BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:
Darke County Board of Commissioners
520 South Broadway
Greenville, Ohio 45331

And

Board of Health,
Darke County General Health District
300 Garst Avenue
Greenville, Ohio 45331

Respondents

Director's Final Finding
and Orders

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.

By D. [Signature]
Date: 12-7-16

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Darke County
Board of Commissioners and the Board of Health, Darke County General Health District,
(together referred to as "Respondents," individually as "Commissioners" and "Health District,"
respectively), pursuant to the authority vested in the Director of the Ohio Environmental
Protection Agency ("Ohio EPA") under Ohio Revised Code ("R.C.") 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents and successors in interest
liable under Ohio law. No change in the composition of Respondents shall in any way alter
Respondents' obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as
defined in R.C. Chapter 6111 and the rules adopted thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The nine residences identified below are located in the First Moorman's Subdivision, an
unincorporated area of Wayne Township, Darke County, along Beamsville-Webster
Road, and are served by individual septic tanks with aerators ("sewage systems"),
installed or modified on the dates indicated:
2. The sewage systems discharge north of Beamsville-Webster Road into a common underground collector line, identified in the picture below ("picture") as a white line. The collector line follows the path of a drainage system, and south of Beamsville-Webster Road, connects to a tile drainage system (shown in the picture as a continuation of the white line), ultimately discharging to Harris Creek, with the drainage systems and Harris Creek being waters of the state.
3. On December 16, 2013, the Health District found untreated sewage on the Petrijean property, at the tile failure location, shown as a black square in the picture. The Health District determined from its records that the sewage originated from the nine residences identified in Finding 1.

4. The tile failure has caused a drainage problem in the front yards of the nine residences.

5. On December 20, 2013, the Health District collected a sample from the collector line at the tile catchment, shown as a black circle in the picture, which results showed fecal coliform greater than 10,000 colonies per one hundred milliliters.

6. The sample described in Finding No. 5 confirmed that the sewage systems were creating a public health nuisance.

7. In August 2014, Ohio EPA and the Health District visited the area and observe water surface discoloration and septic odors at the tile failure location, with soils under the streambed at Harris Creek being black and the presence of a septic odor.

8. On December 10, 2014, the Health District informed the nine residences by letter that the sewage systems are discharging systems that do not meet Ohio National Pollutant Discharge Elimination System ("NPDES") requirements and that the tile systems that the sewage systems drain into, in place since 1972, are failing and creating a nuisance, in violation of Ohio Admin. Code 3701-29-02(D).

9. In the December 10, 2014 letter, the Health District further informed the nine residences that changes must be made to the sewage systems to eliminate the nuisance and that failure to eliminate the discharge or upgrade to NPDES requirements within a timely manner, will result in enforcement action, including possible condemnation of the properties.

10. In July 2015, Ohio EPA and the Health District visited the area and observe water surface discoloration and septic odors at the tile failure location, with soils under the streambed at Harris Creek being black and the presence of a septic odor.

11. On August 27, 2015, Ohio EPA secured a water sample at the tile catchment, with the following results and observations:

<table>
<thead>
<tr>
<th>Time</th>
<th>E. Coli Colonies /100mL</th>
<th>Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>10:00 AM</td>
<td>120,000</td>
<td>Oil sheen</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Grayish color</td>
</tr>
<tr>
<td>12:10 PM</td>
<td>112,000</td>
<td>Moderate odor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Strong odor</td>
</tr>
</tbody>
</table>

12. Ohio Admin.Code 3745-1-04(F) provides that all surface waters of the state, to every extent practical and possible as determined by the Director, shall be free from public health nuisances associated with raw or poorly treated sewage.
13. A public health nuisance is defined to exist when an inspection conducted by, or under the supervision of, Ohio EPA 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 hundred seventy-six E. coli counts per one hundred milliliters in two or more samples when five or fewer samples are collected.

14. The sampling data confirmed the existence of a public health nuisance being caused by the discharge of the sewage systems.

15. The blacken soils under the stream bed at Harris Creek and the presence of septic odors are a result of the discharge of the sewage systems and a continuation of the nuisance caused by the sewage systems and constitutes pollution of waters of the state.

16. By letter dated April 25, 2016, Respondents set forth the following suggested plan of action:

   a. In order for a workable solution to be created, the Commissioners must first create a solution to the drainage, which has been restricted due to the field tile failure. As any non-discharging onsite sewage system requires non-saturated soils to be effective, the first step is to make the tile a County Ditch, to which the Commissioners agree to petition it as such.

   b. Continue to have all nine residences on the County’s Operation and Maintenance Program wherein the County checks their sewage systems monthly. Homeowners also have the option of hiring a service provider to check their system and make any repairs necessary. All of the nine residences have an aeration system with a tank in good condition.

   c. Require all nine residences to install a non-discharging secondary sewage system through incremental repair. The properties are limited on space, but it is the opinion of the Health District that there is ample room for each of the nine residences to install an adequate leach field. Some of these systems will require a lift station.

   d. The Commissioners will petition for the existing 10-inch tile through the Peltjean property to become a County Ditch under R.C. 6131.04, making repairs necessary. The petition will include adding a 12-inch drainage tile on the north side of First Moorman’s Subdivision and replacing the 10-inch tile.

   e. All nine residences will be required to install a curtain drain around the leach field. The County access tile will run parallel with the back of the properties (north) and will drain to the existing tile running through the Peltjean property. The nine residences may also need to run tiles in their front yards for drainage that will also tie into the County tile.

   f. All property owners will be responsible for helping share the cost to fix the tile and install any new tile. The amount assessed is yet to be determined.
17. On April 28, 2016, the Commissioners filed with the Common Pleas Court, Darke County, ("Court"), a Single County Ditch Petition, to locate, remove obstructions from and construct a new subsurface tile ditch to be known as Moorman's First Addition Ditch. The construct of the improvement was stated to be necessary to the public welfare.

18. A Court initiated view of the proposed improvement took place on June 1, 2016 with the first hearing taking place on June 13, 2016.

19. The case is on-going in the Court, with the Director taking notice that the time for the case to proceed to a judicial final determination will affect the time necessary to remedy the public health nuisance.

20. The Director has the authority under R.C. 6111.03(H) to issue Orders to prevent, control or abate water pollution by, among other things:
   
   a. prohibiting or abating discharges of sewage into the 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.

21. The Health District has the authority to approve new, and the modification of, household sewage treatment systems and to order the prevention, abatement or suppression of nuisance from such systems.

22. The Commissioners have the authority to construct facilities for the treatment disposal, impoundment or storage of wastes or for drainage.

23. 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 R.C. 6111.44 and 6111.45 and Ohio Admin.Code Chapter 3745-42.

24. 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 R.C. Chapter 6111.

V. ORDERS

The Director hereby issues the following Orders:

1. Within sixty (60) days after the effective dates of these Orders, Respondents shall submit to the Ohio EPA in accordance with Section X of these Orders, a plan, with milestone
Darke County Board of Commissioners
Board of Health, Darke County General Health District
Director's Final Findings and Orders
Page 6 of 8

dates and times for status reports, for review and concurrence, to address and remedy
the public health nuisance.

2. By agreement of Ohio EPA and Respondents, the plan may be modified to reflect delays
encountered, including delays associated with court actions.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify
in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that
have not been performed, in which case Respondents 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 Respondents to Ohio EPA and shall be signed by
responsible officials of Respondents. For purposes of these Orders, a responsible official is
defined in Ohio Admin.Code 3745-33-03(F)(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 as part
of 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
or rules. These Orders do not waive or compromise the applicability and enforcement of any
other statutes regulations or rules applicable to Respondents.

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 Respondents pursuant to these Orders shall
be addressed to:
XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents 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.
Darke County Board of Commissioners
Board of Health, Darke County General Health District
Director's Final Findings and Orders
Page 8 of 8

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency

Craig W. Butler
Director

12/2/16

Date

IT IS SO AGREED:
Darke County Board of Commissioners

Diane L. Delaplane, Commissioner

Date

11-9-2016

IT IS SO AGREED:
Michael W. Rhoades, Commissioner

Date

11-7-16

IT IS SO AGREED:
Michael E. Stegall, Commissioner

Date

11-2-16

FILED

NOV 0 9 2016

IT IS SO AGREED:
Board of Health, Darke County General Health District

T.L. Holman DVM, RS
Health Commissioner

Date

11-9-16

DARKE COUNTY, OHIO
BOARD OF COMMISSIONERS