

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Sunwest Development Co.  
30195 Chagrin Boulevard, Suite 204  
Pepper Pike OH 44124

Director's Final Findings  
and Orders

Respondent

OHIO E.P.A.  
SEP - 3 2003  
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Sunwest Development Co., ("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 ownership of Respondent or the Facility 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. Respondent, located in Pepper Pike, Ohio, is the developer of Stony Point Estates Subdivision, ("Facility"), consisting of fifty-four single family home sites, bounded on the northeast by Hunt Road, on the south by Stony Point Drive, and on the west by Benbow Road, Strongsville, Cuyahoga County, Ohio.
2. Ohio Administrative Code ("OAC") Rule 3745-31-02 requires the Director's issuance of a permit to install ("PTI") prior to the installation of a new "disposal system," as such term is defined in ORC § 6111.01 (G).

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.  
Dena F. (Dew) Dan Sept 3 2003

3. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any rule adopted by the Director pursuant to those sections, including OAC Rule 3745-31-02.
4. PTI Application No. 02-14561, together with detailed plans, was received at Ohio EPA Northeast District Office on December, 13, 2000, for the installation of a sanitary sewer extension to serve the Facility.
5. Northeast District Office completed the technical review and sent Respondent a request for revision letter on December 27, 2000. In the letter, the District identified the following revisions required before a recommendation could be made for permit issuance:
  - a. In the PTI application, there are inconsistencies in the identification of the owner of the sewer;
  - b. Both the sanitary sewer and water lines must be located on a general plan review of the project;
  - c. Documentation must be provided of the filing of a Notice of Intent for authorization for storm water discharges associated with construction activity under the National Pollutant Discharge Elimination System;
  - d. As there is greater than a four hundred foot distance between manholes on page 8 of the detailed plans, a special note is required which indicates that equipment is capable of cleaning up to five hundred feet;
  - e. On the pump station detail, the high water alarm and pump # 2 are to be at the same elevation;
  - f. The pump station detail must include elevations; and
  - g. The crossed out drain pipe on the pump station detail must be identified.
6. No response was received from Respondent.
7. The sanitary sewer extension proposed in PTI Application No. 02-14561 is a "disposal system," as such term is defined in ORC § 6111.01(G).
8. Ohio EPA determined that the installation of the sanitary sewer extension began in 2001.

9. On August 7, 2002, an inspection of the Facility was conducted by the Northeast District Office. The inspection revealed that the installation of the sanitary sewer extension had been completed prior to approval of the plans and issuance of a PTI by Ohio EPA.
10. On August 8, 2002, Respondent was notified via certified mail that the sanitary sewer extension installation was in violation of ORC Chapter 6111. and OAC Chapter 3745-31. Respondent was also notified in the letter of the revisions required to the detail plans, as specified in the letter of December 27, 2000. The letter indicated that in addition to the December 27, 2000 letter, the engineer who prepared the plans was notified on August 16, 2001, of the required revisions. Respondent was informed that the required revisions must be addressed and four sets of as-built plans were to be submitted within fifteen days.
11. Respondent submitted the revisions referenced in Finding No.10, above.
12. No Ohio EPA PTI has been issued to Respondent for the sanitary sewer extension.
13. Respondent's installation of a new disposal system without a plan approval or PTI is in violation of ORC § 6111.07 and OAC Rule 3745-31-02.
14. 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. Respondent shall not install sewerage or treatment works for sewage disposal or new disposal systems, including, but not limited to, sanitary sewers, at any location in Ohio without first receiving prior approval from the Director as required by law. Respondent may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondent has maintained compliance with this Order for a period of three hundred and sixty five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section VI. of these Orders.
2. Respondent shall pay to the Ohio EPA the amount of three thousand six hundred fifty dollars (\$3,650.00) in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the

full amount within thirty (30) days of the effective date of these Orders, to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Facility.

A photocopy of the check shall be sent to the Northeast District Office at the address below:

Ohio Environmental Protection Agency  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087-1969  
Attn: DSW Enforcement Group Leader

#### **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 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 Respondent. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principle business function of Respondent.

#### **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 the operation of 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. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

### **XI. 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.

**XII. EFFECTIVE DATE**

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

**XIII. SIGNATORY AUTHORITY**

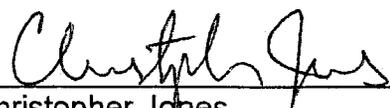
Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO AGREED:  
Sunwest Development Co.**

  
\_\_\_\_\_  
Signature  
Michael J. Haskey  
\_\_\_\_\_  
Printed or Typed Name  
Vice President  
\_\_\_\_\_  
Title

August 17, 2003  
\_\_\_\_\_  
Date

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

  
\_\_\_\_\_  
Christopher Jones  
Director

8-28-03  
\_\_\_\_\_  
Date