

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 30 2005

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Ayersville Water and Sewer District  
13961 Fruit Ridge Road  
Defiance, Ohio 43512

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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 Ayersville Water and Sewer District ("AWSD" or "Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code (R.C.) §§ 6111.03(H) 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 R.C. Chapter 6111, and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has made the following findings:

1. Respondent is a water and sewer district established under R.C. Chapter 6119 to provide for the collection, treatment and disposal of sewage within unincorporated areas of Highland, Richland, and Defiance Townships, Defiance County, Ohio.

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 Sharon B. Brown Date 12/30/05

2. Centralized wastewater treatment facilities are currently unavailable in most of the AWSD.
3. Many of the homes in the AWSD are served by inadequate or 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 (referred to as "drainage systems"). The drainage systems discharge to Preston Run and Wagner Run, or tributaries of Preston Run and Wagner Run, which are all tributary to the Maumee River, and to Powell Creek, or tributaries to Powell Creek, which are all tributary to the Auglaize River. Preston Run, Wagner Run, the Maumee River, Powell Creek, the Auglaize River, and the tributaries to those water bodies, are defined as "waters of the state" pursuant to R.C. § 6111.01(H).
4. Ohio EPA sampling results from August 18, 1988, September 15, 1988, November 9, 1988, July 1, 1992, September 9, 1993, and December 2, 2002, for fecal coliform bacteria confirmed the existence of unsanitary conditions and documented violations of Ohio's general water quality criteria set forth in Ohio Administrative Code (OAC) Rule 3745-1-04. The sampling results are set forth in Attachment A, which is attached hereto and incorporated herein, as if fully written within.
5. On May 28, 1992, Director's Final Findings and Orders ("Orders") were issued to Respondent. The Orders required Respondent to submit a general plan for sewerage improvements. Respondent submitted a general plan to Ohio EPA which was approved in March, 1993.
6. On November 4, 1993, Orders were issued to Respondent that required Respondent to implement the general plan for sewerage improvements that had been approved by Ohio EPA. The Orders included a compliance schedule for implementation of the work proposed in the general plan, beginning with submission of a permit to install ("PTI") application and detail plans for wastewater collection and treatment works sufficient to abate the unsanitary conditions in the AWSD.
7. Revisions were made to the general plan in September 1994, February 1997, and May 1997. The proposed implementation was broken into phases.
8. A PTI application and detail plans for the implementation of the first phase were submitted by Respondent in July 1999, and approved by Ohio EPA in January 2000 with the issuance of PTI No. 03-12100. This phase, which mainly consisted of sewerage certain densely developed areas and constructing a pumping station and force main to convey wastewater to the City of Defiance's wastewater treatment plant, has been completed.
9. On November 18, 2002, the Board of Health of the Defiance County General Health

District ("Board of Health") adopted resolution No. 53.2002 requesting the Director of Ohio EPA, under the authority of R.C. § 6117.34, to investigate and abate alleged unsanitary conditions within the Ayersville Avenue, Dohoney Road area due to untreated sanitary sewage discharges. The resolution is set forth in Attachment B, which is attached hereto and incorporated herein, as if fully written within. Although this area was outside the AWSD at the time this resolution was adopted, it was subsequently annexed to the AWSD.

10. A PTI application and detail plans for the implementation of the second phase were submitted by Respondent in March 2004, and approved by Ohio EPA in April 2004 with the issuance of PTI No. 03-16204.
11. On July 21, 2004, Ohio EPA conducted a follow up investigation of the conditions alleged in the Board of Health's R.C. § 6117.34 resolution, including sampling of the areas included in PTI No. 03-16204 and the Board of Health's resolution No. 53.2002. The investigation determined that the unsanitary conditions observed and documented on August 18, 1988, September 15, 1988, November 9, 1988, July 1, 1992, September 9, 1993, and December 2, 2002, continued to exist. Ohio EPA staff observed conditions indicative of untreated sewage in the drainage systems and waters of the state, with odors of untreated sewage evident. The sampling results are set forth in Attachment A.
12. By letter dated October 13, 2004, Ohio EPA was informed by the AWSD Board that the project included in PTI No. 03-16204 was at a complete standstill.
13. Pursuant to OAC Rule 3745-42-02(D)(3), by letter dated October 13, 2005, the AWSD requested a twelve month extension of the expiration date of PTI No. 03-16204. The Director issued the PTI extension on October 19, 2005.
14. Pursuant to R.C. § 6117.34, whenever the board of health of a general health district makes a complaint in writing to Ohio EPA that unsanitary conditions exist in any county, the Director forthwith shall inquire into and investigate the conditions complained of in the complaint.
15. The sampling data and subsequent investigation by Ohio EPA confirmed the existence of unsanitary conditions, documented violations of Ohio's general water quality criteria set forth in OAC Rule 3745-1-04, and demonstrated a public health nuisance in accordance with OAC Rule 3745-1-04.
16. Local soil conditions and local hydrology, in conjunction with the existence of wells and ponds for drinking water, make the installation of replacement or repair of existing on-site sewage disposal systems an unacceptable solution to remedy the unsanitary conditions.

17. Violations of OAC Rule 3745-1-04 and R.C. § 6111.04(A) having been documented, and Respondent having failed to comply with the November 4, 1993, Orders, in order to prevent, control, and abate water pollution, and to protect the public health and welfare, it is necessary that sewer improvements or sewage treatment or disposal works be constructed, maintained, and operated to service the unincorporated communities.
18. 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 PTI requirement of R.C. §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.
19. 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 R.C. Chapter 6111.

#### **V. ORDERS**

1. Respondent shall implement PTI No. 03-16204 in accordance with the following schedule:
  - a. Respondent shall construct a sewerage system, as approved in PTI No. 03-16204, in the following areas and in accordance with the following schedule:
    - 1) Bowman Road, from just east of the crossing of Bowman Road over the tributary of Wagner Run west to State Route 15; 2) Dohoney Road from south of Wagner Run north to the existing force main along Dohoney Road; and 3) north on State Route 15 from Bowman Road to serve the trailer park and the three properties north of the trailer park. Sewers on Bowman Road and State Route 15 shall be sized for future extension of sewers to the west of State Route 15 on Bowman Road, north on State Route 15, and along Watson Road.
  - i. Within eighteen (18) months after the effective date of these Orders, Respondent shall complete construction of the required improvements and shall achieve compliance with Ohio's water pollution control laws, R.C. Chapter 6111, and the rules promulgated thereunder.
  - ii. By the fifteenth (15<sup>th</sup>) day of each month, Respondent shall submit progress reports to the Northwest District Office of Ohio EPA at the

address in Section X of these Orders.

- iii. Within twenty-one (21) months after the effective date of these Orders, Respondent shall submit "As Built" plans to the Northwest District Office of Ohio EPA at the address in Section X of these Orders.
- b. Respondent shall construct a sewerage system in all areas covered by PTI 03-16204 and not addressed in paragraph 1.a. of this Order, in accordance with the following schedule:
  - i. Within twelve (12) months after 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 included in all areas of PTI No. 03-16204 not addressed in paragraph 1.a., fund the operation and maintenance of the installed sewerage systems, and fund future replacement costs.
  - ii. Within twelve (12) months after the effective date of these Orders, Respondent shall commence construction of the required improvements.
  - iii. Within twenty-four (24) months after the effective date of these Orders, Respondent shall complete construction of the required improvements and shall achieve compliance with Ohio's water pollution control laws, R.C. Chapter 6111, and the rules promulgated thereunder.
  - iv. Beginning twelve (12) months after the effective date of these Orders, and by the fifteenth (15<sup>th</sup>) day of each month, Respondent shall submit progress reports to the Northwest District Office of Ohio EPA at the address in Section X of these Orders.
  - v. Within twenty-seven (27) months after the effective date of these Orders, Respondent shall submit "As Built" plans to the Northwest District Office of Ohio EPA at the address in Section X of these Orders.
2. Any changes to the sewerage detail plans of PTI No. 03-16204 must be submitted as a PTI application for the Director's approval, and must be accompanied by proof that the requested changes will not jeopardize USDA funding of the improvements covered by PTI No. 03-16204, and sampling results that demonstrate that a nuisance condition does not exist in any area to be excluded from the sewer system

approved for installation under PTI No. 03-16204.

3. Respondent shall construct sanitary sewers to address the nuisance conditions in the following area: 1) the triangle formed by Dohoney Road, Standley Road, and Defiance-Ayersville Road; and, 2) Defiance-Ayersville Road southeast to the intersection of Fullmer and Shindler Roads, in accordance with the following schedule:
  - a. Within eight (8) months after the effective date of these Orders, Respondent shall submit a complete PTI application and approvable detail plans to sewer the area.
  - b. Within twelve (12) months after the effective date of these Orders, Respondent shall commence construction of the sewer system in accordance with the PTI and approved plans.
  - c. Within eighteen (18) months after the effective date of these Orders, Respondent shall complete construction of the sewer system and shall achieve compliance with Ohio's water pollution control laws, R.C. Chapter 6111, and the rules promulgated thereunder.
  - d. By the fifteenth (15<sup>th</sup>) day of each month, Respondent shall submit progress reports to the Northwest District Office of Ohio EPA at the address in Section X of these Orders.
  - e. Within twenty-one (21) months after the effective date of these Orders, Respondent shall submit "As Built" plans to the Northwest District Office of Ohio EPA at the address in Section X of these Orders.
4. Respondent shall submit corrections to address any deficiencies in the PTI application referenced in Order No. 3.a. of these Orders to Ohio EPA within thirty (30) days of notification by letter from Ohio EPA of any deficiencies.
5. Within eight (8) months after 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 in the areas covered by Order No. 3, fund the operation and maintenance of the installed sewerage systems, and fund future replacement costs.
6. Within three (3) months after the effective date of these Orders, Respondent shall purchase a portable generator capable of powering any of the pump stations owned by Respondent.

7. Respondent shall exercise all authority under R.C. § 6119.06(Z) to compel all premises in the unincorporated communities, and in all areas currently or in the future served by public sanitary sewers, to connect sewage flows to the public sanitary sewer and cease use of existing sewage disposal systems.

## **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(D).

## **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 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  
Northwest District Office  
Division of Surface Water  
Attn: DSW Enforcement Unit Supervisor  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Surface Water  
Attn: Manager, Stormwater and Enforcement Section  
122 South Front Street [P.O. Box 1049]  
Columbus, Ohio 43215 [43216-1049]

[For mailings use the post office box number and zip code in brackets]

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.

**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, 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**

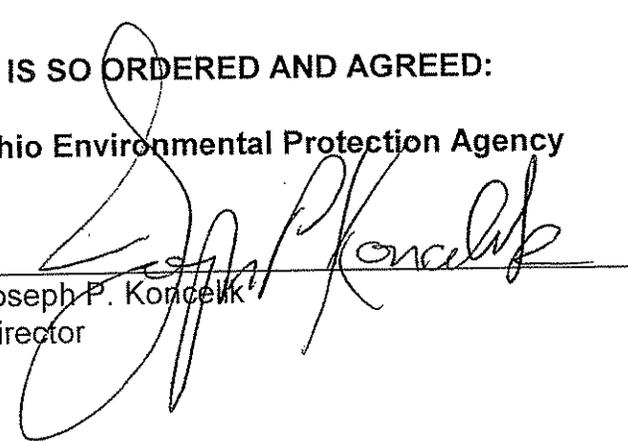
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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**

  
\_\_\_\_\_  
Joseph P. Koncek  
Director

12/30/05  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Ayersville Water and Sewer District**

*John P. Sindel*

Signature

12-23-05  
Date

*John P. Sindel*

Printed or Typed Name

*Vice Pres.*

Title

Table of sample results from 1988 to Present

| Date      | Location  | Fecal coliform (#/100ml) | Comments   |
|-----------|---|--------------------------|--|
| 7/21/2004 | Wagner Run Trib @Bowman Rd.   | 94,000                   | gray water entire length of stream (within sight) Very septic odor. Photos taken.                |
| 7/21/2004 | Wagner Run Trib @Bowman Rd.   | 110,000                  |  |
| 7/21/2004 | Ditch adj. Dohoney Rd. N @Bowman Rd (w side of rd.)                 | 73,000                   | gray/black water. Nuisance algae, sewage fungus, sludge deposits, very septic odor. Photo taken. |
| 7/21/2004 | Ditch adj. Dohoney Rd. N @Bowman Rd (w side of rd.)                 | 86,000                   |  |
| 7/21/2004 | Preston Run Trib. @ Dohoney Rd (s of Ayersville Rd., e side of rd.) | 130,000                  | water cloudy with scum covering surface. Photo taken.  |
| 7/21/2004 | Preston Run Trib. @ Dohoney Rd (s of Ayersville Rd., e side of rd.) | 120,000                  |  |
| 7/21/2004 | Preston Run Trib @ 12320 Dohoney Rd (Ewers, N of Ayersville Rd.)    | 160,000                  | water slightly cloudy, some sewage molds, septic odor  |
| 7/21/2004 | Preston Run Trib @ 12320 Dohoney Rd (Ewers, N of Ayersville Rd.)    | 180,000                  |  |
| 7/21/2004 | Preston Run Trib @ Standley Rd (W of Dohoney Rd.)                   | 5,400                    | slight septic odor   |
| 7/21/2004 | Preston Run Trib @ Standley Rd (W of Dohoney Rd.)                   | 1,200                    |  |
| 12/2/2002 | Standly Road  | 1,240                    | Defiance Co. Health Dept.  |
| 12/2/2002 | Dohoney Ewers N of Ayersville Rd.                                   | 600,000                  | Defiance Co. Health Dept.  |
| 12/2/2002 | Dohoney S of Ayersville Rd.   | 400,000                  | Defiance Co. Health Dept.  |
| 9/9/1993  | Catch basin @ Ayersville and Fruit Ridge Rds.                       | 1,600                    | gray water, septic odor  |
| 9/9/1993  | NE catch basin @ Highland Center and Watson Rds.                    | 3,700                    | black sludge deposits, very septic odor  |
| 9/9/1993  | Preston Run @ headwaters NW of Bowman and Harris Rds.               | 1,700                    | gray water, septic odor  |

|           |   |        |  |
|-----------|---|--------|--|
| 9/9/1993  | Ditch adj. Dohoney Rd. N of Bowman Rd.  | 2,800  | black sludge deposits covering bottom of ditch. Gray water, very septic odor   |
| 9/9/1993  | Tributary to Preston Run adj Shamrock Lane  | 320    | Sample collected from driveway of house #302 very slight septic odor   |
| 9/9/1993  | Tributary to Preston Run @ Dohoney Rd. House #12885                                 | 720    | very gray water, very strong septic odor, black sludge deposits covering bottom of ditch.  |
| 9/9/1993  | Watson Rd. Ditch at house #27742  | 5,100  | very gray water, very strong septic odor, black sludge deposits covering bottom of ditch.  |
| 7/1/1992  | Ditch to Preston Run @ Fullmer Rd   | 620    | slightly gray water, gray water entering from pipe just upstrm., abundant nuisance algae growth                                    |
| 7/1/1992  | Tributary to Wagner Run @ Bowman Rd. W of Fuller Rd.                                | 96,000 | very septic throughout stream segment, water is black, cloudy, gray with heavy deposits of black sewage sludge, smells very septic |
| 7/1/1992  | Wagner Run @ Dohoney Rd   | 1,200  | slow moving water, slightly cloudy, shaded   |
| 7/1/1992  | Preston Run @ Standley Rd   | 680    | virtually no flow -standing water  |
| 7/1/1992  | Hogback Run @ Blanchard Rd. E of Painter Rd.  | 6,800  | water slightly cloudy, nuisance algae growth present   |
| 7/1/1992  | Tributary to Preston Run @Defiance Ayersville Rd House #26268                       | 540    | gray water, some nuisance algae growth   |
| 7/1/1992  | Tributary to N. Powell Creek @ Blanchard Rd. E of Harris Rd.                        | 680    | water slightly cloudy, abundant nuisance algae growth  |
| 7/1/1992  | Preston Run adj Edgewood Dr. Dnstr culvert  | 2,000  | creek shaded, flowing  |
| 7/1/1992  | Drainage ditch adj. Blanchard Rd House #28332                                       | 5,200  | abundant algae growth, black septic smelling sludge deposits on ditch bottom covered with Duckweed                                 |
| 8/18/1988 | Preston Run immediately downst. from culvert under Eunice Rd. (Slusser Subdivision) | 7,200  |  |
| 8/18/1988 | Preston Run @ Dohoney Rd. downst. from known discharges (Slusser Subdivision)       | 27,000 |  |

|           |   |         |  |
|-----------|---|---------|--|
| 9/15/1988 | Preston Run immediately<br>dwnst. from culvert under<br>Eunice Rd. (Slusser<br>Subdivision) | 290,000 |  |
| 9/15/1988 | Preston Run @ Dohoney<br>Rd. dwnst. from known<br>discharges (Slusser<br>Subdivision)       | 58,000  |  |
| 11/9/1988 | Preston Run 200 ft. upstm.<br>from Eunice Rd. (Slusser<br>Subdivision)                      | 2,400   |  |
| 11/9/1988 | Preston Run immediately<br>dwnst. from culvert under<br>Eunice Rd. (Slusser<br>Subdivision) | 5,000   |  |
| 11/9/1988 | Preston Run @ Dohoney<br>Rd. dwnst. from known<br>discharges (Slusser<br>Subdivision)       | 38,000  |  |

**RECEIVED**

Defiance County General Health District  
 197-C Island Park Avenue  
 Defiance, Ohio 43512

APR 17 2003

No.53.2002  
 November 18, 2002

O.H.O. E.P.A.  
 N.W.D.O.

**Ayersville Ave., and Dohoney Rd. Septic Problems Turned Over to Ohio  
 EPA Under 6117.34**

The District Board of Health Defiance County, Ohio met in Regular Session on the 18th day of November 18, 2002 at the office of the Defiance County Board of Elections.

Kelly Roach moved the adoption of the following

**RESOLUTION**

**Whereas** the District Board of Health has investigated and sampled three different locations in the Ayersville Ave., Dohoney Rd. area that is outside of the Ayersville Water and Sewer District and,

**Whereas** the test results are pending but olfactory and visible sewage is noted in the ditches of the area, a sanitary sewer system has been installed, designed to handle, and is accessible to this group of homes and,

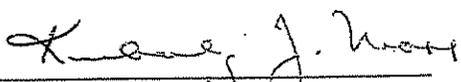
**Whereas** Otto Gerdeman, engineer for the Poggemeier Design Group and engineer for the Ayersville Sewer District has stated before the Board of Health the agreement for the Ayersville Sewer District to add this area to the District and abate this nuisance, requesting this Board sample the area and by resolution turn the matter over to the Ohio Environmental Protection Agency,

**Therefore Be It Resolved** that the Defiance County Board of Health hereby turns this matter over to the Ohio Environmental Protection Agency under **Section 6117.34 of the Ohio Revised Code.**

Kathy Chaput seconded the motion and the roll being called upon its adoption the voted resulted as follows:

|                 |        |
|-----------------|--------|
| Kelly Roach     | yes    |
| Colleen Richter | absent |
| Kathleen Chaput | yes    |
| Daniel Michel   | yes    |
| William Richter | yes    |

November 18, 2002

  
 Kimberly Moss, M.P.H. Secretary