

A. Conroy

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC -7 2006

DIRECTOR'S JOURNAL

In the Matter of:

City of Kirtland
9301 Chillicothe Road
Kirtland, Ohio 44094

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Director's Final Findings
and Orders

Respondent

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.

PREAMBLE

It is agreed by the Parties hereto as follows:

By: Dmy. Jacks Date: 12-7-06

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Kirtland ("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 Chapter 6111. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The Temple View Subdivision, located on Charlesderry, Glen Park, North Star and Chillicothe Roads within the City of Kirtland, Lake County, Ohio, consists of forty-nine homes served by individual home sewage disposal systems.
2. The area along Chillicothe Road from Markell to Russelhurst Drive is primarily a commercial area. There are seventeen commercial facilities served by both on-lot systems and discharging systems.
3. Centralized wastewater treatment facilities are currently unavailable in the Temple View Subdivision and the commercial area along Chillicothe Road.

4. The individual home sewage disposal systems and the on-lot systems and discharging systems referenced above are inadequate or failing, in that said systems are discharging untreated 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 the East Branch of the Chagrin River, which are waters of the state.
5. Ohio Administrative Code ("OAC") Rule 3745-1-04(F) provides that all surface waters of the state, to every extent practical and possible as determined by the Director, shall be free from public health nuisances associated with raw or poorly treated sewage.
6. A public health nuisance shall be deemed to exist when an inspection conducted by, or under the supervision of, Ohio EPA or a sanitarian registered under ORC Chapter 4736, documents any or all of the following: odor, color and/or other visual manifestations of raw or poorly treated sewage in waters of the state; and, water samples exceed five thousand fecal coliform counts per one hundred milliliters in two or more samples when five or fewer samples are collected, or in more than twenty per cent of the samples when more than five samples are taken; or, water samples exceed five hundred seventy-six *Escherichia coli* counts per one hundred milliliters in two or more samples when five or fewer samples are collected, or in more than twenty per cent of the samples when more than five samples are taken.
7. Lake County General Health District conducted a survey on the sewerage systems serving the Temple View Subdivision area in the summers of 1993 and 1994. The survey was in response to a 1991 Water Quality Study of the Chagrin River Basin, performed by Ohio EPA, in which the Temple View Subdivision area discharges were found to have an impact on the water quality of the Chagrin River.
8. The Lake County Health Department collected samples from three locations within the Temple View Subdivision area: a storm outlet on Glen Park Road, a catch basins at 8086 Charlesderry Road and a storm outlet at Charlesderry and North Star Roads. The corresponding fecal coliform levels at these locations were found to be 1.2 billion colonies per 100 ml. of sample, 2.5 billion colonies per 100 ml. of sample and 900 million colonies per 100 ml. of sample.
9. In response to Findings Nos. 7 and 8, Respondent submitted a permit to install ("PTI") application for the construction of a wastewater treatment plant to service the Temple View Subdivision area and an Ohio National Pollutant Discharge Elimination System permit ("NPDES Permit") application to discharge the treated wastewater to "waters of the state."
10. Ohio EPA issued Respondent PTI No. 02-13362 on December 12, 2000, and NPDES Permit No. 3PR00024 on January 1, 2001.

11. Respondent failed to meet the requirements of the compliance schedule contained in the NPDES Permit, in that construction of a wastewater treatment plant was not initiated. The NPDES Permit expired December 31, 2005.
12. Ohio EPA stream sampling conducted in the summers of 2003 and 2004 revealed high levels of fecal coliform in the East Branch of the Chagrin River. A summary of the data reveals a geometric mean of 1,238 colonies per 100 ml of sample. These values exceed the Statewide numerical and narrative criteria for a Primary Contact Water recreational use designation.
13. Ohio EPA met with Respondent on July 2, 2002 and May 3, 2004 to discuss possible sewerage strategies for the Temple View Subdivision and Chillicothe Road commercial areas.
14. On March 29, 2005, Ohio EPA received a General Plan of Improvements for the Kirtland Sanitary Sewer District from CT Consultants, Respondent's engineering consultant. The plan explored various options for treating the sewage from these areas.
15. On March 29, 2005, an NPDES permit application for the Kirtland Water Reclamation Facility was received. The Kirtland Water Reclamation Facility was to be constructed in place of the Temple View wastewater treatment plant and would provide service to the Temple View Subdivision area and commercial area along Chillicothe Road. Simultaneously, Ohio EPA was receiving notice of the possibility of Respondent constructing sewers to connect to another system.
16. An NPDES permit has not been issued for the Kirtland Water Reclamation Facility, nor has a PTI application been submitted for its construction.
17. On January 30, 2006, Respondent submitted the Kirtland Sanitary Sewer Improvements Activity Schedule for the construction of sanitary sewers along Chillicothe Road to serve the commercial and Temple View Subdivision areas. Respondent has entered into a Memorandum of Understanding with the Lake County Commissioners to become part of the Lake County Utilities service area. In addition, Respondent requested the revocation of Kirtland Water Reclamation NPDES permit application no. 3PC00030.
18. On August 21, 2006 Ohio EPA sampled the tributary in the Temple View Subdivision area that runs parallel to North Star Road, and the drainage from the Charlesderry Road storm sewer that discharges to that tributary. The sampling results are set forth below:

Area Sampled	Timed Sampled	Visualizations	Fecal Coliform concentration
Temple View Subdivision	10:40 A.M.	Moderate raw sewage odor, greyish liquid, sludge deposits and sewage fungus	31,000 / 100 ml
Temple View Subdivision	1:40 P.M.	Moderate raw sewage odor, greyish liquid, sludge deposits and sewage fungus	730,000 / 100 ml
Charlesderry Road storm sewer	10:36 A.M.	Moderate odor	34,000 / 100 ml
Charlesderry Road storm sewer	1:36 P.M.	Moderate odor	2,000,000 / 100 ml

19. The sampling data and investigations by Ohio EPA confirm the existence of unsanitary conditions, and demonstrate a public health nuisance in accordance with OAC Rule 3745-1-04.
20. It is necessary for the public health and welfare that sewer improvements or sewage treatment or disposal works be constructed, maintained, and operated to service the commercial and Temple View Subdivision areas.
21. 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 Chapter 3745-42.
22. 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. As soon as possible, but not later than three (3) months from the effective date of these Orders, Respondent shall submit to Ohio EPA for approval, an application for a PTI for the construction of sewers along Chillicothe Road to serve the commercial area along Chillicothe Road and the Temple View Subdivision area.

2. Upon the issuance of the PTI, Respondent shall implement improvements in accordance with the implementation schedule in the "Kirtland Sanitary Sewer Improvements Activity Schedule, Exhibit B," which schedule is attached hereto and incorporate herewith as is fully rewritten herein.
3. Respondent shall complete the sewage system installation in accordance with the approved PTI and connect to the Lake County Utilities Department collection system by September 30, 2008.
4. Within fourteen (14) days of completing the requirement in Order 3, Respondent shall provide notice, in writing, to the Ohio EPA of the Order's completion. Notice shall be sent to the addresses in Section X of these Orders.

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)(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 activities occurring as part of Respondent's sewer system.

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: DSW Enforcement Unit Supervisor
2110 East Aurora Road
Twinsburg, Ohio 44087

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]

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.

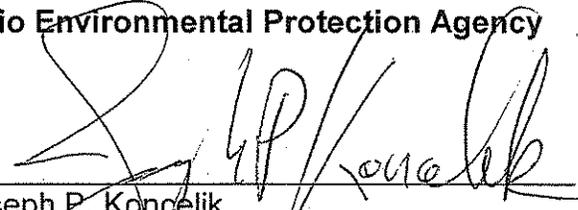
XIII. EFFECTIVE DATE

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.

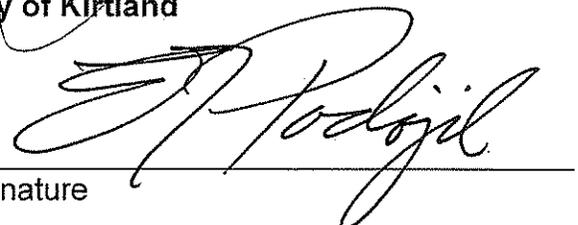
**IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency**



Joseph P. Koncelik
Director

Date 12/1/06

**IT IS SO AGREED:
City of Kirtland**



Signature
EDWARD J. PODOJIL

Date November 13, 2006

Printed or Typed Name
Mayor, City of Kirtland

Title

**Kirtland
Sanitary Sewer Improvements
Activity Schedule**

EXHIBIT B

TASK	2005			2006			2007			2008					
	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
General Plan Preparation															
Master Sewer Plan - Phase I															
Financial Admin.-STAG															
Preliminary Design															
-Review of Master Plan/Publish															
-JOY pipeline Study															
- Geotechnical Investigation															
- Wetland Investigation															
- Field Survey															
- Sewer Routing															
Final Design															
Easement Descriptions															
Easement Acquisition/Appraisals															
Preliminary Assessments/Public Mtgs.															
Submittal/ Reviews															
Bidding - Award; Funding Applications															
Construction/ Close-out															
Final Assessments															

Kirtland Activities
County Activity

Original in color is in Journal Room & Sent to Respondent.