

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

APR 15 2011

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

Medina County Board of Commissioners
144 North Broadway Street
Medina, OH 44256

**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 Dan Lassiter Date: 4-15-11

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Medina 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") §§ 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 Chapter 6111., and the rules adopted thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

Background

1. The Rustic Hills Subdivision ("subdivision") is an unincorporated area in Montville Township, Medina County.
2. The subdivision was built in the late 1950s and early 1960s as one of the first subdivisions in Medina County.
3. Although a small number of homes are connected to sanitary sewers on portions of a few roadways, the vast majority of the 200 plus homes are serviced by on-site

home sewage disposal systems, consisting primarily of aeration systems that discharge to storms sewers, common drainage tiles, or to lakes behind the homes. These ultimately drain to tributaries of Rocky River.

4. Storms sewers, common drainage tiles, lakes, tributaries of Rocky River, and Rocky River are waters of the state.
5. Aeration systems were the original systems of preference, primarily due to lot soil conditions and limited land area on most lots, given the area topography of steep hillsides and ravines.
6. Most of the aeration systems are approximately 50 years old, and are failing or not properly functioning, and discharge untreated or partially treated sewage into waters of the state, as identified above.
7. Replacement of the systems would not be a realistic or a long-term solution, as the limited land areas of the majority of the lots would preclude installation of on-site home sewage disposal systems and would necessitate installing aeration systems that discharge to waters of the state, which would require homeowners to obtain individual National Pollutant Discharge Elimination System permits and perform yearly sampling.

ORC § 6117.34

8. Pursuant to ORC § 6117.34, 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 or prevention or replacement 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 the county of that finding and order that corrective action be taken. The commissioners shall obey the order.
9. On November 16, 2009, the Medina County Health Department passed Board Resolution No. 94-2009 entitled "Letter of Complaint to the Ohio Environmental Protection Agency to Investigate Unsanitary Conditions (Sewage) in the Rustic Hills Subdivision, Montville Township," which stated that:

From sampling conducted by the Medina County Health Department and Medina County Sanitary Engineer's Office, unsanitary conditions exist in the Rustic Hills Subdivision, Montville Township, due to high levels of bacteria from sewage systems in the subdivision. As specified in Ohio Revised Code Section 6117.34, the Medina County

Board of Health hereby authorizes the Medina County Health Department to submit to the Ohio Environmental Protection Agency (OEPA) a letter of complaint requesting the OEPA to investigate the unsanitary conditions in the Rustic Hills Subdivision.

10. The Resolution was received by Ohio EPA on November 19, 2009, with a transmittal letter stating that the Medina County Health Department supports sanitary sewers in the subdivision, as sewers would alleviate current and future sewage issues associated with aging discharging systems that do not meet water quality discharge standards.
11. The transmittal letter was accompanied by copies of sampling data.

Sampling

12. Ohio Administrative Code ("OAC") Rule 3745-1-04(F) provides that it is 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.
13. A public health nuisance is deemed to exist when an inspection documents odor, color and/or other visual manifestations of raw or poorly treated sewage and water samples exceed five hundred seventy-six E. 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.
14. Sampling conducted by, or under the supervision of, Ohio EPA, was performed on May 5, 2010, with the following results and observations:

Site No.*	Location	Time	E. coli**	Field Observations odor / color / other visual
001	End of pipe	1033	>48,000	slight odor greyish, aquatic plants, sewage fungus, algae
		1312	8,700	slight odor greyish sewage fungus, algae
002	Tributary	1053	>24,000	slight odor blackish sewage fungus, algae

Site No.*	Location	Time	E. coli**	Field Observations odor / color / other visual
		1326	>240,000	slight odor blackish sewage fungus, algae
004	Confluence of ditch	1104	2,800	slight odor blackish sewage fungus
		1333	520	slight odor blackish sewage fungus
017		1136	14,000	moderate odor blackish sewage fungus, algae
		1353	7,300	slight odor blackish sewage fungus, algae
018	In stream	1151	350,000	moderate odor blackish sludge deposits, sewage fungus, tubifex worms
		1405	>48,000	moderate odor blackish sewage fungus, tubifex worms
021	At receiving stream	1124	>9,600	moderate odor grayish sewage fungus
		1345	9,600	moderate odor grayish sewage fungus

* A map of the sampling locations is attached and incorporated by reference.

** (#cfu/100mls) Bacteria quantities are generally reported as colonies or colony forming units (cfu) per 100 milliliters (ml) of sample.

Sampling Analyzed

15. The sampling data demonstrated that a public health nuisance, as defined in OAC Rule 3745-1-04, existed and exists in the subdivision.
16. On-site home sewage disposal systems are inherently more dangerous to the public health than sanitary sewage systems and must be replaced when possible.
17. Septic systems pose a potential hazard to the public health, and are a potential nuisance to be prevented when possible.

Determinative Findings

18. It is necessary for the public health and welfare that sanitary or drainage facilities or prevention or replacement facilities be acquired or constructed, maintained, and operated to serve the subdivision.
19. 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(A) and 6111.45 and OAC Chapter 3745-42.

V. ORDERS

1. To address the public health nuisance conditions in the subdivision:
 - a. Within nine (9) months after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval, in accordance with Section X. of these Orders, a complete and approvable permit to install application and detailed plans, to install the necessary sewerage system to connect said system to the Medina County Sewer District No. 500, Liverpool wastewater treatment plant located at 89 Columbia Road, Valley City, Medina County, ("WWTP"). The submission shall include a map of the affected areas which will be served by the sewerage system.
 - b. Within eighteen (18) months after the effective date of these Orders, Respondent shall commence construction of the sewerage system in accordance with the approved permit to install and detailed plans.
 - c. Within thirty (30) months after the effective date of these Orders, Respondent shall complete construction of the sewerage system and connect said system to the WWTP and achieve compliance with Ohio's water pollution control laws, ORC Chapter 6111 and the rules adopted thereunder.

2. Respondent shall submit corrections/revisions to address any deficiencies in the permit to install application and/or detailed plans references in Order No. 1, above, to Ohio EPA in accordance with Section X. of these Orders, within fifteen (15) days of receipt of written notification from Ohio EPA of any deficiencies.
3. Within fourteen (14) days of completing the requirements in Orders Nos. 1.b. and c., Respondent shall provide notice, in writing, to the Ohio EPA of the completion of each Order. Notice shall be sent to the address in Section X. of these Orders.
4. Respondent shall exercise its authority under the Ohio Constitution and the Ohio Revised Code to compel all premises in the subdivision to connect to the sewerage system and cease use of existing on-site home sewage disposal systems within one hundred eighty (180) days after completion of the sewerage system and treatment works.

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.

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

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. DUTY TO COMPLY **COMPLIANCE NOT DEPENDENT ON GRANTS, LOAN OR FUNDS**

Nothing in these Orders shall affect Respondent's obligation to comply with all applicable federal, state or local laws, rules, regulations or ordinances. Respondent shall obtain any and all federal, state or local permits or other authorizations necessary to comply with these Orders. Performance with the terms of these Orders by Respondent is

not conditioned on the receipt of any federal or state grant, loan or funds. In addition, Respondent's performance is not excused by the failure to obtain any federal or state grant, loan or funds, or by the processing of any application for the same.

XIV. UNAVOIDABLE DELAY

In accordance with the provisions set forth below, Respondent may request an extension of the deadline for complying with these Orders if compliance with the deadline is prevented or delayed by an event which constitutes an "unavoidable delay" as defined herein.

Respondent shall cause all work required by these Orders to be performed in accordance with applicable schedules and time frames unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondent, which prevents or delays performance of any obligation required by these Orders and which could not be overcome by due diligence on the part of Respondent. Though not exclusive, unanticipated or increased cost of compliance or change in financial condition or the inability to secure grants, loans or funding shall not be considered an event beyond the control of Respondent.

Respondent shall notify Ohio EPA in accordance with Section X. of these Orders, in writing within five (5) days after the occurrence of an event which Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable under which these measures will be implemented. Respondent shall have the burden of demonstrating that the event constitutes an unavoidable delay. Failure by Respondent to comply with the notice requirement of this Order shall constitute a waiver of Respondent's right to request an extension of its obligation based on such incident. An extension of one date based on a particular incident does not mean that Respondent qualifies for an extension of a subsequent date or dates. Respondent must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this provision does not constitute a waiver by the Director of any rights or defenses the Director may have under applicable law.

If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA shall notify Respondent in writing. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA shall notify Respondent in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

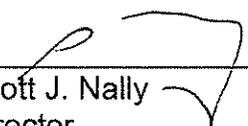
XV. EFFECTIVE DATE

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

XVI. 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**



Scott J. Nally
Director

4/15/11

Date

**IT IS SO AGREED:
Medina County Board of Commissioners**



Signature

4-4-11

Date

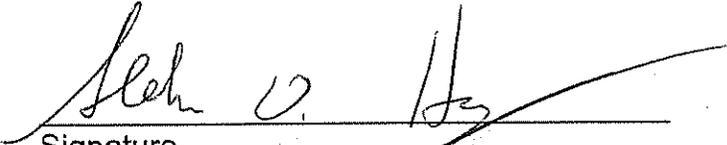
PATRICIA GEISSMAN

Printed or Typed Name

MEDINA COUNTY COMMISSIONER

Title

(signatures continued on next page)



Signature

4-4-11

Date

STEPHEN D HAMBLEY

Printed or Typed Name

MEDINA COUNTY COMMISSIONER

Title



Signature

4 APR 11

Date

ADAM FRIEDRICK

Printed or Typed Name

Commissioner

Title