

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAY - 1 2001

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Wagler Development Corporation
12801 Cleveland Avenue
Uniontown, Ohio 44685

: Director's Final Findings
: and Orders

Respondent

PREAMBLE

These Director's Final Findings and Orders ("Orders") are hereby issued to Wagler Development Corporation ("Respondent") pursuant to the authority invested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Chapter 6111. and Section 3745.01.

PARTIES BOUND

These Orders shall apply to and be binding upon Wagler Development Corporation ("Respondent"), its assigns and successors in interest. No change in ownership of Respondent 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.

FINDINGS

1. Respondent is the developer of the Village of Coventry Crossing Phase VI project ("Facility"), a residential development located southwest of the intersection of State Route 77 and State Route 277, Akron, Summit County, Ohio.
2. Ohio Administrative Code ("OAC") Rule 3734-31-02 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,

I certify this to be a true and accurate copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency.

By: Zona L. Clemente Date 5-1-01

- 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. On December 13, 2000, Respondent submitted an application for a permit to install ("PTI") a sanitary sewer extension (PTI Application 02-14566) at the Facility.
 6. The sanitary sewer extension contained in PTI Application 02-14566 is a "disposal system" as defined in ORC Section 6111.01(G).
 7. On January 4, 2001 Philip P. Rhodes, DSW, NEDO inspected the location of the Village of Coventry Crossing Phase VI, and discovered that the construction of the sanitary sewer was complete.
 8. On January 10, 2001 Joe Mosyjowski, consulting engineer for Respondant, submitted a letter to Ohio EPA 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 violated OAC Rule 3745-31-02, ORC Section 6111.44 and ORC Section 6111.07 by installing a sanitary sewer extension at the Facility without first receiving plan approval and a PTI from the Director.
 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 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 one thousand two hundred and thirty four dollars (\$1,234.00) 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 for the full amount, made payable to "**Treasurer, State of Ohio,**" to the following address:

Vicki Gailei, 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. Ohio EPA reserves all rights, privileges and causes of action except as specifically provided herein.

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 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.

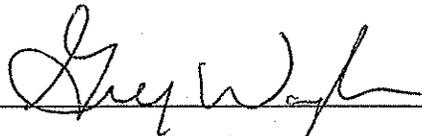
Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent agrees 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:

Wagler Development Corporation

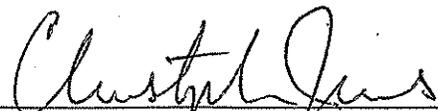
By: 

Date: 3/27/01

Title: President

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Christopher Jones
Director

Date: 4-25-01