

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

THM Enterprises, Inc.  
5740 Center Road  
Valley City, Ohio 44280

:  
:

Director's Final Findings  
and Orders

**Respondent**

**PREAMBLE**

Pursuant to Ohio Revised Code (ORC) Sections 6111.03 and 3745.01, the Director of the Ohio Environmental Protection Agency hereby makes the following Findings and issues the following Orders:

**PARTIES BOUND**

These Orders shall apply to and be binding upon THM Enterprises, Inc. (hereinafter "Respondent") its assigns and successors in interest. No change in ownership will in any way alter Respondent's obligations under these Orders. Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA ("Director").

**FINDINGS**

1. Respondent is the developer of the Fairways Subdivision Phase VI project ("Facility"), a residential development located southeast of the intersection of State Route 303 and Substation Road, Brunswick, Medina County, Ohio.
2. Ohio Administrative Code ("OAC") Rule 3745-31-02 requires the Director's issuance of a PTI prior to the installation of a new "disposal system," as defined in ORC Section 6111.01(G).
3. ORC Section 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. ORC Section 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC Sections 6111.01 to 6111.08, or violating any rule issued by the Director pursuant to those sections, including OAC Rule 3745-31-02.

5. PTI Application Number 02-14510 and detailed plans were received at Ohio EPA's Northeast District Office ("NEDO") on November 29, 2000 for the installation of a sanitary sewer extension to serve the Fairways Subdivision Phase VI project.
6. The sanitary sewer extension contained in PTI Application 02-14510 is a "disposal system" as defined in ORC Section 6111.01(G).
7. On January 22, 2001, an inspection of the Fairways Subdivision Phase 6 was conducted by NEDO. The inspection confirmed that the installation of the sanitary sewers had been completed prior to approval of the plans and issuance of a PTI by Ohio EPA.
8. On January 25, 2001, Respondent submitted to Ohio EPA a letter which confirmed that Respondent had installed a sanitary sewer extension at the Facility prior to receiving plan approval and a PTI from the Director.
9. Respondent installed a new disposal system without a plan approval and PTI in violation of ORC Sections 6111.03, 6111.07, and 6111.44 and OAC 3745-31-02.
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 expected 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. Respondent shall not install sewerage or treatment works for sewage 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 as required by law.
2. Respondent shall pay the amount of one thousand three hundred dollars (\$1,300) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. This payment shall be made by tendering a certified check made payable to "Treasurer, State of Ohio," for the full amount within thirty (30) days after the effective date of these Findings and Orders, 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

### **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.

### **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. 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. 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.

These Orders are not, and shall not be construed to be, a permit, plan approval or other authorization issued pursuant to any statute or regulation. These Orders specifically do not authorize the construction of any new disposal system or sewerage or treatment works for sewage disposal at the Facility or any other location. Respondent must obtain all permits, approvals and authorizations as required by law.

### **TERMINATION**

The Respondent's obligations under these Orders shall be satisfied and terminated when the Respondent demonstrates in writing and certifies to the satisfaction of the Ohio EPA that it has satisfied all its obligations under these Orders and that it 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 the Respondent to the Northeast District Office (attention: DSW Enforcement Supervisor) and 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."*

**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, Respondent agrees that these Orders are lawful and reasonable, and Respondent agrees that the time frames 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.

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.

**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:**  
**THM Enterprises, Inc.**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name & Title: \_\_\_\_\_

**IT IS SO ORDERED AND AGREED:**  
**Ohio Environmental Protection Agency**

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

Date: \_\_\_\_\_