

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Franklin County Board of Commissioners  
373 South High Street (26th Floor)  
Columbus, Ohio 43215

Director's Final Findings  
and Orders

**Respondent**

JURISDICTION

Pursuant to Ohio Revised Code (ORC) Sections 3745.01 and 6117.34, 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 Franklin County Board of Commissioners, 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

1. The community of Darbydale, (hereafter, the "Darbydale Area), is an unincorporated area in Pleasant Township, Franklin County, Ohio. This area is bounded by: Lewis Drive (including the east side of Norton Road and the west side of Norton Road up to and including 5269 Norton Road) to the north; Harrisburg Georgesville Road (including 5570 - 5616 Harrisburg Georgesville Road and including 7174 London Groveport Road) to the west; Big Darby Creek (including Oak Hill Mobile Park) to the south; London Groveport Road a.k.a. State Route 665 (up to and including 6594 London Groveport Road on the north side and 6601 London Groveport Road on the south side) to the east; and the Community Gardens Mobile Home Park, Pleasant Acres Mobile Home Park and 6310 London Groveport Road, also to the east.

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Zona L. Clement Date: 2-1-02

2. Centralized wastewater treatment facilities are currently unavailable in the Darbydale Area.
3. The homes and commercial businesses located in the Darbydale Area are served by failing on-site sewage disposal systems and home aerators that discharge raw or partially treated sewage to storm sewers and roadside ditches. The storm sewers (drainage systems) and roadside ditches discharge directly to Big Darby Creek and to an unnamed tributary of Big Darby Creek, which are defined as "waters of the state" pursuant to ORC Section 6111.01.
4. Investigations and sampling events conducted by Ohio EPA on October 17, 18, 19, 29, 30, and 31, 2001, revealed evidence of unsanitary conditions. Ohio EPA staff observed soap suds in storm sewers, greyish water indicative of untreated sewage and solids in the unnamed tributary of the Big Darby Creek and smelled odors of untreated sewage.
5. Sampling results from October 17 and 30, 2001 for E. Coli bacteria confirmed the existence of unsanitary conditions and documented violations of Ohio's general water quality criteria set forth by Ohio Administrative Code (OAC) Rule 3745-1-04.
6. Ohio EPA received a letter from the Franklin County District Board of Health ("Board of Health") dated November 19, 2001, requesting an investigation pursuant to ORC Section 6117.34 of unsanitary conditions in the Darbydale Area. A copy of Resolution 01-086 declaring unsanitary conditions is attached hereto as "Attachment 1".
7. Pursuant to ORC Section 6117.34, whenever the board of health of a general health district makes complaint, in writing, to the Ohio Environmental Protection Agency that unsanitary conditions exist in any county, the Director forthwith shall inquire into and investigate the conditions complained of.
8. On November 21, 2001, Ohio EPA conducted a follow up investigation of the conditions alleged in the Board of Health's complaint. Results of that investigation verified that the unsanitary conditions observed in October, 2001 still existed.
9. 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.

10. Pursuant to ORC Section 6117.34, if, upon investigation of the complaint, the Director finds that it is necessary for the public health and welfare that sanitary or drainage facilities be acquired or constructed, maintained, and operated to serve any territory outside municipal corporations in any county, the Director shall notify the board of county commissioners of the county of that finding and order that corrective action be taken. The board shall obey the order.
11. It is necessary for the public health and welfare that sewer improvements or sewerage treatment or disposal works be constructed, maintained, and operated to service the Darbydale Area.

#### ORDERS

1. Within twelve (12) months of the effective date of these Orders, Respondent shall submit a complete permit-to-install (PTI) application, approvable detailed plans, an Antidegradation Addendum, and a NPDES permit application to sewer the Darbydale Area. The PTI application shall define several phases of the project. Each phase shall have a specific date for starting and completing construction.
2. Within twelve (12) months of the effective date of these Orders, Respondent shall submit a summary report that includes a copy of the financial mechanisms to be used to fund the required improvements, operation and maintenance, and replacement costs, as well as an implementation schedule for awarding bids, starting and completing construction, and all other significant milestones.
3. Within six (6) months after the receipt of an approved PTI, Respondent shall initiate construction of the sewage system in accordance with its approved PTI.
4. Within thirty (30) months after the receipt of an approved PTI, the Respondent shall complete the sewage system installation in accordance with its approved PTI and achieve compliance with Ohio's water pollution control laws.
5. Respondent shall exercise all authority under ORC Section 6117.51 to compel all homes and businesses in the Darbydale Area to connect sewage flows to the public sanitary sewer and cease use of currently existing sewage disposal systems.

6. Within fourteen (14) days of completing the requirements in Orders 3 and 4, Respondent shall notify Ohio EPA in writing of the completion of each Order.
7. All documents required under these Orders, unless specified otherwise, shall be submitted to:

Ohio EPA Central District Office  
ATTN: DSW Enforcement Group Leader  
3232 Alum Creek Drive  
Columbus, Ohio 43207-3417.

#### **OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be taken 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 the 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 terminate when Respondent demonstrates in writing and certifies to the satisfaction of Ohio EPA that all obligations under these Orders have been performed and Ohio EPA, Division of Surface Water, acknowledges in writing this demonstration and certification. This certification shall be submitted by Respondent to the Central District Office (Attention: DSW Enforcement Group Leader) and shall be signed by a responsible official of Respondent. A responsible official is as defined in OAC rule 3745-33-03(D)(1) for a corporation, OAC rule 3745-33-03(D)(2) for a partnership, OAC rule 3745-33-03(D)(3) for a sole proprietorship, and 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 my 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, Respondent agrees to comply with these Orders, and Respondent agrees that these Orders are lawful and reasonable, and that the times provided for compliance herein are reasonable. 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 rights 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.

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:  
Franklin County Board of Commissioners

Dwight R. Stokes  
By

1-14-02  
Date

Name & Title  
Debra Shomaker  
By

1-15-02  
Date

Name & Title

Franklin County Board of Commissioners (contd.)

By Mary J. Helroy  
Commissioner  
Name & Title

1-15-02  
Date

**IT IS SO ORDERED AND AGREED:**  
**Ohio Environmental Protection Agency**

Christopher Jones  
Christopher Jones  
Director

1-30-02  
Date

Held \_\_\_\_\_ (YEAR)

RESOLUTION 01-086

November 13, 2001

RESOLUTION TO DECLARE UNSANITARY CONDITIONS  
IN THE DARBYDALE AREA, PLEASANT TOWNSHIP,  
FRANKLIN COUNTY, OHIO

WHEREAS, Darbydale, an area bounded by: Lewis Drive (including the east side of Norton Road and the west side of Norton Road up to and including 5269 Norton Road) to the north; Harrisburg Georgesville Road (including 5570 - 5616 Harrisburg Georgesville Road and including 7174 London Groveport Road) to the west; Big Darby Creek (including Oak Hill Mobile Home Park) to the south; London Groveport Road a.k.a. State Route 665 (up to and including 6594 London Groveport Road on the north side and 6601 London Groveport Road on the south side) to the east; and Community Gardens Mobile Home Park, Pleasant Acres Mobile Home Park and 6310 London Groveport Road, also to the east; has a serious sewage disposal problem which has the potential of adversely effecting the residents of the area and pollute the waters of the state, including the Big Darby watershed; and

WHEREAS, it is in the best interest of the public health, safety, and well being to abate this unsanitary condition.

Now, therefore, upon motion of Board Member OZMUN,  
seconded by Board Member BOPE,

BE IT RESOLVED BY THE FRANKLIN COUNTY BOARD OF HEALTH, BOARD MEMBERS:

1. The Board of Health declares the current sewage disposal problems with the aforementioned areas an unsanitary condition which threatens the health, safety, and well being of its residents.
2. Pursuant to Ohio Revised Code 6117.34, the Board of Health authorizes the Health Commissioner to make a complaint to the Ohio Environmental Protection Agency regarding the existence of this unsanitary condition.

