BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Clermont County Commissioners : Director's Final Findings
101 East Main Street : and Orders
Batavia, Ohio 45103 :

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 Clermont County 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, 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 the Ohio EPA has determined the following findings:

1. The former Village of Newtonsville ("Village") was an incorporated village in Wayne Township, Clermont County, encompassing an area of 0.25 square miles. Based on 2010 census data, the Village had a population of 392 with approximately 144 housing units. The estimated population in 2018 was 373 (a change of -4.85%).

2. Many of the residences in the former Village and adjoining properties in Clermont County are currently served by failing on-site sewage treatment systems. Additionally, there are approximately forty-eight (48) discharging household sewage treatment systems.
3. The poorly treated sewage ultimately discharges to unnamed tributaries of Stonelick Creek, waters of the state.

4. Ohio EPA’s 2012 Biological and Water Quality Study of the East Fork Little Miami River and Select Tributaries, found the tributary to Stonelick Creek at River Mile 10.61 (Cedarville Road) to be in non-attainment, citing Newtonsville sewage related discharges as the source of non-attainment.

5. At a March 2013 public information meeting, Clermont County presented to the Newtonsville Village Council a project included in their 5-year Wastewater Capital Improvement Plan for a centralized wastewater collection and treatment system to serve the Village and adjoining properties. Clermont County met with Village Council on numerous occasions in 2013 and 2014 regarding the project design and location of the proposed wastewater treatment plant (“WWTP”), and in July 2014 Village Council passed a resolution (Resolution 2014-B) authorizing Clermont County to utilize Village owned property for the WWTP.

6. On January 14, 2015, Ohio EPA received a National Pollutant Discharge Elimination System (“NPDES”) permit application from the Clermont County Board of Commissioners for a regional WWTP to serve the Village of Newtonsville and the adjoining properties in Clermont County. Ohio EPA did not receive a public hearing request or comments on the permit application, nor were comments received on the draft permit. The NPDES permit, number 1PA00106*AD, was issued on May 1, 2015 and expires on May 31, 2020.

7. Bacteria sampling conducted by Clermont County Public Health on April 25 and 26, 2017 documented water quality violations in the unnamed tributaries to Stonelick Creek. Samples were collected from seven locations, under the supervision of a sanitarian registered under ORC Chapter 4736, of which three sampling locations documented E. coli concentrations ranging from 2,481 counts to >24,000 counts per 100 milliliters. Additionally, Clermont County Public Health staff noted slight to moderate odor, discolored water, and algae growth at all sampling locations. Oily sheen, floating scums, and sewage fungus was also observed at a few locations. These findings established that a public health nuisance existed in 2017 under OAC Rule 3745-1-04(F).

8. On February 25, 2019, Ohio EPA Southwest District Office (“SWDO”) received a formal complaint from Clermont County Public Health, requesting that Ohio EPA investigate the unsanitary conditions in the Village, as a result of poorly treated sewage reaching waters of the state pursuant to OAC § 3745-1-04.

9. On March 21, 2019, the Village adopted an Ordinance granting authority to the Board of County Commissioners of Clermont County to acquire, construct, maintain, and operate a sanitary sewer and sewage treatment system within the territory of the Village to serve residents of the Village.
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 ORC Chapter 4736, documents both of the following: odor, color or other visual manifestations of raw or poorly treated sewage in waters of the state; and, water samples exceed one thousand thirty E. coli counts per one hundred milliliters in two or more samples when five or fewer samples are collected, or in more than twenty percent of the samples when more than five samples are taken.

11. Bacteria sampling conducted by Ohio EPA on August 1, 2019 documented water quality violations in the unnamed tributaries to Stonelick Creek. Samples were collected from eight locations, of which three sampling locations documented E. coli concentrations ranging from 6,510 counts to >241,960 counts per 100 milliliters. At the three sampling sites with excess E. coli counts, Ohio EPA staff noted very slight odor, discolored water, algae growth, and sludge deposits (at one sampling location). These findings established that a public health nuisance exists under OAC Rule 3745-1-04(F).

12. On November 5, 2019, Village residents voted in a local election to disincorporate. This dissolution results in the Village of Newtonsville becoming an unincorporated area of Wayne Township. The disincorporation does not alter the authority of the Clermont County Board of Commissioners to acquire, construct, maintain, and operate sanitary or drainage facilities per ORC Chapter 6117 in the area of Clermont County where public health nuisance conditions were confirmed to exist.

13. It is necessary for the public health and welfare that sewer improvements or sewage treatment or disposal works be constructed, maintained, and operated to service the unincorporated area of Clermont County identified in Attachment A of these Orders, where the existence of public health nuisance conditions have been confirmed.

14. 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.

15. The Director has given consideration to, and based her 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. As soon as possible, but no later than eight (8) months from the effective date of these Orders, Respondent shall submit a complete and approvable PTI application with detailed plans to sewer the unincorporated area in Clermont County delineated in Attachment A of these Orders.

2. As soon as possible, but no later twenty-four (24) months from the effective date of these Orders, Respondent shall initiate construction of the sanitary sewage system in accordance with the approved PTI.

3. As soon as possible, but no later than forty-two (42) months from the effective date of these Orders Respondent shall complete the sanitary sewage system installations in accordance with the approved PTI and achieve compliance with Ohio’s water pollution control laws.

4. Within fourteen (14) days of completing the requirements in Orders 2 and 3, Respondent shall provide notice, in writing, to the Ohio EPA, of the completion of each Order. Notice shall be sent 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 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.

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 Site.
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 specified, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Southwest District Office  
401 East Fifth Street  
Dayton, Ohio 45402  
Attn: Enforcement Supervisor  
Division of Surface Water

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

Laurie A. Stevenson
Director

1/14/20
Date

IT IS SO AGREED:

Clermont County Commissioners

By

Daniel L. Panter
Printed or Typed Name
President, Clermont County
Title

December 18, 2019
Date

By

Edwin H. Humphrey
Printed or Typed Name
Commissioner
Title

December 18, 2019
Date
Claire B. Cope
By
Commissioner

December 18, 2019
Date

APPROVED AS TO FORM:
D. VINCENT FARIS, PROSECUTOR
CLERMONT COUNTY, OHIO

Assistant Prosecutor

DATE: 12-11-19