

Andrew Conway

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Portage County Board of Commissioners
Portage County Administration Building
449 S. Meridian Street, 7th Floor
Ravenna, OH 44266

Director's Final Findings
and Orders

ENTERED DIRECTOR'S JOURNAL

JUL - 2 2007

OHIO E.P.A.

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:

I. JURISDICTION

By: [Signature] Date: 7/2/07

These Director's Final Findings and Orders ("Orders") are issued to the Portage County Board of Commissioners ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Chapter 6111. and ORC §§ 6117.34 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 Chapters 6111., 6117. and 3745. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The area of the Aurora Meadows Subdivision in Mantua Township, Portage County, includes approximately 85 homes along Vincent Drive, Samuel Drive, St. James Drive and the connecting portion of Winchell Road. The homes are served by individual on-site septic systems that connect into a common piping system and discharge near the northeast corner of the subdivision.
2. On October 11, 2005, the Portage County Combined General Health District ("Health Department") received a written complaint regarding sewage overflowing a catch basin located on the property line between 12816 and 12826 Vincent Drive.

From there, the flow continued further northeastward into a wooded swamp area where several neighborhood children have indicated that they play and catch frogs. The flow continues onward into the natural surface water drainage ways of the area. The constant high volume of flow from this catch basin is continually grey to black in color and emits a strong sewage odor.

3. The Health Department conducted septic system dye tests on 10 houses, picked at random, in the Aurora Meadows Subdivision. All tests revealed that the septic systems were discharging to the catch basin described above, confirming speculation that this was the discharge point for the common piping system that collects septic system discharges from the entire subdivision.
4. Four fecal coliform samples were collected from the catch basin point of discharge. The results were as follows:

Date Sample Collected	cfu / 100mL
02/02/06	70,000
03/30/06	390,000
04/05/06	440,000
04/06/06	690,000

5. The results set forth in Finding No. 4, yield a geometric mean of 397,500 cfu/100mL.
6. Fecal coliforms are an indicator that other harmful pathogens associated with fecal wastes may be present.
7. ORC § 6117.34 provides that whenever the board of health of a general health district makes complaint in writing to Ohio EPA that unsanitary conditions exist in any county, the Director shall inquire into and investigate the conditions complained of. If, upon investigation of the complaint, the Director finds that it is necessary for the public health and welfare that sanitary or drainage facilities be acquired or constructed, maintained, and operated to serve any territory outside municipal corporations in any county, the Director shall notify the Board of County Commissioners of that finding and order that corrective action be taken. The Board of County Commissioners shall obey the order and proceed as provided in ORC Chapter 6117., to establish a county sewer district, if required, to provide the necessary funds, to acquire or construct the facilities, and to maintain and operate the facilities, as required by the order and in a manner that is satisfactory to the Director.

8. On June 27, 2006, the Ohio EPA received a letter, written pursuant to ORC § 6117.34, from the Health Commissioner, Portage County Combined General Health District, declaring the surrounding area of the Aurora Meadows Subdivision to be a public health nuisance due to the existence of failing septic systems. Enclosed with the letter was a Resolution by the Portage County Board of Health of the Portage County Combined General Health District detailing the public nuisance. The letter referred the matter to Ohio EPA for action under ORC § 6117.34.

9. On September 8, 2006, Ohio EPA inspected the subject area and performed sampling with the following results:

<i>Location</i>	<i>Sample Date</i>	<i>Time</i>	<i>Fecal Coliforms (#cfu/100mls)</i>	<i>Visuals</i>
12816 Vincent Drive	09/08/06	10:30 a.m.	150,000	Strong Odor blackish liquid sewage fungus
	09/08/06	12:45 p.m.	510,000	Strong Odor blackish liquid sewage fungus
12826 Vincent Drive	09/08/06	10:12 a.m.	92,000	Strong Odor blackish liquid sewage fungus
	09/08/06	12:45 p.m.	98,000	Strong Odor blackish liquid sewage fungus

10. Ohio Administrative Code ("OAC") Rule 3745-1-04(F) 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.

11. 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.

12. The Ohio EPA inspection and sampling results 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.
13. Small lot sizes, in conjunction with local soil conditions and hydrology, make the replacement or repair of existing on-site sewage disposal systems an unacceptable solution to remedy the unsanitary conditions.
14. It is necessary for the public health and welfare that sewer improvements or sewage treatment or disposal works be constructed, maintained, and operated to serve the area of the Aurora Meadows Subdivision, an area which is outside an municipal corporation.
15. 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.

V. ORDERS

1. As soon as possible, but not later than six (6) months from the effective date of these Orders, Respondent shall submit to Ohio EPA for approval, a general plan for sewage improvements or other methods of abating pollution and correcting the unsanitary conditions, pursuant to ORC Chapter 6111., in the Aurora Meadows Subdivision. The general plan shall address, at a minimum, the following items:
 - a. Alternatives for treating sewage from the affected areas including, but not limited to, the following options:
 - i. Centralized treatment, wherein the discharge for a centralized treatment system shall take into consideration and discuss the lack of gradient of the receiving stream;
 - ii. No discharge to surface waters by connecting to existing sewers and directing sanitary sewage flows to the nearest regional wastewater treatment plant;
 - iii. No discharge to surface waters by utilizing land application for wastewater disposal; and
 - b. Proposed locations of collection and treatment facilities if deemed appropriate; and

- c. An implementation schedule for submitting a complete NPDES permit application, if necessary, and a complete permit to install application and approvable detail plans, awarding construction bids, starting and completing construction, and attaining compliance with ORC Chapter 6111. and the administrative rules promulgated thereunder.
2. Upon Ohio EPA's approval of the general plan, Respondent shall implement the general plan in accordance with the implementation schedule approved by Ohio EPA.
3. 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.
4. Respondent shall complete the sewage system installation in accordance with the approved permit to install application and achieve compliance with Ohio's water pollution control laws, no later than forty-two (42) months from the effective date of these Orders.
5. Within fourteen (14) days of completing the requirement in Order 4, 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.
6. Respondent shall exercise all authority under ORC § 6117.51 to compel all premises in area of the Aurora Meadows Subdivision to connect sewage flows to the sewerage system and cease use of existing sewage disposal systems.
7. Upon request by Respondent and good cause shown, the Director may, at his sole discretion, extend in writing any time periods established by 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 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:

Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: DSW Enforcement Coordinator

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.

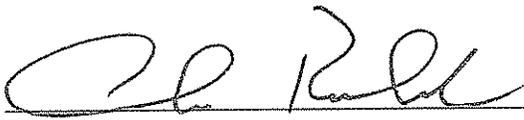
XIII. EFFECTIVE DATE

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



Director

Date 7/2/07

IT IS SO AGREED:
Portage County Board of Commissioners

Maurcen J. Frederick
Signature

5/22/07
Date

Maurcen J. Frederick
Printed or Typed Name

President
Title

Christopher Smalls
Signature

5/22/07
Date

Christopher Smalls
Printed or Typed Name

Vice President
Title

Charles W. Keeper II
Signature

May 22, 2007
Date

Charles W. Keeper II
Printed or Typed Name

Board Member
Title

RESOLUTION NO. 07-0498

RE: TO ENTER INTO AN AGREEMENT WITH OHIO EPA'S DIRECTOR'S FINAL FINDINGS AND ORDERS AND THE BOARD OF COUNTY COMMISSIONERS CONCERNING AURORA MEADOWS SUBDIVISION IN MANTUA TOWNSHIP, PORTAGE COUNTY, OHIO.

It was moved by Charles W. Keiper II, seconded by Christopher Smeiles that the following resolution be adopted:

WHEREAS, the Ohio Environmental Protection Agency issued Finding and Orders under the authority of Ohio Revised Code sections 6117.34 and 3745.01 to the Board of County Commissioners on May 9, 2007 for the area of Aurora Meadows Subdivision in Mantua Township, Ohio; and

WHEREAS, the Finding and Orders are citing unsanitary conditions in the Aurora Meadows Subdivision and the steps required to correct these conditions by requiring Portage County to construct sanitary sewer improvements or other methods of abating pollution; now therefore be it

RESOLVED, by the Board of Commissioners of Portage County, Ohio:

Section 1. the Portage County Board of Commissioners agree to enter into the Director's Final Findings and Orders concerning Aurora Meadows Subdivision;

Section 2. finds and determines that all formal actions of this Board concerning and relating to the adoption of this resolution were adopted in an open meeting of this Board and that all deliberations of this Board and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Voice vote was as follows:

Maureen Frederick, Yea;

Christopher Smeiles, Yea;

Charles W. Keiper II, Yea;

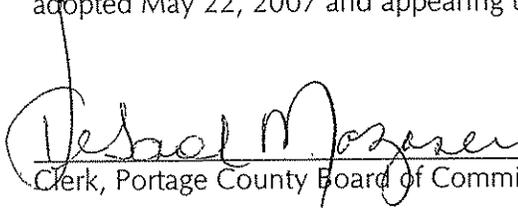
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I, Clerk of the Board of County Commissioners, do hereby certify that the foregoing document is true and correct copy of a resolution of the Board of County Commissioners of Portage County, duly adopted May 22, 2007 and appearing upon the official records of said Board Volume 65, page _____.


Clerk, Portage County Board of Commissioners