

Andrew Conway

OHIO E.P.A.

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

DEC -6 2005

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Coshocton County Board of Commissioners	:	<u>Director's Final Findings</u>
349½ Main Street	:	<u>and Orders</u>
Coshocton, Ohio 43812	:	
	:	
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 Coshocton 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 (R.C.) §§ 6111.03, 6117.34 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 R.C. Chapters 6111, 6117 and 3745, and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. The residential community of Fresno is an unincorporated and unsewered area in White Eyes Township, Coshocton County, Ohio. Fresno consists of approximately

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

Michael A Shapiro Date 12/6/05

- seventy-four (74) residences and non-commercial structures.
2. Centralized wastewater treatment facilities are currently unavailable in Fresno.
  3. Fresno is served by inadequate or failing on-site or aeration sewage disposal systems that discharge untreated or partially treated sewage to roadside ditches, and/or storm drains, and/or storm sewers (referred to as "drainage systems"). The drainage systems discharge to White Eyes Creek. Drainage systems and White Eyes Creek are defined as "waters of the state" pursuant to R.C. § 6111.01.
  4. Paragraph 3745-1-04(F) of the Ohio Administrative Code ("OAC") provides that it is a 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.
  5. A public health nuisance shall be deemed to exist when an inspection conducted by, or under the supervision of, Ohio EPA or a sanitarian registered under R.C. Chapter 4736, documents any or all of the following: odor, color and/or other visual manifestations of raw or poorly treated sewage in waters of the state; and, water samples exceed five thousand fecal coliform 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; or, water samples exceed five hundred seventy-six *Eschericia 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.
  6. Ohio EPA sampled in Fresno on June 3, 2003 and June 25, 2003, for fecal coliform bacteria. The sample results are set forth below:

<i>Date / Time</i>	<i># / 100 mL</i>	<i>Location</i>
06/03/2003 10:57 AM	550	East end of ditch
06/25/2003 9:33 AM	2900	
06/03/2003 10:40 AM	60000	Discharge to ditch
06/25/2003 9:32 AM	60000	

06.03/2003 10:20 AM	45000	Black 12' culvert west side of SR 93
06/25/2003 9:25 AM	60000	

7. Ohio EPA sampled in Fresno on March 10, 2004 and April 7, 2004, for fecal coliform bacteria. The results of that sampling are set forth below:

<i>Date/Time</i>	<i># / 100 mL</i>	<i>Description</i>	<i>Location</i>
03/10/2004 10:40 AM	60000	moderate odor, sludge deposits, greyish color, aquatic plants, sewage fungus	Discharge to the railroad ditch parallel to Twp. Rd. 172. The sample was collected prior to discharging into the railroad ditch
04/07/2004 10:50 AM	76000	moderate odor, greyish and blackish color, sludge deposits, aquatic plants and sewage fungus	
03/10/2004 11:50 AM	8700	slight odor, sewage fungus	Drainage ditch with discharge to White Eyes Creek, adjacent to an alley off TR 420 across from house number 54378. The sample was taken at the culvert on the south side of the alley.
04/07/2004 10:50 AM	3700	slight odor, sewage fungus	
03/10/2003 11:30 AM	76000	strong odor, suspended sludge, sludge deposits, sewage fungus, blackish color	12' black culvert on the west side of SR 93 at the railroad
04/07/2004 10:55 AM	60000	strong odor, suspended sludge, sludge deposits, sewage fungus, blackish color	

8. R.C. § 6117.34 provides that whenever the board of health of a general health district makes complaint in writing to Ohio EPA that unsanitary conditions exist in any county, the Director shall inquire into and investigate the conditions complained of. If, upon investigation of the complaint, the Director finds that it is necessary for the public health and welfare that sanitary or drainage facilities be acquired or constructed, maintained, and operated to serve any territory outside municipal corporations in any county, the Director shall notify the Board of County Commissioners of that finding and order that corrective action be taken. The Board

of County Commissioners shall obey the order and proceed as provided in R.C. Chapter 6117., to establish a county sewer district, if required, to provide the necessary funds, to acquire or construct the facilities, and to maintain and operate the facilities, as required by the order and in a manner that is satisfactory to the Director.

9. On January 7, 2005, the Health Commissioner of the Coshocton County Health District ("Health District"), by letter, issued a written complaint under R.C. § 6117.34, alleging that unsanitary conditions exist in Fresno due to untreated sanitary sewage discharges.
10. On March 8, 2005, Ohio EPA conducted a follow up investigation of the conditions alleged in the Health District's letter of complaint. The investigation determined that the unsanitary conditions observed and documented on June 3, 2003, June 25, 2003, March 10, 2004 and April 7, 2004, continued to exist. Ohio EPA staff observed conditions indicative of untreated sewage in the drainage ways with odors of untreated sewage evident.
11. The sampling data and subsequent investigation by Ohio EPA confirm the existence of unsanitary conditions, documented violations of Ohio's general water quality criteria set forth in OAC Rule 3745-1-04, and demonstrated a public health nuisance in accordance with OAC Rule 3745-1-04.
12. Small lot sizes, in conjunction with local soil conditions and local hydrology, make the replacement or repair of existing on-site sewage disposal systems an unacceptable solution to remedy the unsanitary conditions.
13. It is necessary for the public health and welfare that sewer improvements or sewage treatment or disposal works be constructed, maintained, and operated to service Fresno area.
14. 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 R.C. §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.

## V. ORDERS

1. Within six (6) months after the effective date of these Orders Respondent shall submit to Ohio EPA a complete permit-to-install (PTI) application and approvable detailed plans, stamped by a professional engineer licensed to practice in the state of Ohio, for the construction of a sewerage system to serve Fresno and a force main to pump the sewage to a treatment works.
2. Respondent shall respond, in writing, to any questions or comments Ohio EPA may have on the PTI and detailed plans submitted under Order No. 1, within thirty (30) days of the date on the correspondence from Ohio EPA.
3. Within eighteen (18) months after the receipt of a PTI approved by the Director of Ohio EPA (Respondent may request a twelve (12) month extension under OAC paragraph 3745-42-02(D)(3)), Respondent shall initiate construction of the sewerage system and force main in accordance with the approved PTI.
4. Within forty-eight (48) months after the receipt of a PTI approved by the Director of Ohio EPA, Respondent shall complete the construction of the sewerage system and force main in accordance with the approved PTI, and achieve compliance with R.C. Chapter 6111.
5. Respondent shall exercise all authority under R.C. § 6117.51 to compel all premises in Fresno to connect sewage flows to the sewerage system and cease use of existing sewage disposal systems.
6. Within fourteen (14) days of completing the requirement in Order No. 3 and Order No. 4, Respondent shall provide notice, in writing, to the Ohio EPA of the completion of the Order. Notice shall be sent to the addresses in Section X of these Orders.

## 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(D)(4) for a municipal, state, or other public facility.

#### **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  
District Office  
Division of Surface Water  
Attn: DSW Enforcement Unit Supervisor  
2195 Front Street  
Logan, Ohio 43138

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Surface Water  
Attn: Manager, Stormwater and Enforcement Section  
122 South Front Street [P.O. Box 1049]  
Columbus, Ohio 43215 [43216-1049]

[For mailings use the post office box number and zip code in brackets]

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

#### **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.

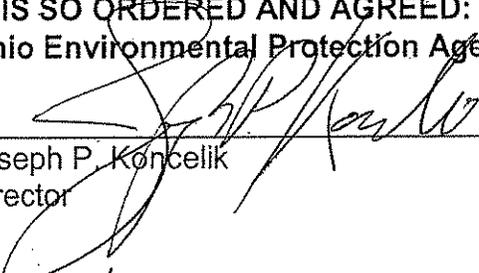
### **XIII. EFFECTIVE DATE**

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

**XIV. 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.

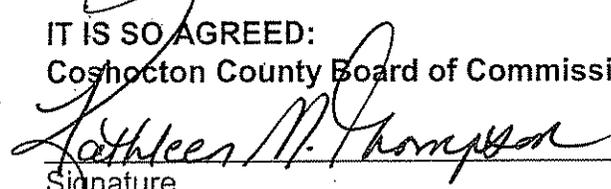
**IT IS SO ORDERED AND AGREED:**  
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Joseph P. Koncelik  
Director

\_\_\_\_\_  
Date

12/5/05

**IT IS SO AGREED:**  
**Coshocton County Board of Commissioners**

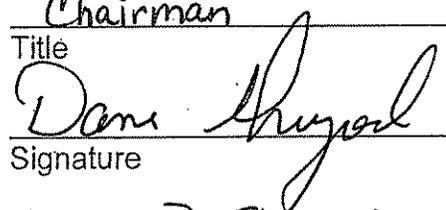
  
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Signature

\_\_\_\_\_  
Date

10-31-05

Kathleen M. Thompson  
Printed or Typed Name

Chairman  
Title

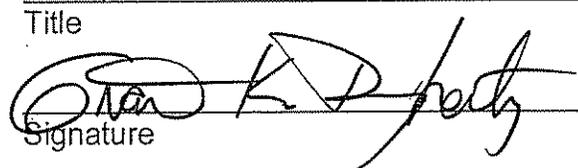
  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

10-31-05

Dane R. Shryock  
Printed or Typed Name

Vice - Chairman  
Title

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

10/31/2005

Brant K. Daugherty  
Printed or Typed Name

Commissioner  
Title