

A. Conway

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
DEC - 1 2008

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Village of Cloverdale  
210 Mahoning Street  
Cloverdale, OH 45827

: 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: D. M. Kessiter Date: 12-1-08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Village of Cloverdale ("Respondent" or "Village") 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 Chapter 6111., and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

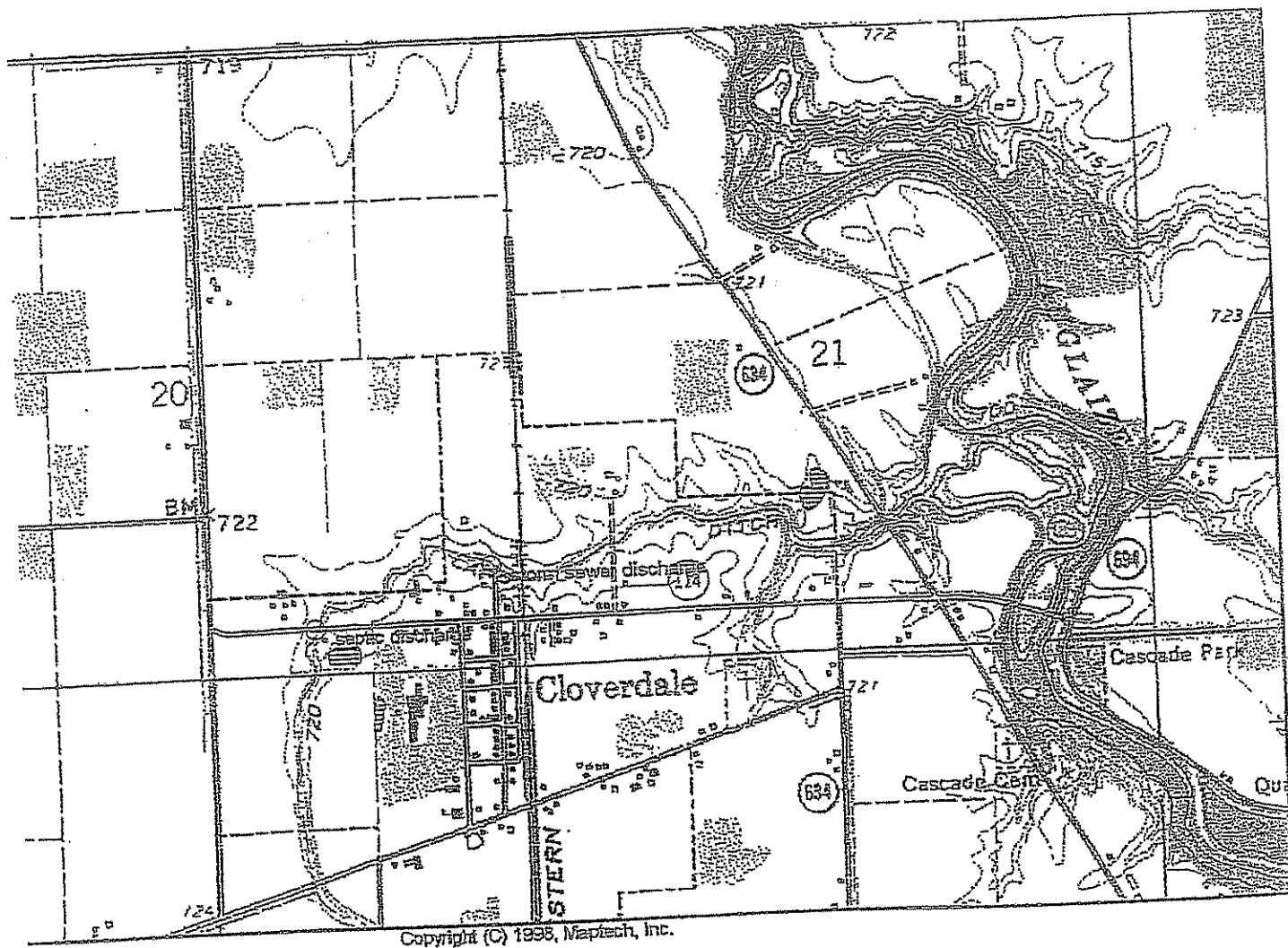
1. Respondent is an incorporated village in Perry Township, Putnam County, encompassing 0.60 square miles and having a 2000 census year population of 201 and an estimated population in July, 2006 of 197 (-2.0% change).
2. The following chart provides a comparison of the Village to the State:

<i>Subject</i>	<i>Cloverdale</i>	<i>Ohio</i>
Estimated Median household income in 2005	\$36,500	\$43,493
Estimated median house/condo value in 2005	\$64,900	\$129,600

<b>Subject</b>	<b>Cloverdale</b>	<b>Ohio</b>
Median real estate property tax paid for housing units in 2000	1.0% (\$600)	1.2% (\$1,271)
Residents with income below the poverty level in 1999	19.9%	10.6% (whole state)
Residents with income below 50% of the poverty level in 1999	2.4%	4.8% (whole state)

3. There are 8 commercial establishments in the Village.
4. The Village does not have a centralized collection and treatment system for sanitary wastewater; with residents primarily served by on-lot type systems, such as septic tanks.
5. Due to the absence or failure of leaching tile fields, on-lot systems often have discharges to streams. These discharges are occasionally from individual households, but are often from a common storm sewer outlet, which is the situation in the Village.
6. Discharges from the Village primarily impact Lapp Ditch. Within the Village several septic discharges of varying degree were noted during the below described sampling event, with the most severe being located on Lapp Ditch at the end of Mahoning Street. The discharge originates from the Village's storm sewer.
7. Lapp Ditch is a waters of the state.
8. A map of the discharge is set forth below on the next page.

(continued after map)



9. Sampling was performed in 2006 and 2007 at Lapp Ditch at State Route 114 (an upstream site) and Lapp Ditch at the end of Mahoning Street (the site at which the on-lot type systems discharge). The results are reported below:

<i>Location</i>	<i>Date Time</i>	<i>Fecal Coliform (# / 100 ml)</i>	<i>Odor</i>	<i>Visual Observations</i>
Lapp Ditch at State Route 114  (up stream site)	08/15/06 12:15	6,100	none	grayish (mostly cloudy) algae
	09/04/07 12:50	3,000	slight	greyish (mostly just cloudy)
	09/24/07 13:27	1,700	moderate	blackish *(cloudy)
Lapp Ditch at end of Mahoning Street  (site at which the on-lot type systems discharge)	08/15/06 11:55	73,000	strong	greyish (cloudy entire stream) sludge deposits sewage fungus
	09/04/07 12:40	>200,000	strong	greyish (cloudy) sludge deposits sewage fungus
	09/24/07	170,000	strong	whitish greyish (cloudy) sewage fungus

10. Ohio Administrative Code ("OAC") Rule 3745-1-04(F) provides that it is a general Ohio water quality criterion 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.
11. 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 5,000 fecal coliform counts per 100 milliliters in two or more samples when five or fewer samples are collected, or in more than 20 percent of the samples when more than five samples are taken.

12. The sampling data and observations confirm the 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.
13. Small lot sizes, in conjunction with local soil conditions and local hydrology, make the replacement or repair of existing on-site sewage disposal systems an unacceptable solution to remedy the unsanitary conditions.
14. It is necessary for the public health and welfare that sewer improvements or sewage treatment or disposal works be constructed, maintained, and operated to serve the Village.
15. ORC § 6111.03(H) provides, among other things, that the Director may issue 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.
16. 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 Chapter 3745-42.
17. 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 the unsanitary conditions throughout the Village 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, connection to an existing or planned wastewater treatment plant;
  - 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 and approvable permit to install applications, 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.

#### **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(E)(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 activities occurring on or at the Facility.

### **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**

Unless otherwise stated herein, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Northwest District Office  
Division of Surface Water  
Attn: DSW Enforcement Unit Supervisor  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

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.

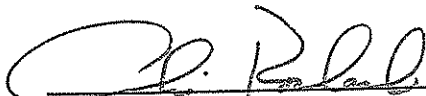
**XIII. EFFECTIVE DATE**

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**

  
\_\_\_\_\_  
Chris Korleski,  
Director

11/26/08  
Date

**IT IS SO AGREED:  
Village of Cloverdale**

  
\_\_\_\_\_  
Signature

10-2-08  
Date

Lelas Prowant  
\_\_\_\_\_  
Printed or Typed Name

Mayor  
\_\_\_\_\_  
Title