

FEB 24 2004

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Lorain County Board of Commissioners
226 Middle Avenue (4th Floor)
Elyria, Ohio 44035

Director's Final Findings
and Orders

Respondent

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to the Lorain 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) §§ 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 the 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 promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA (Director) has determined the following findings:

1. The community of homes located on Broadway and Taylor Streets (hereafter, the Broadway - Taylor Area) are an unincorporated area in Amherst Township, Lorain County, Ohio. This area is bounded by: Tenney Street on the north, Henry Street on the west, the former Conrail railroad tracks on the south, and State Route 58 on the east.
2. Centralized wastewater treatment facilities are currently unavailable in the Broadway - Taylor Area.

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.

[Handwritten Signature] Date 2-24-04

3. The homes located in the Broadway - Taylor Area are served by failing on-site or aeration sewage disposal systems that discharge raw or partially treated sewage to roadside ditches and/ or storm drains and/ or storm sewers (hereinafter, drainage systems). The drainage systems discharge directly to an unnamed tributary to Beaver Creek, which is defined as a "water of the state" pursuant to ORC § 6111.01.
4. Investigations and sampling events conducted by Ohio EPA on June 27, 1996, October 15, 1996, and August 5, 1997 revealed evidence of unsanitary conditions. Ohio EPA staff observed heavy sewage fungus, heavy black sewage deposits, dense algal growths indicative of untreated sewage in the unnamed tributary; an oily sheen with floating scum and suspended sludge, greyish to black color indicative of untreated sewage in the storm drain; and smelled odors of untreated sewage.
5. Ohio EPA sampling results from June 27, 1996, October 15, 1996, and August 5, 1997 for fecal coliform and E. Coli bacteria confirmed the existence of unsanitary conditions and documented violations of Ohio's general water quality criteria set forth by Ohio Administrative Code (OAC) Rule 3745-1-04.
6. Ohio EPA received a letter from the Lorain County General Health District (Health District) dated May 10, 2001, requesting an investigation pursuant to ORC § 6117.34 of unsanitary conditions in the Broadway - Taylor Area.
7. Pursuant to ORC § 6117.34, whenever the board of health of a general health district makes complaint, in writing, to the Ohio EPA that unsanitary conditions exist in any county, the Director forthwith shall inquire into and investigate the conditions complained of.
8. On March 19, 2002, Ohio EPA conducted a follow up investigation of the conditions alleged in the Health District's complaint.
9. Ohio EPA sampling results from March 19, 2002 for fecal coliform and E. Coli bacteria confirmed the existence of unsanitary conditions and documented violations of Ohio's general water quality criteria set forth by OAC Rule 3745-1-04.
10. The investigations and sampling events conducted by Ohio EPA on March 19, 2002 revealed that the unsanitary conditions observed on June 27, 1996, October 15, 1996, and August 5, 1997 still existed. Ohio EPA staff observed conditions indicative of untreated sewage in the storm drain and unnamed tributary to Beaver Creek, and odors of untreated sewage were evident.
11. On May 23, 2002, Ohio EPA conducted another follow up investigation of the conditions alleged in the Health District's complaint.

12. The investigations and sampling events conducted by Ohio EPA on May 23, 2002 revealed that the unsanitary conditions observed in August 5, 1997 and March 19, 2002 still existed. Ohio EPA staff observed whitish and greyish water, oily sheen, floating scums, and suspended sludge indicative of untreated sewage in the storm drain, and smelled strong odors of untreated sewage. Heavy sludge deposits, heavy sewage fungus, and dense algae growth were observed by Ohio EPA staff in an unnamed tributary to Beaver Creek, and odors of untreated sewage were evident.
13. Ohio EPA sampling results from May 23, 2002 for fecal coliform and E. Coli bacteria confirmed the existence of unsanitary conditions and documented violations of Ohio's general water quality criteria set forth by OAC Rule 3745-1-04.
14. The sampling data collected by Ohio EPA demonstrates a public health nuisance in accordance with OAC Rule 3745-1-04.
15. Small lot sizes, in conjunction with local soil conditions and local hydrology make the installation of replacement or repair of existing on-site sewage disposal systems an unacceptable solution to remedy the unsanitary conditions.
16. Pursuant to ORC § 6117.34, 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 the county of that finding and order that corrective action be taken. The board shall obey the order.
17. It is necessary for the public health and welfare that sewer improvements or sewerage treatment or disposal works be constructed, maintained, and operated to service the Broadway - Taylor Area.

V. ORDERS

1. Within twelve (12) months of the effective date of these Orders, Respondent shall submit a complete permit-to-install (PTI) application, approvable detailed plans, and, if necessary and required, an Antidegradation Addendum and a National Pollutant Discharge Elimination System (NPDES) permit application to sewer the Broadway - Taylor Area. The PTI application shall define several phases of the project. Each phase shall have a specific date for starting and completing construction.
2. Within twelve (12) months of the effective date of these Orders, Respondent shall submit a summary report that includes a copy of the financial mechanisms to be used to fund the required improvements, operation and maintenance, and replacement costs, as well as an implementation schedule for awarding bids, starting and completing construction, and all other significant milestones.

3. Within six (6) months after the receipt of an approved PTI, Respondent shall initiate construction of the sewage system in accordance with its approved PTI.
4. Within thirty (30) months after the receipt of an approved PTI, the Respondent shall complete the sewage system installation in accordance with its approved PTI and achieve compliance with Ohio's water pollution control laws.
5. Respondent shall exercise all authority under ORC § 6117.51 to compel all homes in the Broadway - Taylor Area to connect sewage flows to the public sanitary sewer and cease use of currently existing sewage disposal systems.
6. Within fourteen (14) days of completing the requirements in Orders 3 and 4, Respondent shall notify Ohio EPA in writing of the completion of each Order.

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 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, the unsanitary conditions in the Broadway - Taylor Area.

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. NOTICE

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

Division of Surface Water
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: DSW Enforcement Unit Supervisor

and to:

Ohio EPA
Lazarus Government Center
Division of Surface Water
122 South Front Street, P.O. Box 1049
Columbus, Ohio 43216
Attn: DSW Enforcement Unit Supervisor

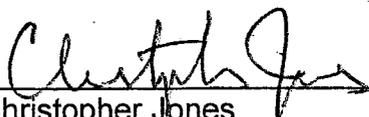
X. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce 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 and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 6111, or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

XI. EFFECTIVE DATE

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

IT IS SO ORDERED:
Ohio Environmental Protection Agency



Christopher Jones
Director

2-20-04

Date