

Andrew Conaway

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC -6 2005

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Village of Ney
P.O. Box 237
Ney, Ohio 43549

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Director's Final Findings
and Orders

Respondent

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Village of Ney ("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 Chapter 6111., and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent, an incorporated village in Washington Township, Defiance County, is comprised of approximately 350 residences, in addition to non-commercial structures.
2. Centralized wastewater treatment facilities are currently unavailable.
3. Respondent is served by inadequate or failing on-site sewage disposal systems that discharge untreated or partially treated sewage to Lick Creek and Little Lick Creek, which are defined as "waters of the state" pursuant to ORC § 6111.01.

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.

M. Paul A. Shapiro Date 12/6/05

4. On January 20, 2005, Respondent notified Ohio EPA that it "is an unsewered area with most of the residences and businesses having individual sewage systems ... [and it] is feared that the individual systems are discharging untreated or partially treated wastewater to Lick Creek and Little Lick Creek."
5. Ohio Administrative Code ("OAC") Rule 3745-1-04(F) provides that it is a general Ohio water quality criterion 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.
6. 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 5,000 fecal coliform counts per 100 milliliters in two or more samples when five or fewer samples are collected, or in more than 20 percent of the samples when more than five samples are taken.
7. On June 2, 2005, Ohio EPA sampled Lick Creek for fecal coliform bacteria. with the results set forth below:

<i>Date/Time</i>	<i>Fecal Coliform (# / 100 mL)</i>	<i>Description</i>	<i>Location</i>
06/02/2005 9:35 AM	910	Odor threshold (very slight), oily sheen	Lick Creek at Defiance CR 134
06/02/2005 11:35 AM	1,200		
06/02/05 9:50 AM	180,000	strong odor, whitish, greyish, blackish colors, sewage fungus, algae, sludge deposits	Lick Creek adjacent to Main St. (SR 157)
06/02/05 12:00 PM	170,000		
06/02/2005 10:10 AM	2,300	moderate odor, whitish, greyish, and blackish colors, sewage fungus, sludge deposits	Lick Creek adjacent to Water St.
06/02/2005 12:15 PM	160,000		

A map showing the sampling points is attached hereto as Attachment A and is incorporated by reference hereto as if fully rewritten herein.

8. 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.
9. Small lot sizes, in conjunction with local soil conditions and local hydrology, make the replacement or repair of existing on-site sewage disposal systems an unacceptable solution to remedy the unsanitary conditions.
10. 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 Respondent. ORC § 6111.03(H) provides, among other things, that the Director may issue Orders to prevent, control, or abate water pollution by such means as requiring the construction of new disposal systems or any parts thereof, or the modification, extension, or alteration of existing disposal systems or any parts thereof.
11. 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.
12. 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. Within nine (9) months of the effective date of these Orders, Respondent shall submit to Ohio EPA, an approvable permit-to-install (PTI) application with detailed plans stamped by a professional engineer licensed to practice in the state of Ohio, for the construction of a sewerage system and treatment works.
2. Respondent shall respond, in writing, to any questions or comments Ohio EPA may have on the documents submitted under Order No. 1, within thirty (30) days of the date on the correspondence from Ohio EPA.

3. Within eighteen (18) months of the receipt of a PTI and detailed plans approved by the Director, Respondent shall initiate construction of the sewerage system and/or treatment works in accordance with the approved PTI and detail plans.
4. Within thirty (30) months of the receipt of a PTI and detailed plans approved by the Director, Respondent shall complete the construction of the sewerage system and/or treatment works in accordance with the approved PTI and detailed plans, and achieve compliance with ORC Chapter 6111.
5. Within fourteen (14) days of the completion of the individual conditions set forth in Orders Nos. 3 and 4, Respondent shall provide written notice to Ohio EPA, in accordance with Section X of 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

Unless otherwise stated herein, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Surface Water
Attn: DSW Enforcement Unit Supervisor
347 North Dunbridge Road
Bowling Green, Ohio 43402

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**



Joseph P. Koncelik
Director

12/2/05
Date

**IT IS SO AGREED:
Village of Ney**



Signature

11-1-05
Date

GARY E McAdow

Printed or Typed Name

Mayor

Title

