

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 18 2006

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Van Wert County Commissioners
114 East Main Street
Van Wert, Ohio 45891
(Greater Van Wert Area)

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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: [Signature] Date: 12-18-06

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Van Wert County Commissioners ("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 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 and 3745 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. On December 1, 1992, Respondent entered into Director's Findings and Orders with the Ohio EPA to address unsanitary conditions in four unsewered areas located outside of the city of Van Wert, known as the Overholt Addition Area, the U.S. 127 Area, the S.R. 118 Area and the Richey Road Area ("the four

unsewered areas"). A map indicating the general outline of these areas is listed as Attachment 1 and incorporated into these Orders. The Orders required Respondent to submit a general plan to address the unsanitary conditions by June 1, 1993.

2. A general plan was received by Ohio EPA on November 10, 1993. Ohio EPA determined that the plan was not acceptable because it lacked a compliance schedule and a commitment to abate unsanitary conditions. In a letter dated January 20, 1994, Ohio EPA indicated that an amendment to the plan must be submitted by May 1, 1994. An amendment to the plan was not received by that date.
3. A letter dated June 27, 1995 from Respondent to Ohio EPA indicated that the original general plans prepared for Respondent were not financially feasible and that Respondent would be conducting a joint study with the city of Van Wert to explore alternative remedies. The study was submitted to Ohio EPA by the city of Van Wert on January 27, 1997. After reviewing the joint study, Respondent indicated that the options suggested in the plan were also not affordable.
4. At the request of Respondent, Ohio EPA resampled the four unsewered areas around the perimeter of Van Wert. In a letter to Respondent dated October 23, 1996, Ohio EPA documented that the sampling results indicated that fecal coliform levels remained above the water quality standard of 1000/100ml, and showed elevated ammonia levels and low dissolved oxygen, all indications that sewage was still entering storm sewers in the area.
5. Ohio EPA sent a notice of violation to Respondent on September 23, 1997, indicating that Respondent was in violation of the December 1, 1992 Orders, and requesting that Respondent submit a plan by November 1, 1997, in order to avoid further enforcement action.
6. In July 1997, the city of Van Wert notified Respondent that it could accept waste from outlying areas, but that those areas would be required to annex to the city, and Respondent would be expected to help pay for the expansion of the city's wastewater treatment plant.
7. On October 29, 1998, Ohio EPA met with Respondent to discuss the status of the projects for the unsewered areas. As set forth in Ohio EPA's December 4, 1998 letter, it was agreed that the Overholt Addition area would take priority and that Respondent would submit a schedule outlining the phases to abate unsanitary conditions in each of the four unsewered areas. In response, Respondent submitted a letter dated March 23, 1999 committing to identify,

survey and conduct door-to-door testing of septic systems over the next 2-4 years in the four unsewered areas.

8. NOVs were sent to Respondent on April 17, 2001 and November 18, 2002, indicating that Respondent was still in violation of the December 1, 1992 Final Findings and Orders. Pursuant to ORC 6111.07, no person shall violate any order, rule or term or condition of any permit issued or adopted by the director of environmental protection pursuant to ORC Chapter 6111.
9. Ohio EPA resampled the four unsewered areas in 2004, and found that fecal contamination was still present above water quality standards. A table of effluent sampling violations listing the 1988 through 2004 sampling is located in Attachment 2 and his hereby incorporated into these Orders have if fully written herein.
10. 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.
11. The sampling data and subsequent investigation by Ohio EPA confirm 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.
12. Small lot sizes, in conjunction with local soil conditions and local hydrology, continue to make the installation of replacement or repair of existing on-site sewage disposal systems an unacceptable solution to remedy the unsanitary conditions.
13. 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") requirements of ORC §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.

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 implement all work that is necessary to abate the unsanitary conditions in the U.S. 127 and S.R. 118 Areas as expeditiously as practicable, but no later than the dates outlined in the following compliance schedule:
 - A. Within 30 days from the effective date of these Orders, Respondent shall submit to Ohio EPA a status report on achieving compliance with Ohio's water pollution control laws for the U.S. 127 and S.R. 118 Areas. At a minimum, the report shall contain the following:
 - i. A status report on acquiring the necessary easements;
 - ii. A copy of any contracts with a receiving publicly owned treatment works (POTW) for accepting the U.S. 127 and S.R. Areas wastewater;
 - iii. A status report of the engineering design work;
 - iv. A status report for achieving funding for the project.
 - B. Within 12 months of the effective date of these Orders, Respondent shall submit to Ohio EPA, an approvable PTI application with detailed plans and an antidegradation addendum for wastewater collection facilities for the U.S. 127 and S.R. 118 Areas that shall be sufficient to abate the unsanitary conditions in those areas.
 - C. Within 20 months of the effective date of these Orders, Respondent shall initiate construction of the wastewater collection facilities in the U.S. 127 and S.R. 118 Areas.
 - D. Within 30 months of the effective date of these Orders, Respondent shall place the technical operation and maintenance of all of its wastewater

collection facilities for the U.S. 127 and S.R. 118 Areas under the responsible charge of a certified wastewater collection system operator. This operator shall meet the requirements set forth in OAC Chapter 3745-7.

- E. Within 32 months of the effective date of these Orders, Respondent shall complete construction of the wastewater collection facilities for the U.S. 127 and S.R. 118 Areas.
 - F. Within 36 months of the effective date of these Orders, Respondent shall be in full compliance with ORC Chapter 6111.
2. Within 14 days of the milestone dates in Orders 1C, 1D, 1E and 1F, Respondent shall submit written notification of compliance to Ohio EPA as set forth in Section X of these Orders.
3. Respondent shall implement all work that is necessary to abate the unsanitary conditions in the Overholt Addition Area as expeditiously as practicable, but no later than the dates outlined in following compliance schedule:
- A. Within 26 months from the effective date of these Orders, Respondent shall submit to Ohio EPA a status report on achieving compliance with Ohio's water pollution control laws for the Overholt Addition Area. At a minimum, the report shall contain the following:
 - i. A status report on acquiring the necessary easements;
 - ii. A copy of any contracts with a receiving publicly owned treatment works (POTW) for accepting the four unsewered area's wastewater;
 - iii. A status report of the engineering design work;
 - iv. A status report for achieving funding for the project.
 - B. Within 37 months of the effective date of these Orders, Respondent shall submit to Ohio EPA, an approvable PTI application with detailed plans and an antidegradation addendum for wastewater collection facilities for the Overholt Addition Area that shall be sufficient to abate the unsanitary conditions in those areas.
 - C. Within 45 months of the effective date of these Orders, Respondent shall

initiate construction of the wastewater collection facilities in the Overholt Addition Area.

- D. Within 55 months of the effective date of these Orders, Respondent shall place the technical operation and maintenance of all of its wastewater collection facilities for the Overholt Addition Area under the responsible charge of a certified wastewater collection system operator. This operator shall meet the requirements set forth in OAC Chapter 3745-7.
 - E. Within 57 months of the effective date of these Orders, Respondent shall complete construction of the wastewater collection facilities for the Overholt Addition Area.
 - F. Within 61 months of the effective date of these Orders, Respondent shall be in full compliance with ORC Chapter 6111.
4. Within 14 days of the milestone dates in Orders 3C, 3D, 3E and 3F, Respondent shall submit written notification of compliance to Ohio EPA as set forth in Section X of these Orders.
5. Within 180 days of the effective date of these Orders, Respondent shall submit to Ohio EPA for approval, in accordance with Section X of the Orders, an Interim Measures General Plan for immediately mitigating the unsanitary conditions within the Richey Road Area. At a minimum, the Interim Measures General Plan shall include:
- a. A list of all properties, by address, that utilize septic systems in the Richey Road Area;
 - b. A schedule for increasing inspections of all onsite systems located within the area where unsanitary conditions have been documented;
 - c. A course of action for notifying owners of the onsite systems of the results of the onsite system inspections;
 - d. A schedule for pumping septic systems to maximize the efficiency of the systems;
 - e. A copy of county rules that require property owners to pump the septic systems in accordance with the proposed schedule and the legal means available to ensure proper maintenance of the septic systems in the event property owners fail to periodically pump the

systems per the proposed schedule. If necessary, new rules and/or ordinances shall be adopted by Respondent to require mandatory pumping and penalty provisions;

- f. Record-keeping methods that will be used to track septic system inspections and pumping activities. The methods must include, but not be limited to, the use of pumping reports in triplicate, signed by the septic hauler and the property owner. One copy of the reports must be provided to the Ohio EPA within 30 days of pumping activity, one copy is retained by the local health department and one copy is retained by the property owner;
 - g. An evaluation of alternative wastewater treatment technologies that will temporarily eliminate pollution and the unsanitary conditions within the Richey Road Area until such time that funding for the construction of the centralized wastewater treatment plant and sanitary sewers has been obtained and construction of the centralized system is complete, including;
 - 1) A detailed cost estimate analysis for each alternative evaluated;
 - 2) The selection of a wastewater treatment technology that will temporarily eliminate pollution and the unsanitary conditions within the Richey Road Area until such time that funding for the construction of the centralized wastewater treatment plant and sanitary sewers has been obtained and construction of the centralized system is complete;
 - 3) An implementation schedule for the construction of the wastewater treatment technology, selected above, that will temporarily eliminate pollution and the unsanitary conditions within the Richey Road Area until such time that funding for the construction of the centralized wastewater treatment plant and sanitary sewers has been obtained and construction of the centralized system is complete.
6. Upon approval of the Interim Measures General Plan, Respondent shall immediately implement the plan and continue to follow the Interim Measures General Plan until construction of a centralized sewer system is complete. Respondent shall submit written notification and documentation of compliance to Ohio EPA in accordance with Section X of the Orders within 7 days of the

implementation of the Interim Measures General Plan.

7. Every 6 months thereafter, Respondent shall submit to Ohio EPA in accordance with Section X of these Orders, a Compliance Report with the number and location of onsite system inspections conducted, results of any dye testing of any septic systems conducted in the Richey Road Area, the date each onsite system inspection was conducted, the type and location of each onsite system within the Richey Road Area, the findings of each onsite system inspection, the type and location of each onsite system where maintenance and/or replacement activities occurred, a description of the maintenance and/or replacement activities implemented, and the date any maintenance and/or replacement activities occurred.
8. Respondent shall implement all work that is necessary to permanently abate the unsanitary conditions in the Richey Road Area as expeditiously as practicable, but no later than the dates outlined in following compliance schedule:
 - A. Within 36 months from the effective date of these Orders, Respondent shall submit to Ohio EPA a status report on achieving compliance with Ohio's water pollution control laws for the Richey Road Area. At a minimum, the report shall contain the following:
 - i. A status report on acquiring the necessary easements;
 - ii. A copy of any contracts with a receiving publicly owned treatment works (POTW) for accepting the four unsewered area's wastewater;
 - iii. A status report of the engineering design work;
 - iv. A status report for achieving funding for the project.
 - B. Within 51 months of the effective date of these Orders, Respondent shall submit to Ohio EPA, an approvable PTI application with detailed plans and an antidegradation addendum for wastewater collection facilities for the Richey Road Area that shall be sufficient to abate the unsanitary conditions in those areas.
 - C. Within 59 months of the effective date of these Orders, Respondent shall initiate construction of the wastewater collection facilities in the Richey Road Area.

- D. Within 69 months of the effective date of these Orders, Respondent shall place the technical operation and maintenance of all of its wastewater collection facilities for the Richey Road Area under the responsible charge of a certified wastewater collection system operator. This operator shall meet the requirements set forth in OAC Chapter 3745-7.
 - E. Within 71 months of the effective date of these Orders, Respondent shall complete construction of the wastewater collection facilities for the Richey Road Area.
 - F. Within 75 months of the effective date of these Orders, Respondent shall be in full compliance with ORC Chapter 6111.
9. Within 14 days of the milestone dates in Orders 8C, 8D, 8E and 8F, Respondent shall submit written notification of compliance to Ohio EPA as set forth in Section X of these Orders.
10. Respondent shall pay to Ohio EPA sixteen thousand dollars (\$16,000.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to Chapter 6111 of the Ohio Revised Code. Within 30 days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for four thousand dollars (\$4,000.00) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

A photo copy of the check shall be sent to Ohio EPA's Northwest District Office at:

Ohio Environmental Protection Agency
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: Enforcement Coordinator

11. In lieu of paying the remaining \$12,000.00 dollars of civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the

amount of \$12,000.00 to the Van Wert County Park District, to be used towards the purchase of approximately 7 acres of land which runs alongside Balyeat Ditch, near the point where Balyeat Ditch enters Maddox Creek ("the Property"). The Property will be used as a passive recreational area and will be developed and managed for wildlife habitat. Additionally, the Property will be managed utilizing best conservation practices as advised by the Van Wert Soil and Water Conservation District and the Natural Resources Conservation Service. The Van Wert County Park District shall establish an environmental covenant with the Ohio EPA within thirty (30) days of the purchase of the Property, to manage the Property according to the requirements listed above and to protect the Property from future development. The environmental covenant will be in the form of the template attached to these Orders as Attachment A.

A photo copy of the contribution check shall be sent to Ohio EPA's Northwest District Office at:

Ohio Environmental Protection Agency
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: Enforcement Coordinator

12. Should Respondent or the Van Wert County Park District fail to purchase the Property within one (1) year from the effective date of these Orders, or fail to establish an environmental covenant with Ohio EPA within the required timeframe set forth in Order No. 9, Respondent shall pay to Ohio EPA the remaining balance of the civil penalty (\$12,000.00) in accordance with the procedures in Order No. 10.

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.

This 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 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, the Respondent's WWTP and sewer system.

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 the Respondent.

IX. MODIFICATIONS

These Orders may be modified by the 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 EPA, Northwest District Office
Attn: DSW Enforcement Unit Supervisor
347 North Dunbridge Road
Bowling Green, Ohio 43402

and to:

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Ohio EPA, Division of Surface Water
Attn: DSW Enforcement Coordinator
P.O. Box 1049
Columbus, Ohio 43216-1049

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 those 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 AGREED:
Van Wert County Commissioners

Harold L. Merkle
By

11-28-06
Date

Harold L. Merkle
Print Name

Chairman, Board of Van Wert County Commissioners
Title

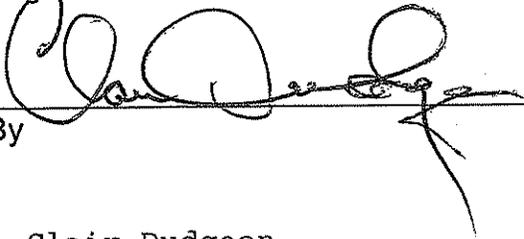
Gary D. Adams
By

11-28-06
Date

Gary D. Adams
Print Name

Vice Chairman, Board of Van Wert County Commissioners
Title

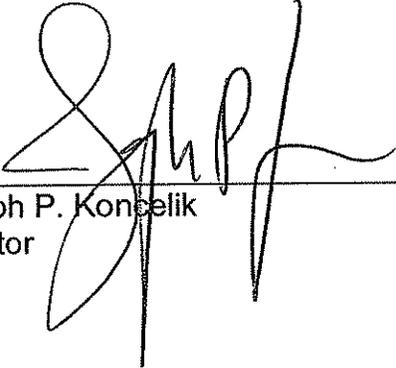
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By _____

Clair Dudgeon
Print Name

Commissioner
Title

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency



Joseph P. Koncelik
Director

11-28-06

Date

12-15-06

Date

Attachment 1

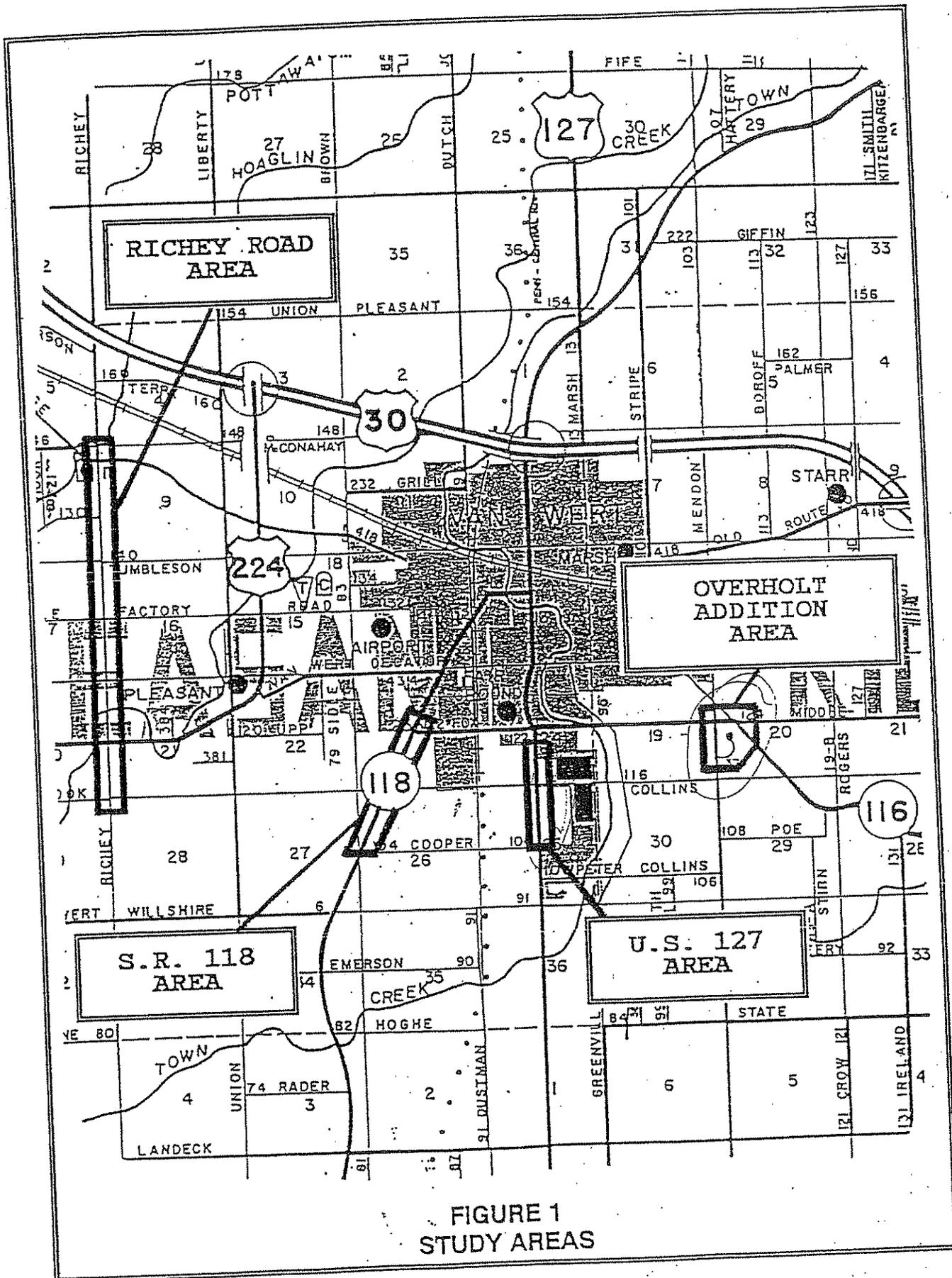


FIGURE 1
STUDY AREAS

Attachment 2

Facility Name: Greater Van Wert Area

Permit Number: none

Table of Effluent Limitation Violations

<u>Outfall Number</u>	<u>Date (Month/Year) of Violation</u>	<u>Parameter Violated</u>	<u>Value Reported</u>	<u>Units</u>	<u>Permit Limitation</u>
Discharge pipe Mendon Road					
		Fecal coliform (#/100ml)	1988	41,000-170,000	
		Fecal coliform (#/100ml)	1996	5,100	
		Fecal coliform (#/100ml)	2004	98,000	
West side of U.S. 127					
		Fecal coliform (#/100ml)	1988	>200,000-7,900,000	
		Fecal coliform (#/100ml)	1996	190,000	
		Fecal coliform (#/100ml)	2004	>200,000	
East side of S.R.118					
		Fecal coliform (#/100ml)	1988	44,000-5,500,000	
		Fecal coliform (#/100ml)	1996	4,200	
		Fecal coliform (#/100ml)	2004	18,000 and 26,000	
Balyeat Ditch					
		Fecal coliform (#/100ml)	1988	29,000-180,000	
		Fecal coliform (#/100ml)	1996	50,000	
		Fecal coliform (#/100ml)	2004	3,600 and 26,000 and 8,100 and 5,600	
Richey Road Ditch					
		Fecal coliform (#/100ml)	1988	160,000-1,200,000	
		Fecal coliform (#/100ml)	1996	>200,000	
		Fecal coliform (#/100ml)	2004	39,000 and 72,000	

Attachment A

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into pursuant to Ohio Revised Code ("R.C.") §§ 5301.80 to 5301.92 by _____, a _____ (the "Owner"), having an address of _____ and _____, a _____ (the "Holder"), having an address of _____, and the Ohio Environmental Protection Agency ("Ohio EPA"), as a non-holder agency, for the purpose of subjecting certain property ("the Covenant Area") to the activity and use limitations set forth herein.

[Insert appropriate background information here. By way of example only, as your situation may differ:

WHEREAS, the Owner is the owner in fee of certain real property, which contains the Covenant Area and is situated in _____ County, Ohio, in the _____ watershed;

WHEREAS, Company X (either a third party doing the project needing the 401, which sometimes could be the Owner) has proposed to construct a certain project on certain other real property ("the Company X Property"), [also] located in _____ County, Ohio ("the Project"), which Project impacts certain surface water features located on the Company X Property and the approvals for which project required that Company X obtain a water quality certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1344 from the Ohio EPA and Nationwide Permit ("NWP") coverage from the Army Corps of Engineers ("the Army Corps");

WHEREAS, in order to mitigate such impacts on the Company X Property and as a condition of being issued the 401 water quality certification [or state isolated wetland permit], Ohio EPA ID No. _____ (the "401 Certification") and the NWP, the Army Corps and the Ohio EPA have required that Company X obtain mitigation property and to protect this property in perpetuity with an environmental covenant;

WHEREAS, to meet the conditions in the 401 Certification, Company X has entered into an agreement with the Owner which provides, among other things, that Company X will construct and implement the mitigation requirements contained in Company X's 401 Certification and the mitigation plan on a specific area ("the Covenant Area") of the Owner's property;

WHEREAS, the Covenant Area possesses substantial value in conserving and protecting the physical, biological and chemical integrity of XYZ Stream and is important in the protection of the existing or designated use of the waters of the state pursuant to § 303 of the Clean Water Act, 33 U.S.C. § 1313 and § 6111.041 of the Ohio Water

Pollution Control Act. The specific conservation values (hereinafter "Conservation Values") of the Covenant Area have been documented in a document entitled "Wetland and Stream Mitigation Plan, Proposed Company X Building, _____ Township, _____ County, Ohio, XYZ File # 20221, [month and day], 200_" (the "Mitigation Plan").

WHEREAS, Company X proposes to fulfill its obligation to ensure the Covenant Area and the Covenant Area's Conservation Values are protected in perpetuity by this Environmental Covenant.]

Now therefore, Owner and Holder and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to R.C. §§ 5301.80 to 5301.92.

2. Covenant Area. The Covenant Area is *[an approximately ____ acre tract of real property; OR real property parcels numbered _____]*, located at _____, in _____ County, Ohio, and more particularly described in Exhibit A [narrative] and Exhibit B [map] attached hereto and hereby incorporated by reference herein ("the Covenant Area").

3. The Owner is the fee simple owner of the Covenant Area.

4. The Holder is the holder of this Environmental Covenant. *[There may be more than one holder. The Owner may be a holder.]*

5. Activity and Use Limitations. As part of the conditions set forth in the 401 Certification issued to Company X and given the conservation values of the Covenant Area, the Owner hereby imposes and agrees to comply with the following activity and use limitations on the Covenant Area:

- a. Division: Any division or subdivision of the Covenant Area is prohibited;
- b. Commercial Activities: Commercial development or industrial activity on the Covenant Area is prohibited;
- c. Construction: The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots on the Covenant Area is prohibited, other than construction activities that are authorized by the 401 mitigation plan approved by the Ohio EPA;
- d. Cutting and Other Control of Vegetation: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or

pesticides on the Covenant Area is prohibited, other than the removal or control of invasive and noxious species and control activities that are authorized by the 401 mitigation plan approved by the Ohio EPA;

- e. Dumping: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area; and
- f. Water Courses: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area, other than as part of activities that are authorized by the 401 mitigation plan approved by the Ohio EPA.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to R.C. § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee" as used in this Environmental Covenant, shall mean any future owner of any interest in the Covenant Area or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to R.C. § 5301.91 or other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any provision of this Covenant. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law in order to protect public health or safety or the environment.

8. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees and the Holder or its agents the right of access to the Covenant Area in connection with the implementation or Enforcement of this Environmental Covenant.

9. Compliance Reporting. Owner and any Transferee shall submit to Ohio EPA, upon request by the Ohio EPA, written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Covenant Area or any portion of the Covenant Area shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN

ENVIRONMENTAL COVENANT, DATED _____, 200_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 200_, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

[In the notice, restate restrictions from Paragraph 5 of this Covenant]

Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Covenant Area. Owner's notice shall include the name, address and telephone number of the Transferee, and a copy of the original document that imposed restrictions on the Covenant Area.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- a. that the Owner is the sole owner of the Covenant Area;
- b. that the Owner holds fee simple title to the Covenant Area that is free, clear and unencumbered and, for example, is not subject to any utility, road or other easement;
- c. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and
- d. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated only by consent of all of the following: the Owner or a Transferee, the Holder[s], and the Ohio EPA, pursuant to R.C. §§ 5301.89 or 5301.90 and other applicable law. "Amendment" means any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. "Termination" means the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. Amendment or termination shall not affect Company X's obligations pursuant to the 401 Certification.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA, the Holder[s], and the Owner[s] or Transferee[s] of the Covenant Area or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this

Environmental Covenant, the Owner[s] or Transferee[s] shall file such instrument for recording with the _____ County Recorder's Office, and shall provide a true copy of the recorded instrument to Ohio EPA.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15. Recordation. Within [thirty (30)] days after the date of the final required signature upon this Environmental Covenant, the Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the property, with the _____ County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Covenant Area with the _____ County Recorder.

17. Distribution of Environmental Covenant. The Owner[s] shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the [City, County, Township, Village] of _____; [any "Holder," any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by Ohio EPA; see ORC § 5301.83].

18. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

[title or position]
Division of [_____]]
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049

[title or position]
[address]

19. Counterparts. This Covenant may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Covenant. {This section is optional. To be used where there are numerous parties and forwarding a single original copy to each party in series will be

difficult and having each copy sign a signature page to be assembled in one original is acceptable to all parties.}

The undersigned [representatives of] the Owner[s] and Holder[s] represent and certify that they are authorized to execute this Environmental Covenant.

IT IS SO AGREED:

OWNER:

_____,
[E.g., The covenant area owner]

By: _____

Its: _____

Date: _____

State of _____)

County of _____)

ss:

Before me, a notary public, in and for said county and state, personally appeared _____, a duly authorized representative of _____, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of _____.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this ____ day of _____, 200_.

Notary

Public

HOLDER:

_____,
[E.g., An Ohio not-for-profit corporation]

By: _____

Its: _____

Date: _____

State of _____)

County of _____)

ss:

Before me, a notary public, in and for said county and state, personally appeared _____, a duly authorized representative of _____, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of _____.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this ____ day of _____, 200__.

Notary Public

OHIO ENVIRONMENTAL PROTECTION AGENCY

By: _____
Director

Date: _____

State of Ohio)
) ss:
County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared _____, the Director of Ohio EPA, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this ____ day of _____, 200__.

Notary Public

