

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JAN 30 2008

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Village of Wharton  
117 West Sandusky Street  
Wharton, Ohio 43359

:  
:  
:

Director's Final Findings  
and Orders

PREAMBLE

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.

It is agreed by the Parties hereto as follows:

By: [Signature] Date: 1-30-08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Village of Wharton ("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 made the following findings:

1. The Village of Wharton, located in Richland Township, Wyandot County, is an unsewered community consisting of approximately 408 residents, a grain elevator, a commercial bank, and a factory.

2. Centralized wastewater treatment facilities are currently unavailable in the Village of Wharton.
3. Many of the homes and the commercial and industrial facilities located in the Village of Wharton are served by inadequate or failing on-site or aeration sewage disposal systems that discharge untreated or partially treated sewage to roadside ditches, and/or storm drains, and/or storm sewers (referred to as "drainage systems"). The drainage systems discharge to Potato Run, a tributary of the Blanchard River, and Baughman Run, a tributary of Tymochtee Creek. Drainage systems, Potato Run, Baughman Run, Tymochtee Creek, and the Blanchard River are "waters of the state" as defined in ORC § 6111.01.
4. 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.
5. 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 five thousand (5,000) fecal coliform counts per one hundred (100) milliliters in two (2) or more samples when five (5) or fewer samples are collected, or in more than twenty percent (20%) of the samples when more than five (5) samples are taken; or water samples exceed five hundred seventy-six (576) *Escherichia coli* counts per one hundred (100) milliliters in two (2) or more samples when five (5) or fewer samples are collected, or in more than twenty percent (20%) of the samples when more than five (5) samples are taken.
6. On August 23, 2005, August 9, 2005, July 26, 2005, July 12, 2005, June 28, 2005, and June 14, 2005, Ohio EPA conducted sampling of the area. The sampling results showed fecal coliform counts ranging from 81,000 per one hundred milliliters to >200,000 per one hundred milliliters in six (6) samples collected at Wharton Ditch #1 adjacent to CR 47, and from 710 per one hundred milliliters to 12,000 per one hundred milliliters in five (5) samples collected at Baughman Run adjacent to CR 47, with three (3) of the five samples exceeding 5,000 per one hundred milliliters.

7. The sampling data confirmed the existence of unsanitary conditions, documented violations of Ohio's water quality standard for fecal coliform, and demonstrated a public health nuisance in accordance with OAC 3745-1-04(F).
8. 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.
9. In order to prevent, control, and abate water pollution and to protect the public health and welfare, it is necessary that a sewerage system and wastewater treatment works be constructed, maintained, and operated to service the Village of Wharton area.
10. ORC § 6111.03(H) provides that the Director may issue Orders to prevent, control, or abate water pollution by such means as:
  - (a) prohibiting or abating discharges of sewage, industrial waste, or other wastes into waters of the state; and
  - (b) 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. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
12. 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 Rule 3745-42.
13. 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 eighteen (18) 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 permit to install ("PTI") application, approvable detailed plans, and if necessary an Antidegradation Addendum and a National Pollutant Discharge Elimination System ("NPDES") permit application, to construct a sewerage system and wastewater treatment works.
2. Respondent shall submit revisions to the PTI application, detailed plans, Antidegradation Addendum, and NPDES permit application within thirty (30) days of receipt of notification of deficiencies from Ohio EPA. Revisions shall be submitted to Ohio EPA in accordance with Section X. of these Orders.
3. Within twenty-four (24) months after the effective date of these Orders, Respondent shall submit to Ohio EPA, in accordance with Section X. of these Orders, a separate summary report for the Village of Wharton area that includes a copy of the financial mechanisms to be used to fund the required improvements, operation and maintenance, and replacement costs.
4. Within forty-two (42) months after the effective date of these Orders, Respondent shall commence construction of the sewerage system and wastewater treatment works in accordance with the approved PTI.
5. Within sixty (60) months after the effective date of these Orders, Respondent shall complete construction of the sewerage system and wastewater treatment works in accordance with the approved PTI.
6. Within sixty (60) months after the effective date of these Orders, Respondent shall hire a State certified operator to supervise the wastewater treatment works as required by Respondent's NPDES permit.
7. Within sixty-two (62) months after the effective date of these Orders, Respondent shall attain operational level of the sewerage system and wastewater treatment works and shall meet the final effluent limitations in its NPDES permit.
8. Respondent shall exercise its authority under the Ohio Constitution and ORC § 729.06 to compel all premises in the Village of Wharton area to connect to the wastewater collection system and cease use of currently existing sewage

disposal systems within one hundred eighty (180) days after completion of the sewerage system and treatment works.

9. Within fourteen (14) days of completing the requirements in Orders Nos. 4, 5, 6, 7, and 8, Respondent shall provide notice, in writing, to the Ohio EPA of the completion of each Order. Notice shall be sent to the addresses in 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 in or at the Village of Wharton.

### **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:

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

and to:

Ohio Environmental Protection Agency  
Division of Surface Water  
Attn: 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 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

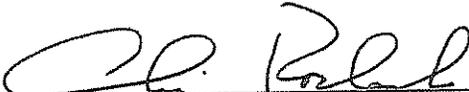
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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**

  
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Chris Korleski  
Director

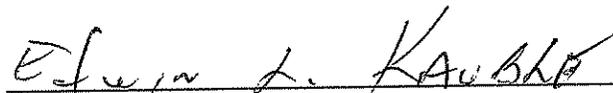
1/28/08  
Date

**IT IS SO AGREED:**

**Village of Wharton**

  
\_\_\_\_\_  
Signature

12-17-07  
Date

  
\_\_\_\_\_  
Printed or Typed Name

  
\_\_\_\_\_  
Title