

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

Mayor and Council	:	<u>Director's Final Findings</u>
Village of Malinta	:	<u>and Orders</u>
103 ½ N. Turkeyfoot Ave.	:	
Malinta, Ohio 43535	:	

PREAMBLE

Pursuant to Ohio Revised Code (ORC) Sections 6111.03 and 3745.01, the Director of the Ohio Environmental Protection Agency (Ohio EPA) hereby makes the following Findings and issues the following Orders:

PARTIES BOUND

These Orders shall apply to and be binding upon the Village of Malinta, hereinafter "Respondent", and its assigns and successors in interest liable under Ohio law. Respondent's obligations under these Orders may be altered only by the written action of the Director of the Ohio EPA.

FINDINGS OF FACT

1. Respondent is the Village of Malinta located in Henry County, Ohio.
2. The Village of Malinta consists of approximately 109 homes, 2 churches, an elementary school, and 13 businesses.
3. A centralized wastewater collection system is currently unavailable in the Village of Malinta.
4. Many residences and businesses in the Village have inadequate or failing sewage disposal systems. Some of these systems are connected directly to Respondent's storm water sewer system. Other systems are discharging septic wastewater directly into South Turkeyfoot Creek.
5. South Turkeyfoot Creek flows into the Maumee River which then flows into Lake Erie. South Turkeyfoot Creek, the Maumee River, and Lake Erie are defined as "waters of the state" in accordance with ORC Chapter 6111.01.

6. Sampling conducted on July 31, 1997, August 25, 1997, and September 11, 1997 of South Turkeyfoot Creek, south of the Village of Malinta, revealed elevated levels of fecal coliform in violation of Ohio's water quality standards. On two of the three sampling dates, fecal coliform levels increased between Malinta's upstream and downstream sampling sites.
7. Sampling of South Turkeyfoot Creek conducted on August 2, 1999 and August 11, 1999 again revealed violations of Ohio's water quality standards for fecal coliform at five sampling locations on both dates.
8. Storm sewer discharges were observed to be a grayish to blackish color effluent with odors due to anaerobic decomposition of organic matter. Substrates in the mixing zone of South Turkeyfoot Creek were found to be covered with sludge and bacteria growth.
9. The sampling data collected by Ohio EPA demonstrates a public health nuisance in accordance with the Ohio Administrative Code Rule 3745-1-04.
10. Lot sizes in the Village of Malinta, in general, are too small to facilitate on-lot replacement systems for failing sewage systems. Accordingly, requiring improvements to individual disposals systems will not likely result in compliance with water quality standards.
11. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
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.

ORDERS

1. As soon as possible, but not later than twelve (12) months from the effective date of these Orders, Respondent shall submit to Ohio EPA 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. Centralized treatment;
 - ii. No discharge to surface waters by connecting to existing sewers and directing sanitary sewage flows to the nearest regional wastewater treatment plant;
 - iii. No discharge to surface waters by utilizing land application for wastewater disposal;
 - iv. Limiting the discharge to surface waters by constructing controlled discharge lagoons; and
 - v. Limiting the discharge to surface waters by using constructed wetlands.
- b. Proposed locations of collection and treatment facilities if deemed appropriate.
- 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. Implementation schedule for submitting a complete NPDES permit application, if necessary, 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. Respondent shall submit all documents required by these Orders to the following address:

Ohio EPA, Northwest District Office
Attn: DSW Enforcement Unit Supervisor
347 North Dunbridge Road
Bowling Green, Ohio 43402

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. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Respondent.

RESERVATION OF RIGHTS

These Orders do not prevent Ohio EPA from enforcing 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. These Orders do not prevent Ohio EPA from exercising its authority to require Respondent to perform additional activities pursuant to Chapter 6111 of the Ohio Revised Code or any other applicable law in the future. These Orders do not restrict the right of Respondent to raise any administrative, legal or equitable claim or defense for any additional activities that Ohio EPA may seek to require of Respondent. These Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

TERMINATION

Respondent's obligations under these Orders shall be satisfied and terminated when Respondent demonstrates in writing and certifies to the satisfaction of Ohio EPA that it has satisfied all its obligations under these Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges the termination of these Orders in writing.

This certification shall be submitted by Respondent to the Northwest District Office (attention: DSW Enforcement Group Leader) and shall be signed by a responsible official of the Respondent. A responsible official is as defined in OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility. The certification shall contain the following attestation:

"I certify under the penalty of law that I have personally examined and am familiar with the information contained in or accompanying this certification, and based on inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

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 agrees to comply with these Orders, Respondent agrees that these Orders are lawful and reasonable, and Respondent agrees that the times provided for compliance herein are reasonable. Compliance with these Orders shall be a full accord and satisfaction of Respondent's liability for the violations specifically cited herein. Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph of these Orders.

Respondent hereby waives the right to appeal the issuance, terms and service of these Orders, and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that 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 agrees to continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

SIGNATORY AUTHORITY

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO AGREED:

Respondent

By: Robert J. Coressel Date: FEBRUARY 20, 2002
ROBERT J. CORESSEL, MAYOR OF THE VILLAGE OF MALINTA
Name & Title: _____

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones Date: 3-7-02
Christopher Jones
Director