

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

AUG 25 2011

ORDERED DIRECTOR'S JOURNAL

In the Matter of:

City of Toledo
One Government Center
Toledo, Ohio 43624

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:
:

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: Andy Cassiter Date: 8/25/11

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Toledo ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("R.C.") §§ 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.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in R.C. Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The Dearden Place and Birdsall road area ("the Site") is an unsewered section located within the corporation limits of Respondent, and consists of a number of private residences and businesses.
2. The properties located within the Site dispose of their sewage through a sewer network that empties into a private septic tank located under Dearden Place with an outlet to the City's storm sewers along Detroit Avenue, and leading to Silver Creek. This network of sewers was discovered in 2003, but has existed for numerous years prior to that date. The septic tank and sewer network discharges "sewage" and/or "other wastes", as those terms are defined in R.C. 6111.01.

3. Silver Creek constitutes "waters of the state" as defined in R.C. 6111.01
4. Respondent was notified by Ohio EPA, Northwest District Office of this network and requested Respondent to abate the unsanitary conditions by providing public sewers to this area. Respondent submitted a permit to install ("PTI") and plans to install sewers to serve this area and received approval of the PTI on May 18, 2007. However, the permit expired without installation of the sewers.
5. Respondent again applied for a PTI and again received approval for the same plans on August 24, 2009. Respondent requested a 12 month extension on the PTI on January 28, 2011.
6. Ohio EPA sampled the outlet pipe from the septic tank leading to the storm sewer system as well as the storm sewer pipe that discharges to Silver Creek. The samples indicated high levels of fecal coliform and *E. Coli*. The sample results are set forth below:

Date	E. Coli (# / 100 mL)	Location
7/29/2008	1200	End of storm sewer pipe at Silver Creek
9/12/2008	>200,000	End of outlet pipe from septic tank
7/28/2008	1600	Silver Creek 15 feet downstream of storm sewer pipe
10/13/10	3900	Silver Creek 15 feet downstream of storm sewer pipe
11/9/10	5000	Silver Creek 15 feet downstream of storm sewer pipe

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 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.
8. The sampling data and investigation by Ohio EPA confirm the existence of unsanitary

conditions, document violations of Ohio's general water quality criteria set forth in OAC Rule 3745-1-04, and demonstrate a public health nuisance in accordance with OAC Rule 3745-1-04.

9. 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.
10. 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.
11. Pursuant to R.C. § 6111.07(A), no person shall violate or fail to perform any duty imposed by R.C. §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
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 R.C. Chapter 6111.

V. ORDERS

1. Within eighteen (18) months of the effective date of these Orders, Respondent shall initiate construction of sewer plans in accordance with its August 24, 2009 approved PTI to abate the unsanitary conditions at the Site.
2. Within twenty eight (28) months of the effective date of these Orders, Respondent shall complete construction of the sewer plans in accordance with its approved PTI.
3. Within 14 days of completing the requirements in Orders 1 and 2, Respondent shall provide notice, in writing, to the Ohio EPA of the completion of each Order. Notice shall be sent to the addresses in Section X of these Orders.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrate 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 Respondent pursuant to Ohio Administrative Code 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 on or at the Site.

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 for the Site 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

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
Attn: Manager, Stormwater and Enforcement Section
50 W. Town Street [P.O. Box 1049]
Columbus, Ohio 43215 [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

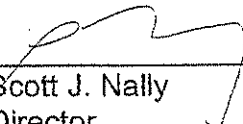
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



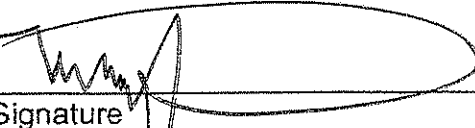
Scott J. Nally
Director

8/25/11

Date

IT IS SO AGREED:

City of Toledo

OK
Edm


Signature

8/2/11

Date

MICHAEL P BELL

Printed or Typed Name

Mayor

Title