

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 16 2009

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Union County Board of Commissioners
233 West 6th Street
Marysville, OH 43040

Director's Final Findings
and Orders

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 Union County Board of Commissioners ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 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 adopted thereunder.

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 6111.03, and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. The Village of Raymond ("Raymond") is an unincorporated community in Liberty Township, Union County, located at the intersection of State Routes 347 and 739.
2. Raymond consists of approximately 50 homes, a school, grocery store and gas station, pizza shop, auto body repair shop, post office, fire station, church and township hall.

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: John Lassiter Date: 12-16-09

3. The Village of Peoria ("Peoria") is an unincorporated community in Liberty Township, Union County, located on County Road 191.
4. Peoria consists of approximately 76 single family homes and two churches.
5. Raymond and Peoria, both located in the Mill Creek watershed, are approximately 6 miles northwest of Marysville and separated from each other by approximately 1.5 miles.
6. Many of the homes and commercial facilities in Raymond and Peoria are served by inadequate or failing on-site or aeration sewage disposal systems that discharge untreated or partially treated sewage to tile outlets, roadside ditches, and/or storm drains, and/or storm sewers, (all referred to as "drainage systems"). The drainage systems discharge to unnamed tributaries of Mill Creek, a tributary of the Scioto River. Drainage systems, unnamed tributaries of Mill Creek, Mill Creek and the Scioto River are "waters of the state."
7. Many of the lots on which the on-site or aeration sewage disposal systems in Raymond and Peoria are installed are too small to properly support the systems. For the larger lots, the soils, which consist of a high clay content, and the shallow seasonal water tables prevent proper sewage treatment.
8. On March 28, 1995, an investigation was conducted in Raymond and Peoria in response to complaints which alleged unsanitary conditions resulting from failed on-site or aeration sewage disposal systems. Tile sampling performed during the complaint investigation showed a fecal coliform count of 755,000 (#/100 mL) at one location in Peoria.
9. On May 16, 1995, a letter was sent to Respondent citing violation of Ohio's Water Pollution Law and rules as a result of failed on-site or aeration sewage disposal systems in Raymond and Peoria. The letter requested that a schedule to address the pollution be submitted to Ohio EPA no later than August 15, 1995.
10. On August 15, 1995, Respondent submitted a Wastewater Feasibility Study outlining costs for sanitary service options in Liberty Township and requested a 60-day extension for submitting a schedule of compliance.
11. On October 18, 1995, following the extension, Respondent submitted a schedule of compliance for sewerage Raymond and Peoria. Two options were provided: conveyance to the City of Marysville wastewater treatment plant through the Honda force main, or construction of a wastewater treatment plant on Mill Creek to serve the two communities. Both options were contingent upon affordable financing which Respondent would pursue.

12. On August 10, 2001, Respondent submitted a request to conduct a preliminary site evaluation for a 3 cell lagoon system to serve Raymond and Peoria.
13. In September 2001, Ohio EPA performed a preliminary site investigation and recommended that Respondent proceed with a hydrogeologic site investigation and groundwater monitoring plan in order to fully evaluate the site's appropriateness for the installation of a facultative lagoon system.
14. On March 26, 2003, a letter was sent from Ohio EPA to Respondent requesting information on the level of progress being made towards resolving the pollution concerns in Raymond and Peoria. The letter requested a schedule for providing sanitary sewer service within the next two years.
15. On April 23, 2003, Respondent stated that it will proceed with additional site evaluation studies for the construction of a wastewater treatment plant on Mill Creek. Respondent further stated that they will pursue various financing options and update an income survey.
16. In May 2007, the Union County Engineer and Assistant Environmental Engineer were contacted and informed that Ohio EPA was to begin sampling events to document pollution concerns in Raymond and Peoria and were invited to participate and to extend an invitation to Respondent. The County Engineer and Assistant Environmental Engineer were informed that the sampling data was to support an enforcement action against Respondent, as informal action since 1995 to address and resolve the pollution concerns was not productive.
17. On August 30, 2007 and September 25, 2007, Ohio EPA performed sampling, with the following results and observations:

<i>Location</i>	<i>Date Time (a.m.)</i>	<i>Fecal Coliform*</i>	<i>E. coli*</i>	<i>Odor</i>	<i>Color</i>	<i>Visual</i>
P-12 (Tile outlet North of Raymond Rd)	08/30 9:00	72,000	5,200	slight	whitish grayish blackish	floating scum suspended sludge sludge deposits sewage fungus
	09/25 9:45	60,000	32,000	moderate	whitish grayish black	suspended sludge sludge deposits sewage fungus

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<i>Location</i>	<i>Date Time (a.m.)</i>	<i>Fecal Coliform*</i>	<i>E. coli*</i>	<i>Odor</i>	<i>Color</i>	<i>Visual</i>
P13/14 (Tile outlet North side of Raymond Rd. North side of Raymond - Peoria Loop intersection)	08/30 9:20	880,000	57,000	moderate	whitish grayish blackish	floating scum sludge deposits
	09/25 10:00	60,000	43,000	strong	whitish grayish black	suspended sludge sludge deposits sewage fungus
P-10 (Tile outlet on East side of Paver-Barnes Road)	08/30 9:30	11,000	5,300	slight	grayish blackish	oily sheen suspended sludge sludge deposits algae
	09/25 10:10	47,000	13,000	threshold (very slight)	whitish floating scums sludge deposits	algae brown fluffy sludge
R-1 (Road culvert under Raymond Rd, south side of town across from pasture)	08/30 9:50	150,000	75,000	moderate	whitish grayish blackish	oily sheen suspended sludge sludge deposits sewage fungus
	09/25 10:25	8,000	2,100	moderate	whitish grayish blackish	suspended sludge sludge deposits sewage fungus
R-4 (Roadside drainage ditch along State Route 347 west of Raymond)	08/30 10:50	200,000	64,000	strong	whitish grayish blackish	oily sheen suspended sludge sludge deposits sewage fungus
	09/25 11:05	60,000	61,000	moderate	whitish grayish blackish	suspended sludge sludge deposits sewage fungus

* (#cfu/100mls) Bacteria quantities are generally reported as colonies or colony forming units (cfu) per 100 milliliters (ml) of sample.

18. Ohio Administrative Code ("OAC") Rule 3745-1-04(F) provides that it is general Ohio water quality criteria, applicable to all surface waters of the State, that, to every extent practical and possible as determined by the Director, surface waters shall be free from public health nuisances associated with raw or poorly treated sewage.
19. A public health nuisance is deemed to exist when an inspection conducted by, or under the supervision of, Ohio EPA or a sanitarian registered under ORC Chapter 4736. documents odor, color and/or other visual manifestations of raw or poorly treated sewage; and
 - a. Water samples exceed five thousand fecal coliform counts per one hundred milliliters (either MPN [most probable number] or MF [membrane filter]) in two or more samples when five or fewer samples are collected, or in more than twenty per cent of the samples when more than five samples are taken; or
 - b. 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, or in more than twenty per cent of the samples when more than five samples are taken.
20. The sampling data set forth herein demonstrates that a public health nuisance, as defined in OAC Rule 3745-1-04, existed and exists in Raymond and Peoria.
21. ORC § 6111.03(H), in pertinent part, provides that the Director may issue orders to prevent, control, or abate water pollution by such means as the following:
 - a. Prohibiting or abating discharges of sewage, industrial waste, or other wastes 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.
22. Pollution is the placing of any sewage, sludge, sludge materials, industrial waste, or other wastes in any waters of the state.
23. Sewage means any liquid waste containing sludge, sludge materials, or animal or vegetable matter in suspension or solution, and may include household wastes as commonly discharged from residences and from commercial, institutional, or similar facilities.
24. The sampling data set forth herein demonstrates that pollution, in the form of sewage, was and is entering the waters of the state from Raymond and Peoria.

25. Individual household sewage disposal systems are inherently more dangerous to the public health than sanitary sewage systems and must be replaced when possible.
26. Septic systems pose a potential hazard to the public health, and are a potential nuisance to be prevented when possible.
27. A policy of favoring centralization of wastewater treatment pervades the Clean Water Act.
28. To prohibit or abate discharges of sewage or other wastes into the waters of the state, it is necessary that sewer improvements be constructed, maintained, and operated to service Raymond and Peoria.
29. The City of Marysville has recently broken ground on construction of an upground water supply reservoir approximately 3 miles southeast of Peoria, off Raymond Road. The intake structure is located on Mill Creek, downstream of Raymond and Peoria and the pollution originating therefrom.
30. The Union County Financial Condition, Union County, Single Audit for the Year Ended December 31, 2007, found that Sewer Fund program revenues were above expenses by \$50,470.
31. ORC § 6111.03(H) provides that in making orders thereunder, the Director shall give consideration to, and base the determination on, evidence relating to the technical feasibility and economic reasonableness of complying with those orders and to evidence relating to conditions calculated to result from compliance with those orders, and their relation to benefits to the people of the state to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.
32. ORC § 6111.03(H) does not require that the Director inquire into the financial status of a particular party before issuing an order to that party.
33. ORC § 6111.03(H) does not provide that financial difficulties experienced by the party receiving an order will excuse compliance with state water pollution control laws, or that such difficulties bar the Director from issuing orders enforcing pollution control laws.
34. Compliance with ORC Chapter 6111 is not contingent upon the availability of financial assurance.

35. ORC § 6111.03(H) provides that regarding the issuance of Orders, it is not Respondent alone that is to be considered, but also the benefits to the people of the entire state and also the conditions of any waters of the state.
36. The people of the state of Ohio and the waters of the state will benefit from the resolution of the water pollution concerns in Raymond and Peoria.
37. 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 purpose of ORC Chapter 6111.
38. 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 ORC §§ 6111.44(A) and 6111.45 and OAC Chapter 3745-42.
39. Ohio EPA has received a permit to install application, detailed plans, Antidegradation Addendum and National Pollutant Discharge Elimination System ("NPDES") permit application, to construct and operate a sewerage system and wastewater treatment works, for Raymond and Peoria. Ohio EPA will review the documents to determine if the documents are complete and approvable.
40. On September 21, 2009. Ohio EPA informed Respondent that after review of the permit to install application and detailed plan for the sewerage system and wastewater treatment works, the Agency has determine the documents to be incomplete and specified the issues which must be addressed.

V. ORDERS

1. Within nine (9) months after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval, in accordance with Section X. of these Orders, a complete and approvable permit to install application, detailed plans, Antidegradation Addendum and National Pollutant Discharge Elimination System ("NPDES") permit application, to construct and operate a sewerage system and wastewater treatment works, which system and works shall prevent, control and abate pollution and abate the public health nuisance, in totality, in and from Raymond and Peoria, as set forth and established in these Orders.
2. OAC Rule 3745-42-04(E) provides that within one hundred eighty (180) days after a completed application is filed, the Director shall issue or propose to issue or deny a permit to install or plan approval.

3. Respondent shall submit revisions to the permit to install application, detailed plans, Antidegradation Addendum and NPDES permit application within thirty (30) days of receipt of notification of deficiencies from Ohio EPA. Revisions shall be submitted to Ohio EPA in accordance with Section X. of these Orders.
4. Within three (3) months after the approval of the permit to install application and detailed plans, Respondent shall submit to Ohio EPA, in accordance with Section X. of these Orders, a separate summary report for Raymond and Peoria that includes a copy of the financial mechanisms to be used to fund the required improvements, operation and maintenance, and replacement costs.
5. Within twelve (12) months after the approval of the permit to install application and detailed plans, Respondent shall commence construction of the sewerage system and wastewater treatment works in accordance with the approved permit to install application and detailed plans.
6. Within eighteen (18) months after the commencement of construction of the sewerage system and wastewater treatment works, Respondent shall complete construction of the sewerage system and wastewater treatment works in accordance with the approved permit to install application and detailed plans.
7. Upon completion of construction of the sewerage system and wastewater treatment works, Respondent shall attain operational level of the sewerage system and wastewater treatment works and shall meet the final effluent limitations in the NPDES permit.
8. Within fourteen (14) days of completing the requirements in Orders Nos. 5, 6, and 7, Respondent shall provide notice, in writing, to the Ohio EPA of the completion of each Order. Notice shall be sent to the address in Section X. of these Orders.
9. Upon request by Respondent and good cause shown, the Director may, at his sole discretion, extend in writing any time periods established by these Orders.
10. Respondent shall exercise its authority under the Ohio Constitution and the Ohio Revised Code to compel all premises in Raymond and Peoria to connect to the sewerage system and cease use of currently existing sewage disposal systems within one hundred eighty (180) days after completion of the sewerage system and treatment works.

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 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 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 the Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03.

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 on or at the Facility.

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

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Division of Surface Water
Central District Office
P.O. Box 1049
Columbus, OH 43216-1049
ATTN: Enforcement Supervisor

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. DUTY TO COMPLY **COMPLIANCE NOT DEPENDENT ON GRANTS, LOAN OR FUNDS**

Nothing in these Orders shall affect Respondent's obligation to comply with all applicable federal, state or local laws, rules, regulations or ordinances. Respondent shall obtain any and all federal, state or local permits or other authorizations necessary to comply with these Orders. Performance with the terms of these Orders by Respondent is not conditioned on the receipt of any federal or state grant, loan or funds. In addition, Respondent's performance is not excused by the failure to obtain any federal or state grant, loan or funds, or by the processing of any application for the same.

XIV. UNAVOIDABLE DELAY

1. In accordance with the provisions set forth below, Respondent may request an extension of the deadline for complying with these Orders if compliance with the deadline is prevented or delayed by an event which constitutes an "unavoidable delay" as defined in herein.
2. Respondent shall cause all work required by these Orders to be performed in accordance with applicable schedules and time frames unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

- a. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of Respondent, which prevents or delays performance of any obligation required by these Orders and which could not be overcome by due diligence on the part of Respondent. Though not exclusive, unanticipated or increased cost of compliance or change in financial condition or the inability to secure grants, loans or funding shall not be considered an event beyond the control of Respondent.
- b. Respondent shall notify Ohio EPA in accordance with Section X. of these Orders, in writing within five (5) days after the occurrence of an event which Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable under which these measures will be implemented. Respondent shall have the burden of demonstrating that the event constitutes an unavoidable delay. Failure by Respondent to comply with the notice requirement of this Order shall constitute a waiver of Respondent's right to request an extension of its obligation based on such incident. An extension of one date based on a particular incident does not mean that Respondent qualifies for an extension of a subsequent date or dates. Respondent must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this provision does not constitute a waiver by the Director of any rights or defenses the Director may have under applicable law.
- c. If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA shall notify Respondent in writing. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA shall notify Respondent in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

XV. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XVI. 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.

(signatory page follows)

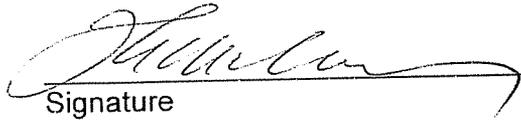
IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency



Chris Korleski
Director

12-15-09
Date

IT IS SO AGREED:
Union County Board of Commissioners



Signature

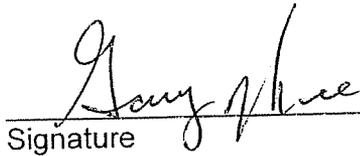
11-30-09
Date

Tom McCarthy

Printed or Typed Name

Commissioner

Title



Signature

11-30-09
Date

Gary Lee

Printed or Typed Name

Commissioner

Title



Signature

11-30-09
Date

Charles A. Hall

Printed or Typed Name

Commissioner

Title