, and an antidegradation addendum to Ohio EPA for eliminating the aforementioned unpermitted discharges.
 - b. Within twenty-seven (27) months from the effective date of these Orders, Respondent shall advertise bids for construction in accordance with its approved PTI.
 - c. Within thirty (30) months from the effective date of these Orders, Respondent shall start construction in accordance with its approved PTI.
 - d. Within forty-eight (48) months from the effective date of these Orders, Respondent shall complete construction in accordance with its approved PTI and eliminate all unpermitted discharges.
3. Within seven (7) days of completing the requirements in Orders 2.b., 2.c., and 2.d., Respondent shall submit to Ohio EPA written notification of the completion of each Order.
4. Respondent has expressed concern that compliance with schedule contained within Order No. 2 may be delayed as a result of problems stemming from easement acquisition, contract bidding, or the tying-in by landowners to the wastewater collection system. Upon request by Respondent, the Director may, at his sole discretion, extend in the writing the time periods contained in Order No. 2.

5. Respondent shall submit all documents required by these orders to the following address:

Ohio EPA, Northeast District Office
Attn: DSW Enforcement Unit Supervisor
2110 East Aurora Road
Twinsburg, OH 44087

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

The Respondent's obligations under these Orders shall be satisfied and terminated when the Respondent demonstrates in writing and certifies to the satisfaction of the Ohio EPA that it has satisfied all its obligations under these Orders and, subsequent to the completion of the final requirement of these Orders, that it has complied with all conditions of its effective, for a period of 36 consecutive months and the Chief of Ohio EPA's Division of Surface Water acknowledges the termination of these orders in writing.

This certification shall be submitted by the Respondent to the Northeast 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."

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:

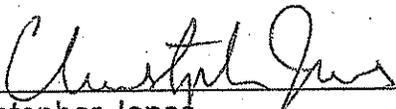
Respondent

By: 
Title: Gary J. Seft, Service Director

Date: 2-7-02

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency


Christopher Jones
Director

Date: 3-22-02