

OHIO E.P.A.
FEB 24 2004

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

DIRECTOR'S JOURNAL

In the Matter of:

City of Amherst
206 South Main Street
Amherst, Ohio 44001

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Director's Final Findings
and Orders

Respondent

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 Amherst (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 the Respondent shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

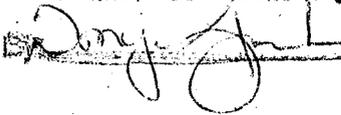
Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA (Director) has determined the following findings:

1. Respondent is the City of Amherst located in Lorain County, Ohio.
2. Respondent is serviced by both centralized wastewater treatment and discharging household septic tank systems.

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.

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3. The community of homes located on Hall Court are located in the City of Amherst; this area is bounded by: Tenney Street on the north, Henry Street on the west, the former Conrail railroad tracks on the south, and State Route 58 on the east.
4. Centralized wastewater treatment facilities are currently unavailable on Hall Court.
5. The homes located on Hall Court are served by failing on-site or aeration sewage disposal systems that discharge raw or partially treated sewage to roadside ditches and/ or storm drains and/ or storm sewers (hereinafter, drainage systems). The drainage systems discharge directly to an unnamed tributary to Beaver Creek, which is defined as a "water of the state" pursuant to ORC § 6111.01.
6. Investigations and sampling events conducted by Ohio EPA on June 27, 1996, October 15, 1996, and August 5, 1997 revealed evidence of unsanitary conditions. Ohio EPA staff observed heavy sewage fungus, heavy black sewage deposits, dense algal growths indicative of untreated sewage in the unnamed tributary; an oily sheen with floating scum and suspended sludge, greyish to black color indicative of untreated sewage in the storm drain; and smelled odors of untreated sewage.
7. Ohio EPA sampling results from June 27, 1996, October 15, 1996, and August 5, 1997 for fecal coliform and E. Coli bacteria confirmed the existence of unsanitary conditions and documented violations of Ohio's general water quality criteria set forth by Ohio Administrative Code (OAC) Rule 3745-1-04.
8. On March 19, 2002, Ohio EPA conducted a follow up investigation of the conditions on Hall Court.
9. The investigations and sampling events conducted by Ohio EPA on March 19, 2002, revealed that the unsanitary conditions observed on June 27, 1996, October 15, 1996, and August 5, 1997 still existed. Ohio EPA staff observed conditions indicative of untreated sewage in the storm drain and unnamed tributary to Beaver Creek, and odors of untreated sewage were evident.
9. Ohio EPA sampling results from March 19, 2002 for fecal coliform and E. Coli bacteria confirmed the existence of unsanitary conditions and documented violations of Ohio's general water quality criteria set forth by OAC Rule 3745-1-04.
10. On May 23, 2002, Ohio EPA conducted another follow up investigation of the conditions on Hall Court.
11. The investigations and sampling events conducted by Ohio EPA on May 23, 2002 revealed that the unsanitary conditions observed on June 27, 1996, October 15,

1996, August 5, 1997, and March 19, 2002 still existed. Ohio EPA staff observed whitish and greyish water, oily sheen, floating scums, and suspended sludge indicative of untreated sewage in the storm drain, and smelled strong odors of untreated sewage. Heavy sludge deposits, heavy sewage fungus, and dense algae growth were observed by Ohio EPA staff in an unnamed tributary to Beaver Creek, and odors of untreated sewage were evident.

12. Ohio EPA sampling results from May 23, 2002 for fecal coliform and E. Coli bacteria confirmed the existence of unsanitary conditions and documented violations of Ohio's general water quality criteria set forth by OAC Rule 3745-1-04.
13. The sampling data collected by Ohio EPA demonstrates a public health nuisance in accordance with OAC Rule 3745-1-04.
14. Small lot sizes, in conjunction with local soil conditions and local hydrology make the installation of replacement or repair of existing on-site sewage disposal systems an unacceptable solution to remedy the unsanitary conditions.
15. It is necessary for the public health and welfare that sewer improvements or sewerage treatment or disposal works be constructed, maintained, and operated to service Hall Court.
16. Discharge of pollutants to waters of the state without a National Pollutant Discharge Elimination (NPDES) Permit is a violation of ORC §§ 6111.04 and 6111.07.
17. Compliance with the ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
18. 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 twelve (12) months of the effective date of these Orders, Respondent shall submit a complete permit-to-install (PTI) application, approvable detailed plans, an Antidegradation Addendum, and a NPDES permit application to sewer Hall Court. The PTI application shall define several phases of the project. Each phase shall have a specific date for starting and completing construction.

2. Within twelve (12) months of the effective date of these Orders, Respondent shall submit a summary report that includes a copy of the financial mechanisms to be used to fund the required improvements, operation and maintenance, and replacement costs, as well as an implementation schedule for awarding bids, starting and completing construction, and all other significant milestones.
3. Within six (6) months after the receipt of an approved PTI, Respondent shall initiate construction of the sewage system in accordance with its approved PTI.
4. Within thirty (30) months after the receipt of an approved PTI, the Respondent shall complete the sewage system installation in accordance with its approved PTI and shall eliminate the unpermitted discharges to waters of the state and achieve compliance with Ohio's water pollution control laws.
5. Within fourteen (14) days of completing the requirements in Orders 3 and 4, Respondent shall notify Ohio EPA in writing of the completion of each Order.

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 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.

This 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 Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(D)(4) 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, the unsanitary conditions from Hall Court.

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 the Respondent.

IX. MODIFICATIONS

These Orders may be modified by the 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 EPA
Northeast District Office
Division of Surface Water
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: DSW Enforcement Unit Supervisor

and to:

Ohio EPA
Lazarus Government Center
Division of Surface Water
122 South Front Street, P.O. Box 1049
Columbus, Ohio 43216
Attn: DSW Enforcement Unit Supervisor

XI. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. Ohio EPA and Respondent each reserve all other 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 those violations specifically cited

in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders, which right Ohio EPA does not waive, 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

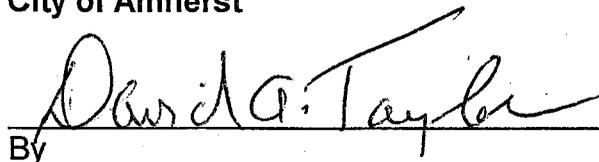
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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 AGREED:

City of Amherst


By _____

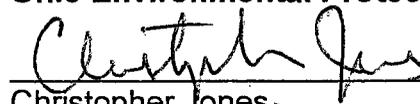
David A. Taylor, Mayor

Name & Title

1-27-04
Date

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Christopher Jones
Director

2-2004
Date