

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

APR 28 2010

In the Matter of:
Tuscarawas County Board of Commissioners
125 East High Avenue
New Philadelphia, OH 44663

ENTERED DIRECTOR'S JOURNAL

**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: Shirley Lassiter Date: 4-28-10

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Tuscarawas 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 Lowden area is an unincorporated area in Dover Township, Tuscarawas County, consisting of approximately 20-25 homes, with shallow water wells on very small lots.
2. All waste producers treat their waste on-site with failing individual septic systems, the majority of which are comprised of septic tanks and effluent discharge lines connected to the storm water drainage system. This storm water is then discharged to open ditches and the ground surface.

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3. Space is not available on the individual lots for the installation of additional or replacement septic systems, and there is no additional common space for additional secondary treatment and disposal of the waste produced.
4. The City of Dover's existing sanitary sewer is located approximately 525 feet to the south of the Lowden area.

ORC § 6117.34

5. Pursuant to ORC § 6117.34, whenever the board of health of a general health district, or a board of township trustees 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.
6. On August 18, 2008, the Tuscarawas County General Health District, Division of Environmental Health, ("Health District"), which had been investigating complaints in the Lowden area, wrote to Ohio EPA that the Health District is seeking inquiry and enforcement under ORC § 6117.34. The Health District further stated that it had determined that the only solution to protect public health is the installation of central sanitary sewers in the Lowden area.
7. On October 7, 2008, the Dover Township Trustees ("Trustees") passed Resolution No. 10082008, to seek inquiry and enforcement under ORC § 6117.34 to have the area of Lowden in Dover Township investigated by Ohio EPA. The Trustees believed that there was an immediate public health danger as the residence in the area have on-site sewage disposal and shallow water wells on a very small lot size
8. The Trustees' resolution was transmitted to Ohio EPA pursuant to a letter dated October 7, 2008, which also stated that the Trustees had filed a complaint with the Tuscarawas County Health Department concerning septic effluent discharges into storm sewers and open ditches at the intersection of Columbia Road and Crown Hill Ext., Lowden area.

Sampling

9. Ohio EPA conducted the following sampling in the Lowden area in July, 2009, with the associated results:

Location ****	Date (2009) Time	Fecal Coliform /100 ml*	Odor	Color	Visual
Upstream Drainage Swale to Field, ** adjacent to 6156 Columbia Rd, NW. (Sampling Station No. 1)	07/16 0935	20	slight (level 2)	clear	algae
	07/16 1210	30	slight (level 2)	clear	algae
Downstream drainage @ N. Wooster Ave & Crown Street (Sampling Station No. 2) ***	07/16 0950	9,700	Strong (level 4)	greyish	oily sheen sludge deposits sewage fungus algae / suds
	07/16 1200	11,000	Strong (level 4)	blackish	oily sheen sludge deposits sewage fungus algae

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

**The drainage swale had been dug out to promote better flow conditions, and contains the discharge of the residences slightly upstream from the majority of the residences.

*** Flow increased at time of second sampling event.

**** A sampling map is attached as Attachment A, which is incorporated by reference herewith, as if fully rewritten herein

Public Health Nuisance

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.

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11. OAC Rule 3745-1-04(F), in pertinent part, further provides that a public health nuisance is deemed to exist when an inspection conducted by, or under the supervision of, Ohio EPA or a sanitarian registered under ORC Chapter 4736., documents odor, color and/or other visual manifestations of raw or poorly treated sewage; and
 - a. Water samples exceed five thousand fecal coliform counts per one hundred milliliters (either MPN [most probable number] or MF [membrane filter]) 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.

Public Health Nuisance Found / Unsanitary Conditions

12. The sampling data demonstrates that:
 - a. A public health nuisance, as defined in OAC Rule 3745-1-04, exists in the Lowden area;
 - b. Unsanitary conditions exist in the Lowden area; and
 - c. 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 Lowden area.
13. In 2006, a *Preliminary Engineering Report for Columbia Area Sanitary Sewer Extension to the City of Dover Sanitary Sewer System For the Tuscarawas County Metropolitan Sewer District* was prepared by George A. Fiedler and Associates - Consulting Engineers.
14. The Report found that the Lowden area immediately adjacent to the City of Dover's north corporation line can be served by gravity sewers which discharge to the Dover sanitary sewer system by gravity without the need for a lift station. The Lowden area waste are fairly insignificant in quantity and could be added to the present load of the Dover sanitary sewer system without much effect.
15. An April 2008 *Sanitary Sewer System Extension Preliminary Engineering Report*, prepared by Civil Design Associates, Inc., concluded that it is feasible to extend the existing City of Dover Sanitary Sewer System into Dover Township for the purpose of providing sanitary sewer collection facilities and wastewater treatment and improve health and safety conditions to the residents in the Lowden area.
16. Compliance with ORC Chapter 6111 is not contingent upon the availability of financial assurance.

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17. 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

Respondents shall abate unsanitary conditions in the Lowden area pursuant to the following schedule:

1. As soon as possible, but not later than thirty (30) days from the effective date of these Orders, Respondent shall submit to Ohio EPA, Southeast District Office, for the District's review and approval, a general plan for sewage improvements or other methods of correcting the unsanitary conditions, pursuant to ORC Chapter 6111., in the Lowden area. 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; and
 - iii. No discharge to surface waters by utilizing land application for wastewater disposal;
 - 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 adopted 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.

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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.

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 in association with these Orders.

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.

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X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Surface Water
2195 Front Street
Logan, Ohio 43138
(ATTN: Enforcement Group Leader)

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.

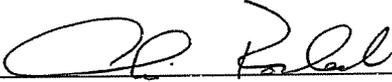
XV. EFFECTIVE DATE

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**



Chris Korleski
Director

4/27/10
Date

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



Signature
Kerry Metzger

Printed or Typed Name

4/8/2010
Date

President, Tuscarawas County Commissioner

Title



Signature
Jim Seldenright

Printed or Typed Name

4-8-10
Date

V.P., Tuscarawas County Commissioner

Title



Signature
Chris Abbuhl

Printed or Typed Name

4-8-10
Date

Member, Tuscarawas County Commissioner

Title

SHORT DRIVE AREA

Map of Lowden area w/
sampling locations marked
and point of connection
marked

Attachment A

