

BEFORE THE

OHIO E.P.A.

OHIO ENVIRONMENTAL PROTECTION AGENCY

FEB - 6 2004

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Bercley Cottages on Hill, LLC :
1445 E. Broad St. :
Columbus, Ohio 43205 :

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 Bercley Cottages on Hill LLC (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.

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 promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is the developer of the Bercley Cottages on Hill, a multi-family development located in the City of Pickerington, Fairfield County.
2. Ohio Administrative Code (OAC) Rule 3745-42-02 (formally codified in OAC Rule 3745-31-02 prior to October, 2003) requires the Director's issuance of a permit to

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

[Signature] 2/6/04

- install (PTI) prior to the installation of a new "disposal system," as such term is defined in ORC § 6111.01(G).
3. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any rule adopted by the Director pursuant to those sections, including OAC Rule 3745-42-02.
 4. PTI Application No. 01-10847, together with detailed plans, were received at Ohio EPA Central District Office on December 24, 2003, for the installation of improvements to the City of Pickerington "sewerage system" as such term is defined in ORC § 6111.01(E) at the Bercley Cottages on Hill.
 5. The sanitary sewer improvements proposed in the PTI Application No. 01-10847 is a "disposal system," as such term is defined in ORC § 6111.01(G).
 6. On November 26, 2003, Ohio EPA conducted an inspection at the Bercley Cottages on Hill. The inspection confirmed that the installation of the sanitary sewer had been completed prior to the approval of the plans and issuance of a PTI by Ohio EPA. Based on Ohio EPA's investigation of this matter, it appears that construction began approximately August 12, 2002, and was substantially completed by September 12, 2002.
 7. By letter dated December 22, 2003, Respondent was notified via certified mail that the sanitary sewer installation was in violation of ORC Chapter 6111. and OAC Chapter 3745-42.
 8. The sanitary sewer disposal system, as installed, does not have, among other things, proper isolation distances between sanitary and drinking water lines and does not have necessary manholes.
 9. 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.

V. 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. Respondent may request termination of this Order upon a demonstration

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to the satisfaction of Ohio EPA that Respondent has maintained compliance with this Order for a period of three hundred and sixty five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section VI. of these Orders.

2. Within sixty (60) days of the effective date of these Orders, Respondent shall reconstruct the sanitary sewer system serving Bercley Cottages on Hill in accordance with the following requirements:
 - a. Manholes shall be installed at the end of each sewer line, at all changes in grade, size or alignment; at all intersections; and at distances not greater than 400 feet. Cleanouts may only be used at the end of laterals that are less than 150 feet.
 - b. The minimum diameter of the manholes shall be 48 inches with a minimum access diameter of 22 inches. Drop manholes shall be provided for a sewer entering a manhole at an elevation of 24 inches or more above the manhole invert.
 - c. All water hydrants and water valves shall be located at least ten feet horizontally from the sanitary sewer lines. Water lines shall be located at least ten feet horizontally from the sanitary sewer lines. Where water and sewer lines cross, the bottom of the water lines shall be at least 18 inches above the top of the sanitary sewer lines.
 - d. The 8-inch diameter sanitary sewer lines that connect to the City of Pickerington's sanitary sewer system shall be installed at a minimum slope of 0.40%.
3. Respondent shall complete the work required by Order No. 2 prior to discharge of wastewater to the sanitary sewer lines. Respondent may install, on a temporary basis, holding tanks to collect wastewater discharges from occupied units prior to the completion of work required by Order No. 2. If holding tanks are installed, they shall be designed/operated in accordance with the following:
 - a. The holding tanks shall be designed for ten days of storage;
 - b. The wastewater generated from each inhabitant shall be calculated at 100 gallons per person per day;
 - c. The holding tanks shall have an audio/visual alarm installed which activates at 80% of the total volume of the holding tank;

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- d. The holding tanks' disposal system shall be constructed in a manner to prevent freezing; and
 - e. Respondent shall provide a signed contract with a wastewater hauling company to the Ohio EPA. Pumping records shall be maintained on-site and be made available to the Agency.
4. The sanitary sewers and holding tanks shall not be utilized until Ohio EPA has conducted an inspection of the installed sewers and holding tanks. An inspection will be conducted by the Ohio EPA after each phase is completed. The Respondent shall notify the Ohio EPA, Central District Office, Division of Surface Water, within five (5) days of the completion of each phase.
5. Within 30 days of completion of work required by Order No. 2, Respondent shall submit "As-Built" plans for the entire project to the Ohio EPA. The "As-Built" plans should show all profile and plan views of the sanitary sewer system, including the sanitary sewer inlet and outlet invert elevations of the lines at all manholes. All water line and sanitary sewer line crossings should be shown in a profile view on the plans with invert elevations of the lines at the crossing. All storm sewers and sanitary sewer line crossings should be shown in a profile view on the plans with invert elevations of the lines at the crossing.
6. Respondent shall pay to the Ohio EPA the amount of \$5,760.00 in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the full amount within thirty (30) days of the effective date of these Orders, to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the project (Bercley Cottages on Hill).

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 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 Respondent.

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 the Bercley Cottages on Hill project.

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. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI. of these Orders.

XI. 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.

XII. EFFECTIVE DATE

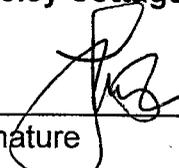
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIII. SIGNATORY AUTHORITY

Each undersigned representative or 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.

IT IS SO AGREED:

Bercley Cottages on Hill, LLC



Signature

FEB. 06, 2004
Date

LAWRENCE ROSEN

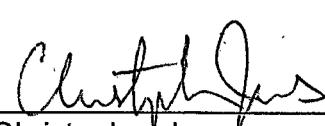
Printed or Typed Name

MEMBER

Title

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Christopher Jones
Director

2-6-04
Date