

OHIO E.P.A.
BEFORE THE
DEC 18 2006
OHIO ENVIRONMENTAL PROTECTION AGENCY
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Van Wert County Commissioners
114 East Main Street
Van Wert, Ohio 45891
(Delphos Area)

:
:
:
:
:
:

Director's Final Findings
and Orders

Respondent :

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.

PREAMBLE

It is agreed by the Parties hereto as follows:

By: Jerry Jacks Date: 12-18-06

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Van Wert County 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, 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 ORC Chapters 6111, 6117 and 3745 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The Greater Delphos Area is an unincorporated area located in Washington

Township, Van Wert County, Ohio ("the Greater Delphos Area").

2. Many of the homes and businesses located in the Greater Delphos Area are served by failing on-site sewage disposal systems that discharge raw or partially treated sewage to Fort Jennings Creek, via roadside ditches and storm sewers. The Fort Jennings Creek, storm sewers (drainage systems), and roadside ditches constitute waters of the state as defined in ORC Section 6111.01
3. On August 17, 1992, Director's Final Findings and Orders were issued to Respondent for the Greater Delphos Area. The Orders were issued in response to a July 2, 1990 letter from the Van Wert County Board of Health requesting an investigation of unsanitary conditions in the Delphos Area pursuant to ORC Section 6117.34. The Orders required Respondent to submit a general plan for sewage improvements or other methods of abating pollution and correcting unsanitary conditions in the Greater Delphos Area.
4. A general plan was submitted by Respondent in May 1993, but was determined to be deficient in that the plan did not contain an implementation schedule for the project. On October 30, 1997, Ohio EPA received Respondent's updated general plan, which was accepted by Ohio EPA on December 11, 1997.
5. On February 16, 1999, additional Director's Final Findings and Orders were issued to Respondent for the Greater Delphos Area incorporating the timelines set forth in the October 30, 1997 submittal. The Orders required Respondent to accomplish the following:
 - A. Submit a status report on achieving compliance by January 1, 1999;
 - B. Submit an approvable Permit to Install and antidegradation addendum for wastewater collection facilities by July 1, 1999;
 - C. Initiate construction of the wastewater collection facilities by January 15, 2000;
 - D. Place the technical operation and maintenance of the wastewater collection facilities under the responsible charge of a certified wastewater collection system operator by December 15, 2000;
 - E. Complete construction of the wastewater collection facilities by December 15, 2000;
 - F. Be in full compliance with ORC Chapter 6111 by June 15, 2001.

6. In a letter to Respondent dated December 18, 2002, Ohio EPA indicated that Respondent had failed to meet any of the requirements set forth in Orders A through F as listed above. Pursuant to ORC 6111.07, no person shall violate any order, rule or term or condition of any permit issued or adopted by the director of environmental protection pursuant to ORC Chapter 6111.
7. In 2001, Ohio EPA documented additional water quality standard violations for dissolved oxygen and ammonia. Ohio EPA also observed gray water, nuisance algal growth, and black septic smelling sludge deposits in Jennings Creek.
8. 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.
9. The sampling data and subsequent investigation by Ohio EPA confirm the continued 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.
10. 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.
11. 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 ("PTI") requirements of ORC §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.
12. 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 implement all work that is necessary to abate the unsanitary conditions in the Greater Delphos Areas as expeditiously as practicable, but no later than the dates outlined in the following compliance schedule:
 - A. Within thirty (30) days from the effective date of these Orders, Respondent shall submit to Ohio EPA a status report on achieving compliance with Ohio's water pollution control laws. At a minimum, the report shall contain the following:
 - i. A status report on acquiring the necessary easements;
 - ii. A copy of the contract with the receiving publicly owned treatment works (POTW) for accepting the Greater Delphos Area's wastewater;
 - iii. A status report of the engineering design work;
 - iv. A status report for achieving funding for the project.
 - B. Within 4 months of the effective date of these Orders, Respondent shall submit to Ohio EPA, an approvable PTI application with detailed plans and an antidegradation addendum for wastewater collection facilities in the Greater Delphos Area. These facilities shall be sufficient to abate the unsanitary conditions in the Greater Delphos Area.
 - C. Within 8 months of the effective date of these Orders, Respondent shall initiate construction of the wastewater collection facilities in the Greater Delphos Area.
 - D. Within 20 months of the effective date of these Orders, Respondent shall place the technical operation and maintenance of its wastewater collection facilities under the responsible charge of a certified wastewater collection system operator. This operator shall meet the requirements set forth in OAC Chapter 3745-7.
 - E. Within 20 months of the effective date of these Orders, Respondent shall

complete construction of the wastewater collection facilities in the Greater Delphos Area.

- F. Within 21 months of the effective date of these Orders, Respondent shall be in full compliance with ORC Chapter 6111.
2. Within fourteen (14) days of the milestone dates in Orders 1C, 1D, 1E and 1F, Respondent shall submit written notification of compliance to Ohio EPA as set forth in Section X of these Orders.
 3. Respondent shall pay to Ohio EPA eleven thousand dollars (\$11,000.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to Chapter 6111 of the Ohio Revised Code. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for three thousand dollars (\$3,000.00) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

A photo copy of the check shall be sent to Ohio EPA's Northwest District Office at:

Ohio Environmental Protection Agency
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: Enforcement Coordinator

4. In lieu of paying the remaining \$8,000.00 dollars of civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of \$8,000.00 to the Van Wert County Park District, to be used towards the purchase of approximately 7 acres of land which runs alongside Balyeat Ditch, near the point where Balyeat Ditch enters Maddox Creek ("the Property"). The Property will be used as a passive recreational area and will be developed and managed for wildlife habitat. Additionally, the Property will be managed utilizing best conservation practices as advised by the Van Wert Soil and Water

Conservation District and the Natural Resources Conservation Service. The Van Wert County Park District shall establish an environmental covenant with the Ohio EPA within thirty (30) days of the purchase of the Property, to manage the Property according to the requirements listed above and to protect the Property from future development. The environmental covenant will be in the form of the template attached to these Orders as Attachment A.

A photo copy of the contribution check shall be sent to Ohio EPA's Northwest District Office at:

Ohio Environmental Protection Agency
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: Enforcement Coordinator

5. Should Respondent or the Van Wert County Park District fail to purchase the Property within one (1) year from the effective date of these Orders, or fail to establish an environmental covenant with Ohio EPA within the required timeframe set forth in Order No. 4, Respondent shall pay to Ohio EPA the remaining balance of the civil penalty (\$8,000.00) in accordance with the procedures in Order No. 3.

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.

This 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 Respondent's WWTP and sewer system.

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 the Respondent.

IX. MODIFICATIONS

These Orders may be modified by the 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 EPA, Northwest District Office
Attn: DSW Enforcement Unit Supervisor
347 North Dunbridge Road
Bowling Green, Ohio 43402

and to:

Ohio EPA, Division of Surface Water
Attn: DSW Enforcement Coordinator
P.O. Box 1049
Columbus, Ohio 43216-1049

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 those 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 AGREED:
Van Wert County Commissioners

Harold L. Merkle
By _____ Date 11-28-06

Harold L. Merkle
Print Name

Chairman, Board of Van Wert County Commissioners
Title

Gary D. Adams
By _____ Date 11-28-06

Gary D. Adams
Print Name

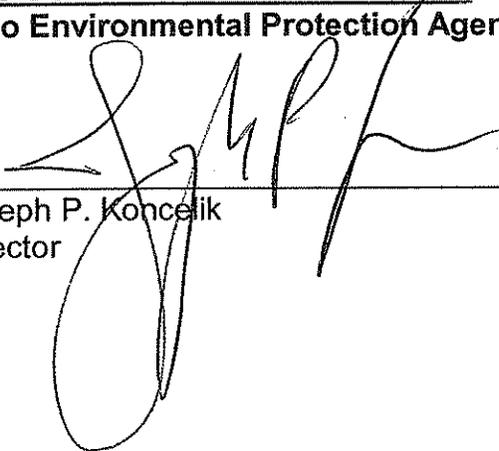
Vice Chairman, Board of Van Wert County Commissioners
Title

Clair Dudgeon
By _____ Date 11-28-06

Clair Dudgeon
Print Name

Commissioner
Title

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency



Joseph P. Koncelik
Director

12-15-06
Date

ATTACHMENT A

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into pursuant to Ohio Revised Code ("R.C.") §§ 5301.80 to 5301.92 by _____, a _____ (the "Owner"), having an address of _____ and _____, a _____ (the "Holder"), having an address of _____, and the Ohio Environmental Protection Agency ("Ohio EPA"), as a non-holder agency, for the purpose of subjecting certain property ("the Covenant Area") to the activity and use limitations set forth herein.

[Insert appropriate background information here. By way of example only, as your situation may differ:

WHEREAS, the Owner is the owner in fee of certain real property, which contains the Covenant Area and is situated in _____ County, Ohio, in the _____ watershed;

WHEREAS, Company X (*either a third party doing the project needing the 401, which sometimes could be the Owner*) has proposed to construct a certain project on certain other real property ("the Company X Property"), [also] located in _____ County, Ohio ("the Project"), which Project impacts certain surface water features located on the Company X Property and the approvals for which project required that Company X obtain a water quality certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1344 from the Ohio EPA and Nationwide Permit ("NWP") coverage from the Army Corps of Engineers ("the Army Corps");

WHEREAS, in order to mitigate such impacts on the Company X Property and as a condition of being issued the 401 water quality certification [or state isolated wetland permit], Ohio EPA ID No. _____ (the "401 Certification") and the NWP, the Army Corps and the Ohio EPA have required that Company X obtain mitigation property and to protect this property in perpetuity with an environmental covenant;

WHEREAS, to meet the conditions in the 401 Certification, Company X has entered into an agreement with the Owner which provides, among other things, that Company X will construct and implement the mitigation requirements contained in Company X's 401 Certification and the mitigation plan on a specific area ("the Covenant Area") of the Owner's property;

WHEREAS, the Covenant Area possesses substantial value in conserving and protecting the physical, biological and chemical integrity of XYZ Stream and is important in the protection of the existing or designated use of the waters of the state pursuant to § 303 of the Clean Water Act, 33 U.S.C. § 1313 and § 6111.041 of the Ohio Water

Pollution Control Act. The specific conservation values (hereinafter "Conservation Values") of the Covenant Area have been documented in a document entitled "Wetland and Stream Mitigation Plan, Proposed Company X Building, _____ Township, _____ County, Ohio, XYZ File # 20221, [month and day], 200_" (the "Mitigation Plan").

WHEREAS, Company X proposes to fulfill its obligation to ensure the Covenant Area and the Covenant Area's Conservation Values are protected in perpetuity by this Environmental Covenant.]

Now therefore, Owner and Holder and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to R.C. §§ 5301.80 to 5301.92.

2. Covenant Area. The Covenant Area is *[an approximately _____ acre tract of real property; OR real property parcels numbered _____]*, located at _____, in _____ County, Ohio, and more particularly described in Exhibit A [narrative] and Exhibit B [map] attached hereto and hereby incorporated by reference herein ("the Covenant Area").

3. The Owner is the fee simple owner of the Covenant Area.

4. The Holder is the holder of this Environmental Covenant. *[There may be more than one holder. The Owner may be a holder.]*

5. Activity and Use Limitations. As part of the conditions set forth in the 401 Certification issued to *Company X* and given the conservation values of the Covenant Area, the Owner hereby imposes and agrees to comply with the following activity and use limitations on the Covenant Area:

- a. Division: Any division or subdivision of the Covenant Area is prohibited;
- b. Commercial Activities: Commercial development or industrial activity on the Covenant Area is prohibited;
- c. Construction: The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots on the Covenant Area is prohibited, other than construction activities that are authorized by the 401 mitigation plan approved by the Ohio EPA;
- d. Cutting and Other Control of Vegetation: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or

pesticides on the Covenant Area is prohibited, other than the removal or control of invasive and noxious species and control activities that are authorized by the 401 mitigation plan approved by the Ohio EPA;

- e. Dumping: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area; and
- f. Water Courses: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area, other than as part of activities that are authorized by the 401 mitigation plan approved by the Ohio EPA.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to R.C. § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee" as used in this Environmental Covenant, shall mean any future owner of any interest in the Covenant Area or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to R.C. § 5301.91 or other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any provision of this Covenant. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law in order to protect public health or safety or the environment.

8. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees and the Holder or its agents the right of access to the Covenant Area in connection with the implementation or Enforcement of this Environmental Covenant.

9. Compliance Reporting. Owner and any Transferee shall submit to Ohio EPA, upon request by the Ohio EPA, written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Covenant Area or any portion of the Covenant Area shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN

ENVIRONMENTAL COVENANT, DATED _____, 200_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 200_, IN [DOCUMENT _____, or BOOK _____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

[In the notice, restate restrictions from Paragraph 5 of this Covenant]

Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Covenant Area. Owner's notice shall include the name, address and telephone number of the Transferee, and a copy of the original document that imposed restrictions on the Covenant Area.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- a. that the Owner is the sole owner of the Covenant Area;
- b. that the Owner holds fee simple title to the Covenant Area that is free, clear and unencumbered and, for example, is not subject to any utility, road or other easement;
- c. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and
- d. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated only by consent of all of the following: the Owner or a Transferee, the Holder[s], and the Ohio EPA, pursuant to R.C. §§ 5301.89 or 5301.90 and other applicable law. "Amendment" means any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. "Termination" means the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. Amendment or termination shall not affect Company X's obligations pursuant to the 401 Certification.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA, the Holder[s], and the Owner[s] or Transferee[s] of the Covenant Area or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this

Environmental Covenant, the Owner[s] or Transferee[s] shall file such instrument for recording with the _____ County Recorder's Office, and shall provide a true copy of the recorded instrument to Ohio EPA.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15. Recordation. Within [thirty (30)] days after the date of the final required signature upon this Environmental Covenant, the Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the property, with the _____ County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Covenant Area with the _____ County Recorder.

17. Distribution of Environmental Covenant. The Owner[s] shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the [City, County, Township, Village] of _____; [any "Holder," any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by Ohio EPA; see ORC § 5301.83].

18. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

[title or position]
Division of [_____]]
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049

[title or position]
[address]

19. Counterparts. This Covenant may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Covenant. *{This section is optional. To be used where there are numerous parties and forwarding a single original copy to each party in series will be*

OHIO ENVIRONMENTAL PROTECTION AGENCY

By: _____
Director

Date: _____

State of Ohio)
) ss:
County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared _____, the Director of Ohio EPA, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this ____ day of _____, 200_.

Notary Public

