

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Henry County Board of Commissioners
660 N. Perry Street
Napoleon, Ohio 43545

Director's Final Findings
and Orders

JURISDICTION

Pursuant to Ohio Revised Code (ORC) Chapter 6111. and Section 3745.01, the Director of the Ohio Environmental Protection Agency (Ohio EPA) hereby makes the following Findings and issues the following Orders.

PARTIES BOUND

These Orders shall apply to and be binding upon Henry County Board of Commissioners, hereinafter "Respondent", its assigns and successors in interest. Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

FINDINGS

1. The Okolona Area is an unincorporated area located in western Henry County consisting of approximately 31 homes and 9 businesses in the town of Okolona and 11 homes and 1 business along County Road 17D. The Okolona Area has no centralized wastewater treatment facility or associated collection system.
2. During investigations performed on December 5, 1997, April 24, 1998, and February 9, 1999, representatives from Ohio EPA observed septic conditions in drainage ways in the Okolona Area. Photographs of the septic conditions were taken by Ohio EPA representatives during the inspection of December 5, 1997. Ohio EPA informed the Henry County Board of Commissioners of the results of these inspections in correspondence dated respectively December 10, 1997, June 5, 1998, and March 19, 1999.

I certify this to be a true and accurate copy of the
official record of the proceedings of the Ohio
Environmental Protection Agency

By Dorey Jacobs 10/9/01

3. On July 29, August 4 and August 10, 1999, representatives of Ohio EPA investigated the Okolona Area and found further evidence of septic conditions. Sample results taken during these investigations revealed violations of the Water Quality Standards of Chapter 3745-1 of the Ohio Administrative Code and confirmed the existence of unsanitary conditions in the Okolona Area. Ohio EPA provided the Henry County Board of Commissioners with a copy of the sample results from these investigations in correspondence sent to Respondent in March of 2000.
4. Individual on-site sewage treatment systems in Okolona Area discharge "sewage" as defined by ORC Section 6111.01(B) either directly or indirectly, such as through storm sewers, to an unnamed tributary that flows into Benien Creek.
5. Benien Creek constitutes "waters of the state," as defined by ORC Section 6111.01(H).
6. ORC Section 6111.03(H) grants the Director of Ohio EPA the authority to issue orders to prevent, control, or abate water pollution by such means as prohibiting or abating the discharge of sewage into waters of the state and requiring the construction of new disposal systems or any parts thereof.
7. Small lot sizes, poor soil conditions, local hydrology and geological characteristics prohibit the installation of replacement sewage treatment systems by individual property owners in the Okolona Area.
8. In order to protect the public health and welfare and to prevent, control or abate water pollution, sewer improvements or sewage treatment or disposal works should be constructed, maintained and operated for the service of the Okolona Area.
9. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.
10. 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.

ORDERS

1. As soon as possible, but not later than twelve (12) months after the effective date of these Orders, Respondent shall submit to the Ohio EPA for review and approval a general plan for sewage improvements or other methods of abating pollution and correcting the unsanitary conditions in the Okolona Area. The general plan shall address, at a minimum, the following items:
 - a. Alternatives for treating sewage from the Okolona area, including but not limited to centralized treatment. In discussing alternatives for treating sewage from the Okolona Area, Respondent shall evaluate, at a minimum, the following options:
 - i. Achieving no discharge to surface waters by connecting to existing sewers and directing sanitary sewage flows to the nearest regional wastewater treatment plant;
 - ii. Achieving no discharge to surface waters by utilizing land application for wastewater disposal;
 - iii. Limiting the discharge to surface waters by constructing controlled discharge lagoons; and
 - iv. Limiting the discharge to surface waters by using constructed wetlands.
 - b. Proposed locations of collection and treatment facilities if deemed appropriate;
 - c. Cost estimates for the required improvements and cost effectiveness analysis of the alternatives based on total present worth. The cost effectiveness analysis shall include the total construction costs of each alternative as well as the operation, maintenance, and replacement costs, and should use the following assumptions:
 - i. The analysis must be for a twenty (20) year period; and
 - ii. Assume an interest rate of 6.5% per annum.

- d. The financial mechanisms to be used to fund the required improvements and to fund the operation, maintenance, and replacement costs.
 - e. Implementation schedule for submitting a complete NPDES permit application, if necessary, a complete permit to install (PTI) application and approvable detail plans, awarding construction bids, starting and completing construction, and attaining compliance with ORC Chapter 6111 and the rules and regulations adopted pursuant to this chapter. This schedule shall be consistent with these Orders.
2. Within thirty (30) days after receiving any comments from Ohio EPA on the general plan, Respondent shall revise the general plan consistent with Ohio EPA's comments and resubmit the general plan to Ohio EPA for review and approval. Within thirty (30) days after receiving any comments from Ohio EPA on the revised general plan, Respondent shall again revise the general plan consistent with Ohio EPA's comments and resubmit the general plan to Ohio EPA for review and approval. Ohio EPA may approve the general plan with conditions and/or modify the general plan and approve it as modified.
 3. All documents required under these Orders, unless otherwise specified, shall be submitted to:

Ohio EPA Northwest District Office
ATTN: DSW Enforcement Group Leader
347 North Dunbridge Road
Bowling Green, Ohio 43402

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. 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.

RESERVATION OF RIGHTS

These Orders do not prevent Ohio EPA from enforcing the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations which are the subject of these Orders. These Orders do not prevent Ohio EPA from exercising its authority to require Respondent to perform additional activities pursuant to Chapter 6111. of the Ohio Revised Code or any other applicable law in the future. Ohio EPA specifically reserves the right to require Respondent to implement the general plan as approved by Ohio EPA and/or to perform additional activities, including obtaining all applicable permits and/or performing additional investigatory and remedial activities, as a result of the conditions in the Okolona Area and/or the violations which are the subject of these Orders. These Orders do not restrict the right of Respondent to raise any administrative, legal or equitable claim or defense for any additional activities that Ohio EPA may seek to require of Respondent. These Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

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, corporation or other entity, not a signatory to these Orders, for any liability arising out of or relating to the events or conditions in the Okolona Area.

TERMINATION

Respondent's obligations under these Orders shall be satisfied and 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 the Chief of Ohio EPA's Division of Surface Water acknowledges the termination in writing.

This certification shall be submitted by Respondent to the Northwest District Office (Attn. DSW Enforcement Group Leader) and shall be signed by the Henry County Commissioners. The certification shall contain the following attestation:

"I certify under the penalty of law that I have personally examined and am familiar with the information contained in or accompanying this

certification, and based on my 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."

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 agrees to comply with these Orders, that these Orders are lawful and reasonable, and that the times provided for compliance herein are reasonable. 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.

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.

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:

Henry County Board of Commissioners

Rita M. Franz
By

8-9-01
Date

Richard C. Butz
By

8-9-01
Date

Richard J. Bennett
By

8-9-01
Date

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency

Christopher Jones
Christopher Jones
Director

10-2-01
Date