

BEFORE THE

OHIO E.P.A.

OHIO ENVIRONMENTAL PROTECTION AGENCY

JUN 19 2006

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Pheasant Run Association  
317 Turtle Creek  
LaGrange, Ohio 44050

: Director's Final  
: Findings and Orders  
:

Respondent

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders (Orders) are issued to Pheasant Run Association (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.

**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 made the following findings:

1. Respondent is a nonprofit corporation homeowner's association located in LaGrange, Ohio in Lorain County for the Pheasant Run residential development located in LaGrange. The Association operates its own wastewater plant, a 100,000 gallon per day package plant, to treat wastewater from the development.
2. The Director issued Findings and Orders to Respondent on November 21, 2001, directing the Association to make improvements to its wastewater treatment plant

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

*[Signature]* Date 6-19-06

(WWTP) necessary to meet the effluent limits and terms and conditions of NPDES permit 3PW00001\*DD. A connection ban was also imposed in these Orders.

3. The Director issued a second set of Findings and Orders on March 28, 2003, terminating the earlier Orders. The new Orders required the Association to, among other things, install upgrades to its plant; and, in paragraphs 3.B(i) and (ii):
  - (i) evaluate the effectiveness of the WWTP clarifiers and submit a PTI to address deficiencies, and at a minimum, evaluate the flow splitting into the clarifier, return pumping capacity, and weir elevations; and
  - (ii) commence and complete construction in accordance with the PTI.
4. Respondent has not fully complied with the requirements of the Director's Findings and Orders issued March 28, 2003. Also, Respondent has not complied with paragraph 3.B. In April 2003, with Respondent's consent, an evaluation was done of the effectiveness of the WWTP clarifiers by members of Ohio EPA's Compliance Assistance Unit. Eight (8) limitations were identified on the existing treatment system and it was recommended that Respondent construct a new clarifier based on Ten States Standards.
5. In September 2005, Respondent submitted an application for a permit to install (PTI) for new clarifiers and to make other modifications to its WWTP. This PTI was issued March 9, 2006. This PTI and modifications thereto approved by the Director shall be referred in these Orders as the "March 9, 2006 PTI."
6. In 2005 and 2006, the discharge from Respondent's WWTP repeatedly violated effluent limitations imposed in NPDES permit 3PW00001\*ED for total suspended solids, CBOD, nitrogen and ammonia. These discharges have flowed via a ditch into Wellington Creek, a tributary of the West Branch of the Black River. The ditch, Wellington Creek and Black River are all "waters of the state" as that term is defined in ORC 6111.01(H).
7. Specifically, discharge from Respondent has violated NPDES permit 3PW00001\*ED limits, set forth in columns 3 and 4 in the chart below, by discharging effluent from outfall 001 that exceeds those limits as described in column 5 below:

Date (Month/Year) of Violation	Brief Description of Violation				
January 2005	Total Suspended Solids	7D Conc	18	46.	1/1/2005
January 2005	Total Suspended Solids	7D Qty	6.8	46.7371	1/1/2005
January 2005	Total Suspended Solids	30D Conc	12	14.375	1/1/2005
January 2005	Total Suspended Solids	30D Qty	4.5	12.9792	1/1/2005
January 2005	CBOD 5 day	7D Qty	5.7	5.79673	1/1/2005
May 2005	Total Suspended Solids	7D Conc	18	42.	5/1/2005
May 2005	Total Suspended Solids	7D Qty	6.8	8.10747	5/1/2005
May 2005	Total Suspended Solids	30D Conc	12	13.625	5/1/2005
May 2005	CBOD 5 day	7D Conc	15	61.5	5/1/2005
May 2005	CBOD 5 day	7D Qty	5.7	16.0616	5/1/2005
May 2005	CBOD 5 day	30D Conc	10	15.375	5/1/2005
May 2005	CBOD 5 day	30D Qty	3.8	4.01541	5/1/2005
August 2005	Nitrogen, Ammonia (NH3)	7D Conc	2.3	2.6	8/15/2005
August 2005	Nitrogen, Ammonia (NH3)	7D Qty	0.8	0.83705	8/15/2005
September 2005	Nitrogen, Ammonia (NH3)	7D Conc	2.3	7.39	9/1/2005
September 2005	Nitrogen, Ammonia (NH3)	7D Qty	0.8	1.97638	9/1/2005
September 2005	Nitrogen, Ammonia (NH3)	7D Conc	2.3	7.305	9/8/2005
September 2005	Nitrogen, Ammonia (NH3)	7D Qty	0.8	2.37806	9/8/2005
September 2005	Nitrogen, Ammonia (NH3)	30D Conc	1.5	3.32667	9/1/2005
September 2005	Nitrogen, Ammonia (NH3)	30D Qty	0.5	0.99416	9/1/2005
January 2006	Total Suspended Solids	30D Conc	12.0	221.5	1/1/2006
January 2006	Total Suspended Solids	30D Qty	4.5	107.112	1/1/2006
January 2006	CBOD 5 day	30D Qty	3.8	13.3705	1/1/2006
January 2006	CBOD 5 day	30D Conc	10	27.75	1/1/2006
January 2006	Total Suspended Solids	30D Conc	18.0	882.5	1/15/2006
January 2006	Total Suspended Solids	30D Qty	6.8	427.496	1/15/2006
January 2006	CBOD 5 day	30D Qty	5.7	53.2928	1/15/2006
January 2006	CBOD 5 day	30D Conc	15	110	1/15/2006

8. In violation of NPDES permit 3PW00001\*FD, sewage solids from the plant have also overflowed the plant at least four times in 2005 and at least six times in 2006. The solids have flowed into the ditch referred to in paragraph 5 of these Orders and onto the property of a downstream resident. NPDES permit 3PW00001\*FD does not authorize the discharge of such sewage into waters of the state. The dates of the overflows are noted in the following chart:

June 2005	Sludge Solids Spill
November 28, 2005	Sludge Solids Spill
November 29, 2005	Sludge Solids Spill
December 23, 2005	Sludge Solids Spill
January 2, 2006	Sludge Solids Spill
January 19, 2006	Sludge Solids Spill
February 3, 4 & 5, 2006	Sludge Solids Spill
February 19, 2006	Sludge Solids Spill
March 21, 2006	Sludge Solids Spill
April 4, 2006	Sludge Solids Spill
April 30, 2006	Sludge Solids Spill
May 6, 2006	Sludge Solids Spill

9. ORC 6111.04(A) provides no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.
10. Ohio Administrative Code (OAC) 3745-33-02 provides no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio NPDES permit in accordance with the requirements of OAC Chapter 3745-33.
11. ORC 6111.04(C) provides that no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit without first receiving a permit from the director to do so.
12. ORC 6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violating any order, rule, or term or condition of a permit issued or adopted by the director of Environmental Protection pursuant to those sections. Each day of violation is a separate offense.
13. In failing to comply with the Director's Findings and Orders issued March 28, 2003, Respondent has violated ORC 6111.07(A).
14. In allowing discharges to waters of the state in excess of the permissible limits contained in NPDES permit 3PW00001\*ED, Respondent has violated ORC 6111.04(C).

15. In allowing discharges of solids to waters of the state, Respondent has violated ORC 6111.04(A) and OAC 3745-33-02.
16. 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 achieve compliance with the final effluent limitations of NPDES permit number 3PW00001\*ED as expeditiously as practicable, but not later than December 9, 2006.
2. By November 9, 2006, Respondent shall complete construction/installation of, and shall place into operation, the final clarifiers described in the March 9, 2006 PTI and all other improvements necessary to place the clarifiers on line. By February 9, 2007, whichever is later, Respondent shall complete construction/installation of, and shall place in operation, the remaining (other than the final clarifiers) equipment and upgrades described in the March 9, 2006 PTI.
3. By December 9, 2006, Respondent shall not discharge sewage, industrial waste, or other waste from its WWTP in excess of effluent limits contained in NPDES permit 3PW00001\*ED, or in any modifications or renewal of that permit.
4. Respondent shall be prohibited from allowing connection to its sewer system any additional residential or other sources or sewage, industrial waste or other waste. This connection prohibition shall not apply to residential homes that have received a building permit and are currently under construction at the time of issuance of these orders. The connection ban shall last until the requirements of Orders 1 and 2 are complied with in full.
5. Within thirty (30) days of the effective date of these Orders, Respondent shall commence an infiltration and inflow analysis of its sewage collection system. By September 1, 2006, Respondent shall submit a report of the analysis and a plan for eliminating sources of infiltration and inflow. The report shall include recommendations as to what portion of infiltration and inflow can be cost effectively removed, what portion of infiltration and inflow will not be removed and will have to be handled at the WWTP and future improvements required, if any, to the WWTP to handle the infiltration and inflow not removed. The plan shall include a schedule

for implementing the recommendations of the report. Ohio EPA will review the report and plan, and may require modifications to the plan if Ohio EPA believes that additional infiltration or inflow reasonably can be removed. Upon approval by the Ohio EPA of the plan, or the plan as modified, Respondent shall complete the reduction of the sources of infiltration and inflow recommended in the approved plan within six months after approval by Ohio EPA. Ohio EPA reserves the right to require in the future additional removal of infiltration and inflow as need be, outside the terms of these Orders.

6. Within sixty (60) days after the effective date of these Orders, Respondent shall enact and enforce any necessary rule or regulation governing homes connecting to Respondent's WWTP, which rule or regulation prohibits clean water connections to the collection system.
7. Respondent may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondent has maintained compliance with this Order for a period of three hundred and sixty-five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section VI. of these Orders.
8. Nothing in these Orders shall be construed as a waiver of the Ohio EPA's right to seek a penalty for the violations cited in these Orders, either in a future administrative order or through the Attorney General of Ohio. Ohio EPA reserves its rights and intends to impose a civil penalty for these violations but believes that conditions warrant the issuance of these orders in advance of obtaining a penalty.

#### **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 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 Respondent.

#### **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 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 shall be addressed to:

Ohio Environmental Protection Agency  
Northeast District Office  
Division of Surface Water  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: Enforcement Coordinator

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI. 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**

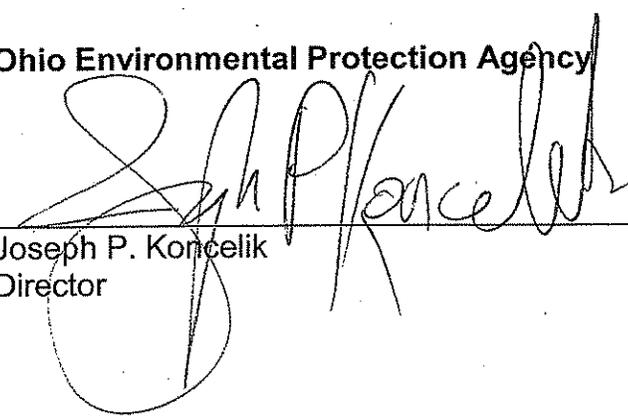
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

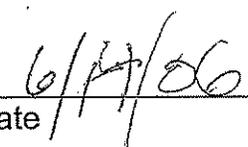
**XIV. SIGNATORY AUTHORITY**

Each undersigned representative or 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

  
\_\_\_\_\_  
Joseph P. Koncelik  
Director

  
\_\_\_\_\_  
Date