OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

James and Amy Childress d.b.a.
Edgewater Mobile Home Park
4665 East Miami River Road
Cleves, Ohio 45002

Director's Final Findings and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to James and Amy Childress (Respondents) d.b.a. Edgewater Mobile Home Park (Edgewater) 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 Respondents and heirs and successors in interest liable under Ohio law. No change in ownership of the Facility (as hereinafter defined) shall in any way alter Respondents' 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 (Director) has determined the following findings:

1. Respondents own and operate Edgewater, a twenty-eight (28) unit mobile home park located on East Miami River Road, in Cleves, Hamilton County, Ohio (Facility).

2. To manage the Facility's sanitary wastewater, Respondents own and operate a dry well disposal system (disposal system) comprised of a septic tank and leaching well, which Ohio EPA records indicate were installed in 1969. Respondents' disposal system discharges to the Great Miami Sole Source Aquifer, and/ or a ditch or unnamed tributary to the Great Miami River. Based upon a three hundred (300) gallon per day (gpd) mobile home, the Facility is estimated to produce an average daily flow of eight thousand four hundred (8,400) gpd of sanitary wastewater.

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.

1-13-05

3. The Facility's sanitary wastewater constitutes "sewage" as that term is defined in ORC § 6111.01.

4. The term "pollution," as defined in ORC § 6111.01(A), includes, but is not limited to, the placing of "sewage" in any "waters of the state," as those terms are defined in ORC § 6111.01.

5. ORC § 6111.04 prohibits any person from causing pollution or causing any sewerage, industrial waste or other waste to be placed in any location where they cause pollution to waters of the state, except if such discharges occur in accordance with a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in ORC §§ 6111.01 to 6111.08.

6. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any rule issued by the Director pursuant to those sections.

7. The Great Miami Sole Source Aquifer, the ditch and/ or unnamed tributary to the Great Miami River, and the Great Miami River constitute "waters of the state" as defined by ORC § 6111.01.

8. Respondents have discharged "pollution," including "sewage," as those terms are defined in ORC § 6111.01, from the disposal system at the Facility to the Great Miami Sole Source Aquifer, the ditch and/ or unnamed tributary to the Great Miami River without a valid, unexpired permit for such discharge, in violation of ORC §§ 6111.04 and 6111.07.

9. On January 31, 2001, the Hamilton County Health Department (County HD) inspected the Facility. The County HD discovered that the disposal system serving the Facility was failing, and as a result septic tank effluent was being discharged to a ditch and/ or unnamed tributary to the Great Miami River in violation of ORC §§ 6111.04 and 6111.07. The County HD referred Respondents to Ohio EPA to obtain the necessary permits for replacement of the failing disposal system.

10. On January 31, 2001, the County HD also sampled the Facility's failing disposal system discharge; the results were fecal coliform greater than 2,000,000/ 100 milliliters, biochemical oxygen demand (BOD) 61.9 milligrams per liter (mg/l), and total suspended solids (TSS) 35 mg/l.

11. On February 20, 2001, Ohio EPA performed an inspection of the Facility's failing disposal system, and took video footage of the septic tank effluent and unsanitary conditions observed in the ditch and/ or unnamed tributary to the Great Miami River in violation of ORC §§ 6111.04 and 6111.07.

12. On February 21, 2001, Ohio EPA sent a Notice of Violation (NOV) letter to Respondents containing a June 25, 2001 compliance deadline for submission of a permit to install (PTI) application and detail plans for a wastewater treatment plant (WWTP) to be installed at the Facility. Respondents failed to submit the PTI application and detailed plans as requested by June 25, 2001.

13. On April 12, 2001 and July 6, 2001, the County HD performed inspections of the Facility and observed continued discharges of septic tank effluent in the ditch and/ or unnamed tributary to the Great Miami River in violation of ORC §§ 6111.04 and 6111.07. Additionally, during the latter inspection, the County HD discovered sewage emerging and pooling on the top of the ground.

14. On July 16, 2001, Oho EPA sent a letter to Respondents with a revised schedule of compliance for a new WWTP to be installed by March 16, 2002.

15. On November 1, 2001, Ohio EPA inspected the Facility's failing disposal system and met with Respondents regarding the schedule for installation of the WWTP. Ohio EPA observed the continuation of the unauthorized discharge to the ditch and/ or unnamed tributary of the Great Miami River from Respondents' disposal system in violation of ORC §§ 6111.04 and 6111.07.

16. On January 29, 2002, Ohio EPA sent a second NOV to Respondents regarding the November 1, 2001 inspection and the continued unauthorized discharge to waters of the state in violation of ORC §§ 6111.04 and 6111.07.

17. On April 9, 2002 and September 11, 2002, respectively, Respondents submitted PTI and National Pollutant Discharge Elimination System (NPDES) applications to Ohio EPA.

18. The Director issued PTI (No. 05-12095) on June 11, 2003, and NPDES permit (No. 1PV00120*AD) on March 14, 2003 to Respondents.

19. Ohio EPA inspected the Facility on October 21, 2003, at which time the concrete had been poured for WWTP sand filters. However, further construction activity at the Facility had ceased, and Respondents represented to Ohio EPA that this was due to a lack of funding. On November 4, 2003, Ohio EPA provided Respondents with a letter documenting this inspection.

20. As of the effective date of these Orders, Respondents have failed to complete construction of the WWTP at the Facility, and the unauthorized discharge to waters of the state continues from the Facility's disposal system.

21. Respondents' disposal system at the Facility, which consists of a dry well(s) used for the injection of wastes, constitutes a Class V injection well(s) (Class V well) as that term is defined in Ohio Administrative Code (OAC) Rule 3745-34-04 (E).

22. OAC Rule 3745-34-13(A)(2) authorizes the operation of an existing Class V well only injecting sanitary waste by rule provided:

    a. A PTI in accordance with ORC §§ 6111.44 and 6111.45 is issued by the Director prior to the commencement of injection; or

    b. An installation permit and operation permit (PTO) in accordance with OAC Rule 3701-29-04 is obtained prior to the commencement of injection; and

    c. The information required under OAC Rule 3745-34-13 (D) is submitted to the Director.

23. In accordance with OAC Rule 3745-34-13 (B), previous version effective November 9, 1984 to March 10, 2002, the owner or operator of any Class V well shall, by November 9, 1985, notify the Director of the existence of any well under the owner or operator's control meeting the definition of Class V and provide the information set forth in that rule.

24. In accordance with OAC rule 3745-34-13 (D), the owner or operator of any class V well shall notify the Director of the existence of any well under the owner or operator's's control meeting the definition of class V contained within OAC Rule 3745-34-04 (E). Unless the owner or operator has previously submitted inventory information for a class V well to the Director prior to the effective date of this rule (March 11, 2002), the owner or operator shall submit the information described in OAC Rule 3745-34-13 (D)(1) through (D)(11) for each well under the owner or operator's control for the notification.

25. The Director failed to be notified of the existence of the Class V well(s) at the Facility by November 9, 1985, in accordance with OAC Rule 3745-34-13 (B).

26. In violation of OAC Rule 3745-34-13 (D), as of the effective date of these Orders, Respondents have failed to submit the required Class V well information to the Director.

27. Respondents did not receive authorization for the Facility's Class V well(s) by a PTI issued by the Director or by an installation permit and PTO issued by the local health department, and have failed to submit the information required under OAC Rule 3745-34-13 (D) to the Director. Therefore, Respondents are not authorized by rule under OAC Rule 3745-34-13 (A)(2) to operate the Facility's Class V well(s).

28. OAC Rule 3745-34-16 (A) prohibits all underground injection wells except if the owners or operators of such wells are authorized by rule or permit.

29. Since at least April 1995, to the effective date of these Orders, Respondents have been in violation of ORC Rule 3745-34-16 via the operation of the Facility's Class V well(s) without a permit.

30. 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. Within fourteen (14) days of the effective date of these Orders, Respondents shall submit to Ohio EPA the inventory information for each dry well located at the Facility as required by OAC Rule 3745-34-13 (D). Respondent shall submit this information to Ohio EPA, Division of Drinking and Ground Waters (DDAGW).

2. Within sixty (60) days of the effective date of these Orders, Respondents shall submit to Ohio EPA, Southwest District Office (SWDO), Division of Surface Water (DSW) a revised schedule of compliance for the Facility's WWTP to be installed, in accordance with PTI No. 05-12095 issued by the Director, within one hundred and eighty (180) days of the effective date of these Orders.

3. Within ninety (90) days of the effective date of these Orders, Respondents shall submit a written closure plan to Ohio EPA in accordance with OAC Rules 3745-34-07 and 3745-34-13 (F). Respondents shall submit this information to Ohio EPA, DDAGW. The closure plan shall include provisions for:

   a. Disposing of any soil, gravel, sludge, liquids or other materials removed from or adjacent to the well(s) being closed in accordance with all applicable federal, state or local regulations and requirements; and

   b. Notifying the Director of the intent to close the Class V well(s) at least thirty (30) days prior to commencing closure of the well(s); and

   c. Certifying to the Director in a report according to OAC Rule 3745-34-17 that the Class V well(s) was closed in compliance with the closure plan submitted to comply with this Order.

4. Within one hundred and eighty days (180) days of the effective date of these Orders, Respondents shall complete construction of the Facility's WWTP in accordance with PTI No. 05-12095 issued by the Director.

5. Within one hundred and eighty (180) days of the effective date of these Orders, Respondents shall permanently plug and abandon all of the dry wells and associated structures, such as septic tanks and piping, in accordance with the closure plan submitted to Ohio EPA, DDAGW.

6. Within two hundred and ten (210) days of the effective date of these Orders, Respondents shall submit written verification to Ohio EPA, SWDO, DSW of the completion of construction of the Facility's WWTP in accordance with PTI No. 05-12095 issued by the Director.

7. Within two hundred and ten (210) days of the effective date of these Orders, Respondents shall submit a report, certified according to OAC Rule 3745-34-17, that the Facility's Class V well(s) was closed in compliance with the closure plan submitted to Ohio EPA, DDAGW.

8. Within fourteen (14) days of receipt of notification from Ohio EPA, Respondents shall provide Ohio EPA with a written response addressing any comments or deficiencies and/ or submit any additional information requested with regard to the any of the submittals required by these Orders.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrates to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Chiefs of Ohio EPA's DSW and DDAGW acknowledge, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondents of the obligations that have not been performed, in which case Respondents 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 Respondents to Ohio EPA and shall be signed by a responsible official of the Respondents. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03 (D)(3) for a sole proprietorship.

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 on or at the Facility.

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 Respondents.

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 Respondents pursuant to these Orders shall be forwarded to the Division specifically indicated in each Order in Section V above, and addressed as follows:

Ohio Environmental Protection Agency
Division of Drinking and Ground Waters
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43215-1049
Att: Underground Injection Control Unit

or

Ohio Environmental Protection Agency
Southwest District Office, Division of Surface Water
401 East Fifth Street
Dayton, Ohio 45402
Attn: Enforcement Supervisor

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event,

Respondents 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

Joseph P. Koncelik
Director

4.12.05
Date

IT IS SO AGREED:

James and Amy Childress d.b.a. Edgewater Mobile Home Park

James Childress
Signature

4-8-05
Date

Amy Childress
Signature

4-8-05
Date