BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
APR 17 2013
ENTERED DIRECTOR'S JOURNAL

In the Matter of:	:	
City of Avon **36080 Chester Road** **Avon, Ohio 44011**	:	**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.

By: Dirk Lassiter Date: 4-17-13

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Avon ("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. 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 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The area located approximately in the vicinity of Elizabeth Ave., Joseph St., and Puth Dr., in the City of Avon, is an unsewered community consisting of approximately seventy five (75) residences ("the Elizabeth Ave. Area.")

2. Centralized wastewater treatment facilities are currently unavailable in the Elizabeth Ave. Area.

3. In general, the residential lots exhibit characteristics unsuitable for or detrimental to, new or upgraded on-lot individual sewage disposal systems due to their respective size and soil conditions.

4. The Elizabeth Ave. Area 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 an unnamed tributary to Heider Ditch. Drainage systems, the unnamed tributaries, and Heider Ditch are defined as "waters of the state" pursuant to ORC § 6111.01.

5. Ohio Administrative Code ("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.

6. On June 14, 2011, Ohio EPA conducted a municipal storm water program audit, where Ohio EPA noted the odor of sewage emanating from the Elizabeth Ave. Area and determined that illicit discharges were occurring. An August 26, 2011 Notice of Violation ("NOV") letter to Respondent confirmed the presence of illicit discharges within the Elizabeth Ave. Area.

7. 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 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 (5,000) fecal coliform counts per one hundred (100) milliliters in two (2) or more samples when five (5) or fewer samples are collected, or in more than twenty percent (20%) of the samples when more than five (5) samples are taken; or water samples exceed five hundred seventy-six (576) *Escherichia coli* counts per one hundred (100) milliliters in two (2) or more samples when five (5) or fewer samples are collected, or in more than twenty percent (20%) of the samples when more than five (5) samples are taken.

8. Ohio EPA sampled the Elizabeth Ave. Area on February 6, 2012 for *E. coli*. The sample results are set forth below:

Date / Time	***# / 100 mL***	***Description***	***Location***
2/6/2012 11:45 AM	9,200	No odor, clear color	Catch basin: 34241 Detroit Rd.

Date / Time	# / 100 mL	Description	Location
2/6/2012 12:20 PM	5,500	No odor, clear color	Catch basin: 2552 Joseph St.
2/6/2012 12:05 PM	0	Slight odor, greyish color, oily sheen and suspended solids	Catch basin: 2532 Joseph St.
2/6/2012 2:10 PM	<40		
2/6/2012 12:50 PM	480,000	Slight to moderate odor, clear color, suspended sludge	Catch basin: 34315 Puth Dr.
2/6/2012 2:45 PM	>480,000		
2/6/2012 12:40 PM	9,800	Slight to moderate odor, clear color	Catch basin: 2734 Elizabeth St.
2/6/2012 2:45 PM	4,100		
2/6/2012 1:00 PM	9,800	Slight odor, whitish color, sewage fungus with substrates appearing whitish-grey	Unnamed trib Heider Ditch dst. Detroit Rd.
2/6/2012 3:05 PM	9,800		

9. The Elizabeth Ave. Area was previously sampled in September 2010 by the Lorain County Health Department. Their sampling indicated elevated levels of fecal coliform in catch basins and storm water pipe outlet locations, ranging from 4,000 to 83,000 #/ 100 ml.

10. The Lorain County Board of Health passed resolution No. 2011-52 on September 14, 2011, declaring a public nuisance existed in the Elizabeth Ave. Area. A letter was forwarded to the Director by the Board of Health requesting assistance in elimination of the nuisance. The resolution stated that pursuant to R.C. 6117.51, it is necessary to implement a new sewer project for the area.

11. The sampling data and subsequent investigation by Ohio EPA confirm the existence of unsanitary conditions and documented violations of Ohio's general water quality criteria set.

12. Residential lots are small and requiring the replacement or repair of existing on-site sewage disposal systems is an unacceptable solution to remedy the unsanitary conditions.

13. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.

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 ORC §§ 6111.44 and 6111.45 and OAC Rule 3745-42.

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. As soon as possible, but not later than eighteen (18) months from the effective date of these Orders, Respondent shall submit to Ohio EPA for approval a general plan for sewage improvements or other methods of abating pollution and correcting the unsanitary conditions, pursuant to ORC Chapter 6111. The general plan shall address, at a minimum, the following items:

    a. Alternatives for treating sewage from the affected areas including, but not limited to, the following options:

        i. No discharge to surface waters by connecting to existing sewers and directing sanitary sewage flows to the nearest regional wastewater treatment plant;

    b. Proposed locations of collection and treatment facilities;

    c. Cost estimates for the required improvements and cost effectiveness analysis of the alternatives based on total present worth. The cost

effectiveness analysis must include the total construction costs of each alternative as well as operation, maintenance, and replacement costs, and should use the following assumptions:

i. The analysis must be for a twenty (20) year period; and

ii. Assume an interest rate of 6.5% per annum.

d. The financial mechanisms to be used to fund the required improvements, as well as the operation, maintenance, and replacement costs;

e. An implementation schedule for submitting a complete permit to install ("PTI") application and approvable detail plans, awarding construction bids, starting and completing construction, and attaining compliance with ORC Chapter 6111 and the administrative rules promulgated thereunder.

2. Upon Ohio EPA's approval of the general plan, Respondent shall implement the general plan in accordance with the implementation schedule required by Order 1.e.

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.

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 in the 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. 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
Northeast District Office
Division of Surface Water
Attn: Enforcement Supervisor
2110 E. Aurora Road
Twinsburg, Ohio 44087

and to:

Ohio Environmental Protection Agency
Division of Surface Water
Attn: Enforcement Section
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 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

Scott Nally
Director

4/11/13
Date

IT IS SO AGREED:

City of Avon

James A. Smith
Signature

4/12/2013
Date

James A. Smith
Printed or Typed Name

Mayor of Avon
Title