

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
JAN 27 2002  
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

City of Akron  
166 South High St.  
Akron, Ohio 44308

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Director's Final Findings  
and Orders

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are hereby issued to the City of Akron ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Revised Code ("RC") Chapter 6111. 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 ownership relating to the Facilities will in any way alter Respondent's obligations under these Orders. Respondent's obligations under these Orders may be altered only by the written action of the Director of Ohio EPA.

**III. FINDINGS**

The Director finds the following:

1. Respondent is a municipal corporation constructing the Manchester Road and Pigeon Creek Jacoby Road sanitary sewer extension projects ("Facilities") in Akron.
2. Ohio Administrative Code ("OAC") rule 3745-31-02 requires the Director's issuance of a Permit to Install ("PTI") prior to the installation of a new "disposal system" as defined in RC § 6111.01(G).
3. RC § 6111.44 requires the Director's approval of plans for sewerage or treatment works for sewage disposal prior to the installation of such sewerage or treatment works for sewage disposal.
4. RC § 6111.07 (A) prohibits any person from violating, or failing to perform, any duty imposed by RC §§ 6111.01 to 6111.08, or violating any rule issued by the Director pursuant to those sections, including OAC rule 3745-31-02.

I certify this to be a true and accurate copy of the  
official record of the Director's decision of the Ohio  
Environmental Protection Agency.

By Joseph J. ... Date 1/24/02

5. Respondent submitted an application for a PTI for a sanitary sewer extension (PTI Application 02-12824) for the Manchester Road project on February 4, 1999, and for the Pigeon Creek Jacoby Road project (PTI Application 02-14029) on May 12, 2000.
6. The sanitary sewer extensions are "disposal systems" as defined under RC § 6111.01(G).
7. Patrick Gsellman, Environmental Manager of Akron's Bureau of Engineering, stated that construction of the Manchester Road sanitary sewer extension project commenced on January 19, 1999, with the project completed on May 24, 1999. On January 9, 2001, Patrick Gsellman stated that the Pigeon Creek Jacoby Road sanitary sewer extension project was completed.
8. Respondent violated OAC rule 3745-31-02 and RC §§ 6111.44 and 6111.07 by installing sanitary sewer extensions without first receiving plan approvals and PTIs from the Director.
9. 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.

#### **IV. ORDERS**

1. Respondent shall not install sewerage or treatment works for sewerage disposal or new disposal systems, including, but not limited to, sanitary sewers, at any location in Ohio without first receiving prior approval from the Director of Ohio EPA as required by law.
2. Within thirty (30) days of the effective date of these Orders, Respondent shall pay the amount of nine thousand five hundred and sixteen dollars (\$9,516) in settlement of Ohio EPA's claim for civil penalties, which may be assessed under RC Chapter 6111. This payment shall be made by tendering a certified check for the full amount, made payable to "Treasurer, State of Ohio" to the following address

Vicki Galilei, Office of Fiscal Administration  
Ohio Environmental Protection Agency  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049

#### **V. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be taken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Respondent and its operations.

#### **VI. RESERVATION OF RIGHTS**

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to RC Chapter 6111. or any other applicable law or rule in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

These Orders are not, and shall not be construed to be, a permit, plan approval or other authorization issued pursuant to any statute or rule. These Orders specifically do not authorize the construction of any new disposal system or sewerage or treatment works for sewerage disposal at any location. Respondent must obtain all permits, approvals and authorizations as required by law. Ohio EPA reserves all rights, privileges and causes of action except as specifically provided herein.

#### **VII. TERMINATION**

These Orders shall terminate when Respondent demonstrates in writing and certifies to the satisfaction of the Ohio EPA that all obligations under these Orders have been performed and that Respondent has subsequent to the issuance of these Orders complied with OAC rule 3745-31-02 for a period of twelve(12) consecutive months, and the Chief of Ohio EPA's Division of Surface Water acknowledges the termination of these Orders in writing.

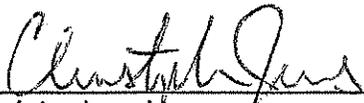
This certification shall be submitted by Respondent to:

Ohio Environmental Protection Agency  
Northeast District Office  
Attn: DSW Enforcement Unit Supervisor  
2110 East Aurora Road  
Twinsburg, OH 44087

The certification shall be signed by a responsible official of the Respondent. A responsible official is as defined in OAC rule 3745-33-03(D)(1) for a corporation, OAC rule 3745-33-03(D)(2) for a partnership, OAC rule 3745-33-03(D)(3) for a sole proprietorship, and OAC rule 3745-33-03(D)(4) for a municipal, state, or other public facility. The certification shall contain the following attestation:

*"I certify under the penalty of law that I have personally examined and are familiar with the information contained in or accompanying this certification, and based on inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."*

**IT IS SO ORDERED:**

  
\_\_\_\_\_  
Christopher Jones  
Director

1-18-02  
Date

**VIII. 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 cited in these Orders, Respondent agrees to comply with these Orders, Respondent agrees that these Orders are lawful and reasonable, and Respondent agrees that the times provided for compliance herein are reasonable. Compliance with these Orders shall be a full accord and satisfaction of Respondent's liability for the violations specifically cited herein. Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph of these Orders.

Respondent hereby waives the right to appeal the issuance, terms and service of these Orders, and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity. Respondent does not waive the right to challenge the Ohio EPA's subsequent interpretation and/or enforcement of these Orders.

Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that 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 agrees to continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

**IX. SIGNATORY AUTHORITY**

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

**IT IS SO AGREED:**

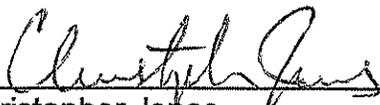
**City of Akron**

By:   
Title: Service Director

Date: 1/3/02

**IT IS SO AGREED:**

**Ohio Environmental Protection Agency**

  
Christopher Jones  
Director

Date: 1-18-02