

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 22 2005

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

City of North Ridgeville  
7307 Avon Belden Road  
North Ridgeville, Ohio 44039

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 North Ridgeville ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("EPA") under Ohio Revised Code (R.C.) §§ 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 R.C. Chapters 6111 and 3745, and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has made the following findings:

1. The Dyke Avenue area is a residential community located within Respondent's corporate boundary, Lorain County, Ohio, as shown on Attachment A hereto. The

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

*Janice G. Jacobson* Date 12-22-05

Dyke Avenue area consists of approximately thirty (30) residential lots.

2. Centralized wastewater treatment facilities are currently unavailable in the Dyke Avenue area.
3. The Dyke Avenue area is 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 unnamed tributaries of the Black River. The drainage systems, unnamed tributaries of the Black River and the Black River are defined as "waters of the state" pursuant to R.C. § 6111.01.
4. Paragraph 3745-1-04(F) of the Ohio Administrative Code (OAC) provides that it is a general Ohio water quality criteria, applicable to all surface waters of the state, that, to every extent practical and possible as determined by the Director, surface waters shall be free from public health nuisances associated with raw or poorly treated sewage.
5. 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 R.C. 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.
6. Ohio EPA and Lorain County General Health District staff sampled in the Dyke Avenue area on April 13, 2005, for fecal coliform and *Escherichia coli* bacteria. The sample results are set forth below:

<i>Site</i>	<i>Test</i>	<i>Sample A</i>	<i>Sample B</i>
7271 Dyke Avenue	fecal coliform	510	1,300
	<i>Escherichia coli</i>	680	1,100
7468 Dyke Avenue	fecal coliform	15,000	9,100
	<i>Escherichia coli</i>	10,000	8,000
Watson Avenue	fecal coliform	18,000	7,100
	<i>Escherichia coli</i>	17,000	>24,000

7. 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.
8. Small lot sizes, in conjunction with local soil conditions and local hydrology, make the installation, replacement or repair of existing on-site sewage disposal systems an unacceptable solution to remedy the unsanitary conditions.
9. R.C. § 6111.03(H) provides that the Director may issue Orders to prevent, control, or abate water pollution by such means as: 1) prohibiting or abating discharges of sewage, industrial waste, or other wastes into waters of the state; and, 2) requiring the construction of new disposal systems or any parts thereof, or the modification, extension, or alteration of existing disposal systems or any parts thereof.
10. It is necessary for the public health and welfare that sewers or sewer improvements be constructed, maintained, and operated to service the Dyke Avenue area.
11. 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 (PTI) requirement of R.C. §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.
12. 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. Within twelve (12) months after the effective date of these Orders, Respondent shall submit to Ohio EPA, for the Director's approval, a General Plan to abate the unsanitary conditions documented in Finding No. 6 and Finding No. 7. The General Plan shall address, at a minimum, the following:
  - a. A discussion of the chosen alternative to abate the unsanitary conditions;
  - b. A map(s) showing proposed location(s) of sewerage system and/or treatment works construction;
  - c. A cost estimate for the chosen alternative of Order No. 1.a. The cost estimate shall include the construction costs as well as operation, maintenance, and replacement costs;
  - d. A report on the proposed financing of the project including the following:
    - i. Grant and/or loans for which applications have been submitted, the date of submittal, and the total amount of monies requested;
    - ii. Grant and/or loan funding agencies that will be approached, and a timeline for application submittals;
    - iii. The portion of the project(s) that will be funded by the local community, including operation, maintenance, and replacement costs;
  - e. A schedule for submittal of a complete permit-to-install (PTI) application(s) and approvable detailed plans, stamped by a professional engineer licensed to practice in the state of Ohio, for the chosen alternative under Order No. 1.a. The PTI application may define several phases of the project; and,
  - f. If a discharge to waters of the state is proposed, a schedule to submit to Ohio EPA a complete National Pollutant Discharge Elimination System (NPDES) permit application, and Antidegradation Addendum.
2. Respondent shall respond, in writing, to any questions or comments Ohio EPA may have on the General Plan submitted under Order No. 1, within thirty (30) days of the date on the correspondence from Ohio EPA.
3. Upon approval by the Director of Ohio EPA, the General Plan shall be incorporated herein as if fully written within. Respondent shall implement the General Plan.

4. Respondent shall respond, in writing, to any questions or comments by Ohio EPA on the PTI or NPDES permit applications under Order No. 1.e. and Order No. 1.f. respectively, within thirty (30) days of the date on the comment letter from Ohio EPA.
5. Within twelve (12) months after the receipt of a PTI approved by the Director of Ohio EPA, Respondent shall initiate construction of the sewerage system and/or treatment works in accordance with the approved PTI.
6. Within thirty (30) months after the receipt of a PTI approved by the Director of Ohio EPA, Respondent shall complete the construction of the sewerage system and/or treatment works in accordance with the approved PTI, and achieve compliance with R.C. Chapter 6111.
7. Within fourteen (14) days of completing the requirement in Order No. 5 and Order No. 6, Respondent shall provide notice, in writing, to the Ohio EPA of the completion of the Order. Notice shall be sent to the addresses in Section X of these Orders.
8. Following completion of construction of the sewerage system, Respondent shall compel all premises in the Dyke Avenue area to connect sewage flows to the public sanitary sewer and to 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)(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 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  
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]

[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.

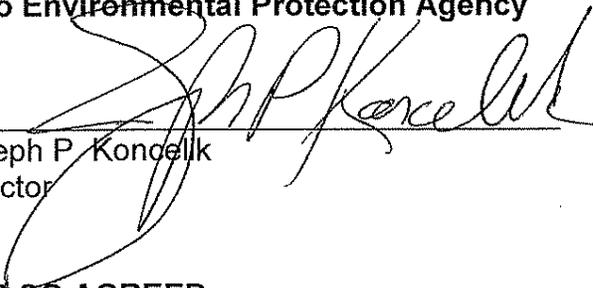
#### **XIII. EFFECTIVE DATE**

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. Kocellik  
Director

12/22/05  
Date

**IT IS SO AGREED:  
City of North Ridgeville**

  
\_\_\_\_\_  
Signature

12-8-05  
Date

G. DAVID GILLOCK  
Printed or Typed Name

MAYOR  
Title