

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

City of Willoughby Hills
35405 Chardon Road
Willoughby Hills, Ohio 44094

:
:

Director's Final Finding
and Orders

Jurisdiction

Pursuant to Ohio Revised Code (ORC) Chapter 6111. and Section 3745.01, the Director of the 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 the City of Willoughby Hills, hereinafter "Respondent" or "Willoughby Hills," its assigns and successors in interest. Respondent's obligations under these orders may be altered only by the written approval of the Director of the Ohio EPA.

Findings of Fact

1. Willoughby Hills is located in Lake County, Ohio. Sections of Willoughby Hills are served by sanitary sewers that discharge to the City of Euclid Wastewater Treatment Plant (WWTP). The remaining sections of Willoughby Hills are served by home sewage disposal systems, consisting of either septic tanks or extended aeration systems. The Lake County Board of County Commissioners also own, operate and maintain two (2) package treatment plants and associated collection systems in Willoughby Hills.
2. Pursuant to the City of Euclid's WWTP NPDES Permit, Respondent was required to eliminate all sanitary sewer overflows from its sanitary sewer system by March 31, 1999.
3. Respondent owns and operates nine pump stations in its sanitary sewer system. During wet weather conditions, three of these pump stations have had sanitary sewer overflows which resulted in the discharge of "sewage," as defined in ORC Section 6111.01(B), to the East Branch of Euclid Creek.
4. The East Branch of Euclid Creek, and streams, ditches and watercourses that feed into the East Branch of Euclid Creek are "waters of the state" as defined by ORC

Section 6111.01(H).

5. Ohio EPA has not authorized the discharge of sewage to waters of the state from the sanitary sewer overflows in Respondent's sanitary sewer system through the issuance of an NPDES permit.
6. Chapter 3745-7 of the Ohio Administrative Code (OAC) requires that a wastewater collection system be under the responsible charge of a certified operator. Respondent does not have a certified operator in charge of its wastewater collection system.
7. Numerous homes in the western section of Willoughby Hills have failing home sewage disposal systems that discharge "sewage" as defined under ORC Section 6111.01 into ditches, creeks, and watercourses that eventually discharge to the East Branch of Euclid Creek.
8. Small lot sizes, poor soil conditions, local hydrology or geologic characteristics prohibit the installation of replacement sewage disposal systems by numerous homes in the western section of Willoughby Hills which have failing home sewage disposal systems.
9. On July 25, 2000, August 15, 2000, August 22, 2000, and September 19, 2000, the Lake County General Health District investigated the western section of Willoughby Hills and found evidence of unsanitary conditions. Representatives sampled parts of Euclid Creek, ditches, and storm sewers. Results of the samples taken during that survey confirmed the existence of unsanitary conditions by documenting violations of Ohio's water quality standards for the East Branch of Euclid Creek, which are contained in OAC 3745-1-04.
10. In July, 2000, the Cuyahoga County Health Department conducted a stream assessment of the East Branch of Euclid Creek in Lake and Cuyahoga Counties. The sample location for the East Branch of Euclid Creek in Lake County revealed unsanitary conditions by documenting fecal coliform levels in violation of Ohio's water quality standards for the East Branch of Euclid Creek, which are contained in OAC 3745-1-04.
11. Ohio EPA has not authorized the discharge of sewage to waters of the state from failing home sewage disposal systems in the western section of Willoughby Hills through the issuance of NPDES permits.
12. The discharge of "pollutants," as defined under ORC Section 6111.01(A) to waters of the state without an Ohio EPA NPDES permit constitutes a violation of ORC Section 6111.04.

13. Respondent has developed a sanitary sewer master plan for the Euclid Creek tributary watershed, dated May, 1999, recommending the installation of sewer upgrades to address Respondent's pump station overflows and the unsanitary conditions in unsewered areas of Willoughby Hills.
14. In a letter dated June 5, 2001, Respondent provided to Ohio EPA a list of streets in Willoughby Hills which the Lake County Health District has investigated and which Respondent has recommended for sewerage in order to address unsanitary conditions in Willoughby Hills.
15. 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.
16. 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. Within one month after the effective date of these Orders, Respondent shall place the technical operation and maintenance of its wastewater collection system under the responsible charge of a certified operator having at least a Class I collection system license.
2. Respondent shall eliminate all sanitary sewer overflows from its wastewater collection system and implement the work proposed in the May, 1999, Euclid Creek Tributary Watershed Sanitary Sewer Master Plan as expeditiously as practicable, but not later than the dates outlined below:
 - a. By March 1, 2002, Respondent shall submit to Ohio EPA an approvable Permit to Install (PTI) application containing detailed plans for a wastewater collection system sufficient to eliminate the sanitary sewer overflows.
 - b. By August 2, 2002, Respondent shall initiate construction of the wastewater collection system.

- c. By August 1, 2004, Respondent shall complete construction, attain an operational level of the wastewater collection system and eliminate all sanitary sewer overflows from its wastewater collection system.
3. Respondent shall eliminate all unsanitary conditions along the following streets and locations within the City of Willoughby Hills as expeditiously as practicable, but not later than forty-eight months after the effective date of these Orders: SOM Center Road from White Road north to Rosewood Trail; White Road from SOM Center Road to Erich Drive; Rockefeller Road from the South Corporation line north to the Euclid Creek Tributary; Marcum Boulevard; Parkview Road, Trabar Drive; Orchard Drive and Oak Street.
4. Respondent shall pay the amount of \$65,475.00 in settlement of Ohio EPA claims for civil penalties, which may be assessed pursuant to Chapter 6111. of the Ohio Revised Code in the following manner:
 - a. Within 30 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$16,370.00 which payment shall be made by tendering a certified check made payable to "Treasurer, State of Ohio" for the full amount 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
 - b. Before August 1, 2004, Respondent shall pay at least \$49,105.00 toward the installation of sanitary sewers to service unsewered areas within Willoughby Hills which are not the subject of these Orders or any other administrative or judicial order. Upon request of Ohio EPA, Respondent shall provide to Ohio EPA receipts or other documentation demonstrating Respondent's compliance with this Order.
5. Respondent shall submit all documents required by Order 2 to Ohio EPA's Northeast District Office at the following address:

Ohio Environmental Protection Agency
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087

(ATTN: Enforcement Group Leader)

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 or for violations identified in 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 perform additional activities to address and eliminate unsanitary conditions within Willoughby Hills. 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.

TERMINATION

The Respondent's obligations under these Orders shall be satisfied and terminate when Respondent demonstrates in writing, and certifies to the satisfaction of Ohio EPA that all obligations under these Orders have been performed, and the Chief of Ohio EPA's Division of Surface Water acknowledges in writing the termination of these Orders.

This certification shall be submitted by the Respondent to the Northeast District Office (Attention: DSW Enforcement Group Leader) and shall be signed by a responsible official of the City of Willoughby Hills.

A responsible official is as defined in Ohio Administrative Code (OAC) 3745-33-03(D)(1) for a corporation, OAC 3745-33-03(D)(2) for a partnership, OAC 3745-33-03(D)(3) for a sole proprietorship, and OAC 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 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, Respondent agrees that these Orders are lawful and reasonable, that the schedules provided for compliance herein are reasonable, and the Respondent agrees to comply with these Orders. 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 judicial review of said Orders either in law or equity.

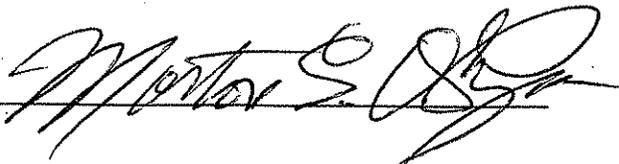
Notwithstanding the preceding, in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such event, respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless said Orders are stayed, vacated, or modified.

SIGNATURE 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 Willoughby Hills

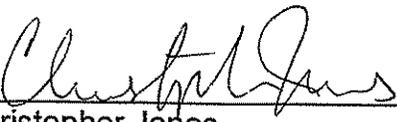
BY:



TITLE: Mayor

DATE: 2-15-02

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency



Christopher Jones
Director

DATE: 3-5-02