

A. Conway

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC -7 2006

In the Matter of:

Muskingum County Board of Commissioners
401 Main Street
Zanesville, OH 43701

Respondent

:
:
: **Director's Final Findings**
: **and Orders**
:
: I certify this to be a true and accurate copy of the
: official documents as filed in the records of the Ohio
: Environmental Protection Agency.

I. JURISDICTION

By: [Signature] Date: 12-7-06

These Director's Final Findings and Orders ("Orders") are issued to the Muskingum 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") §§ 6111.03(H), and 6117.34.

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 ORC Chapter 6111., and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The Coopermill Road, Potts Lane and Owens Hill areas in Springfield Township, Muskingum County, are unincorporated wherein centralized wastewater treatment facilities are unavailable.
2. On December 13, 2002, Ohio EPA received a letter from the Health Commissioner, Zanesville-Muskingum County Board of Health ("Board of Health"), informing the Director that premises from the abovementioned unincorporated areas are discharging inadequately treated sewage into Chaps Run. The letter requested, pursuant to ORC § 6117.34, that the Ohio EPA investigate the areas for unsanitary conditions.
3. OAC Rule 3745-1-04(F) 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.

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4. 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 ORC Chapter 4736. documents odor, color and/or other visual manifestations of raw or poorly treated sewage; and
 - a. Water samples exceed five thousand fecal coliform counts per one hundred milliliters (either MPN [most probable number] or MF [membrane filter]) 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
 - b. Water samples exceed five hundred seventy-six E. 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.
5. Upon receipt of the letter from the Board of Health, Ohio EPA investigated the areas with the Board of Health and found evidence of unsanitary conditions and identified sampling sites at the Coopermill Road and Potts Lane areas. No unsanitary conditions were discovered in the Owens Hill area.
6. On September 23 and October 14, 2004, Ohio EPA collected samples at the Coopermill Road and Potts Lane areas. At the verbal request of the Board of Health, the unsewered area along Walnut Drive, an unincorporated area, was sampled. The results are set forth below:¹

#	Location	Sample (2004)	Time (AM)	Fecal Coliforms (#cfu/100mls)	E. Coli (#cfu/100mls)
Z1	Front 1135 Potts Lane	09-23	09:13	11,000	900
		10-14	11:15	60,000	270
Z2	Chaps Run on Potts Lane	09-23	09:17	2,600	410
		10-14	10:30	60,000	240
Z3	Chaps Run on Coopermill Rd.	09-23	09:25	7,700	1,060
		10-14	10:25	60,000	1,000

¹Bacteria quantities are generally reported as colonies or colony forming units (cfu) per 100 milliliters (ml) of sample.

#	Location	Sample (2004)	Time (AM)	Fecal Coliforms (#cfu/100mls)	E. Coli (#cfu/100mls)
Z4	Walnut Drive Apt A	09-23	09:40	6,000	110
		10-14	10:20	60,000	2,000
Z5	Walnut Drive in front of 1307	09-23	09:45	63,000	600
		10-14	10:15	60,000	1,000

The sampling number and location are referenced in Appendix A, which is attached here and incorporated herewith, as if fully rewritten herein.

7. Many of the premises in the areas identified in Finding No. 6, above, are served by failing on-site sewage disposal systems which discharge raw or partially treated sewage to roadside ditches and storm sewers tributary to Chaps Run. Ohio EPA has not authorized these discharges. Many premises have small lots and little room, if any, for any repair or replacement of existing home sewage disposal systems. The same is true for premises located on Benjamin Avenue.
8. Chaps Run constitutes waters of the state, and a discharge of sewage to waters of the state without authorization from Ohio EPA is a violation of ORC §§ 6111.04(A) and 6111.07(A).
9. 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.
10. It is necessary for the public health and welfare that sewer improvements be constructed, maintained, and operated to service the Coopermill Road and Potts Lane areas.
11. Pursuant to ORC § 6111.03(H), the Director may issue, modify, or revoke orders to prevent, control, or abate water pollution by such means as requiring the construction of new disposal systems or any parts thereof, or the modification, extension, or alteration of existing disposal systems or any parts thereof.
12. Unauthorized discharges from premises located on Walnut Drive and Benjamin Avenue are contributing to discharges of sewage into waters of the state.

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13. 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 ORC §§ 6111.44(A) and 6111.45 and OAC Chapter 3745-42.
14. Compliance with ORC Chapter 6111 is not contingent upon the availability of financial assurance.
15. 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 submit to Ohio EPA, a comprehensive General Plan for sewage treatment improvements or other methods of abating pollution throughout the Coopermill Road, Potts Lane, Walnut Drive and Benjamin Avenue areas, as such areas are identified in Appendix B, which is attached hereto and incorporated herewith, as if fully rewritten herein, as expeditiously as practicable, but not later than twelve (12) months from the effective date of these Orders. At a minimum, the comprehensive General Plan shall include, but not be limited to, the following:
 - a. Alternatives for treating sewage from all areas of concern, including but not limited to, centralized collection and treatment;
 - b. Proposed locations for collection and treatment facilities, if deemed appropriate;
 - c. Cost estimates for the required improvements and cost effectiveness analysis of the alternatives;
 - d. The financial mechanisms to be used to fund the required improvements, operation and maintenance, and replacement costs; and
 - e. Implementation schedule for submitting complete permit to install applications, approvable detail plans, anti-degradation addenda, and National Pollutant Discharge Elimination System permit application(s) (if necessary); awarding bids; starting and completing construction; and/or all other significant milestones.
2. Upon approval of the comprehensive General Plan by Ohio EPA, Respondent shall implement the alternative agreed upon as outlined in the comprehensive General Plan in accordance with the schedule of implementation set forth therein.

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3. Upon request by Respondent and good cause shown, the Director may, at his sole discretion, extend in writing any time periods established by 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 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 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.

VIII. NOTICE

Respondent shall submit all documents, applications, and notifications required under these Orders to Ohio EPA, Southeast District Office, at the following address:

Ohio Environmental Protection Agency
Southeast District Office
2195 Front Street
Logan, Ohio 43138
(ATTN: Enforcement Group Leader)

IX. 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 any of 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.

X. APPEAL

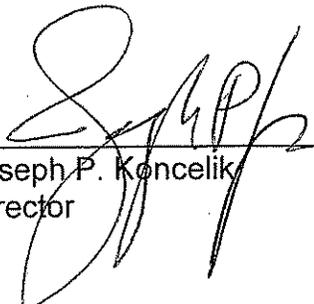
You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC § 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00 which the Commission, in its discretion, may reduce if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, OH 43215

XII. EFFECTIVE DATE

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

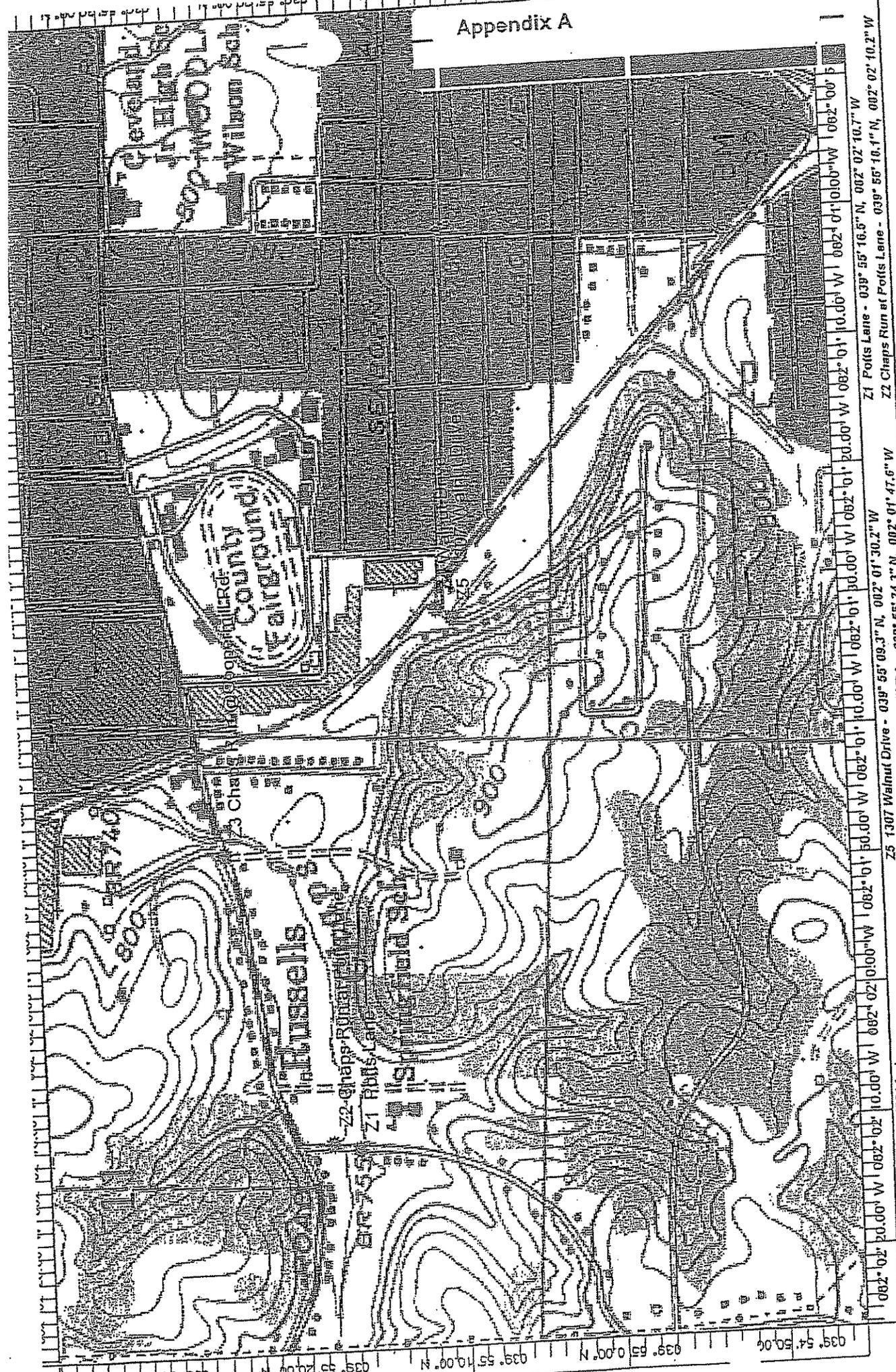
IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency



Joseph P. Koncelik
Director

12/6/06
Date

Appendix A



Sampling Points - 5 Markers, Length = 4294 feet
 Z4 Walnut Drive - 039° 55' 10.4" N, 082° 01' 29.4" W
 Z1 1307 Walnut Drive - 039° 55' 09.3" N, 082° 01' 30.2" W
 Z3 Chaps Run @Coopermill Rd. - 039° 55' 24.3" N, 082° 01' 47.6" W
 Z1 Potts Lane - 039° 55' 16.5" N, 082° 02' 10.7" W
 Z2 Chaps Run at Potts Lane - 039° 55' 16.1" N, 082° 02' 10.2" W

Location: 039° 55' 10.6" N 082° 01' 34.4" W

Name: ZANESVILLE WEST
 Date: 9/27/104
 Scale: 1 inch equals 800 feet

Note: Location Z4 is above Z5

APPENDIX B

IDENTIFICATION OF THE COOPERMILL ROAD, POTTS LANE, BENJAMIN AVENUE AND WALNUT DRIVE AREAS TO BE SEWERED AND THE PREMISES TO BE CONNECTED TO THE SEWERS.

COOPERMILL ROAD: All premises from the railroad track (North Central Railroad) to 2494 Coopermill Road, inclusively.

POTTS LANE: All premises starting at Coopermill Road to 1189 Potts Lane, inclusively.

BENJAMIN AVENUE: The entire length of the avenue.

WALNUT DRIVE: All premises from 1291 to 1407 Walnut Drive, inclusively.