

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

AUG 13 2008

ENTERED DIRECTOR'S JOURNAL

In the matter of:

Bright Innovations, LLC
5141 Bixford Avenue
Canal Winchester, Ohio 43110

: Director's Final Findings
: and Orders
:
:
:

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.

Respondent

By: [Signature] Date: 8-13-08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Bright Innovations, LLC ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03, 6111.46 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its 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 there under.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is Bright Innovations, LLC. Respondent owns and operates properties located at 5650 Groveport Road and 5600 Saltzgeber Road in Groveport, Ohio.
2. At the 5650 Groveport Road property, Respondent owns three commercial buildings that utilize "temporary" sewage holding tanks approved by Ohio EPA on August 26, 1998 under Permit to Install (PTI) 01-7694. Wastewater from the

facility is periodically pumped and hauled to the City of Columbus for disposal at one of Columbus' wastewater treatment plants. This arrangement was approved under the assurance that Groveport sanitary sewers would be available within two years and with the special condition in the PTI that if Groveport sanitary sewers were not available within the two year period then Respondent would have to install an equivalent system.

3. In 2004, the Village of Groveport contracted EMH&T to design a sanitary sewer along Groveport Road that extended the existing 12 inch sewer in a northwesterly direction to a point west of 5521 Groveport Road (First Baptist Church of Groveport). A "Final Report – Groveport Road Sanitary Sewer Special Assessment District" dated April 12, 2006 was completed by EMH&T and included a summary of the project, the estimated project costs, and possible alternatives for establishing a sewer district.
4. As of July 5, 2006 Groveport sanitary sewers were not available and Respondent had not installed an equivalent system. Therefore, Ohio EPA issued a Notice of Violation (NOV) to Respondent informing Respondent of the need to contact the Village of Groveport to determine status of sanitary sewers along Groveport Road and to plan on installing an equivalent system if sewers were not going to be installed.
5. In a letter to Ohio EPA dated July 18, 2006, Ms. Diana Ward-Bright of Bright Innovation LLC stated that the Village of Groveport's plans to extend sanitary sewers along Groveport Road was, in her opinion, cost prohibitive and indicated her belief that Groveport would find ways of lowering the cost. Accordingly, she requested Ohio EPA to delay action on her facility.
6. On August 14, 2006, Ohio EPA sent a letter to Ms. Ward-Bright stating that some of the costs mentioned in her July 18th letter did not appear correct and she should discuss the costs with the Village. The letter gave her 45 days to submit a PTI for wastewater treatment system or respond within 25 days that she would pursue sanitary sewer service from Groveport. No response was received.
7. As of July 31, 2008, Respondent continues to operate in violation of the Permit to Install issued to it for the property at 5650 Groveport Road on August 26, 1998 and in violation of ORC Section 6111.07. The violations began August 26, 2000.
8. Respondent also owns a property located at 5600 Saltzgaber Road. This property is adjacent to 5650 Groveport Road. This property consists of a retail strip mall located along Groveport Road and a residential property along Saltzgaber Road. The retail strip mall appears to have been constructed over a leach field that served the property originally. Currently, the strip mall is served by an un-permitted septic and leach system in a grassed area along Groveport

Road in violation of OAC Chapter 3745-42 and Ohio Revised Code Sections 6111.44 and 6111.07.

9. Respondent's systems at both the 5650 Groveport Road property and 5600 Saltzgaber Road property are considered a "semi-public disposal system" as defined by OAC Rule 3745-33-01(KK). "Semi-public disposal system" means a disposal system which treats the sanitary sewage discharged from publicly or privately owned buildings or place of assemblage, entertainment, recreation, education, correction, hospitalization, housing or employment, but does not include a disposal system which treats sewage in amounts of more than twenty-five thousand gallons per day; a disposal system for the treatment of sewage that is exempt from the requirements of division (F) of section 6111.04 of the Revised Code; or a disposal system for the treatment of industrial waste.
10. Including Respondent's properties, there are fourteen parcels owned by nine landowners along Groveport Road that are served by individual sewage treatment systems. Seven of these parcels are semi-public facilities, three are single family rental properties, three are private residences and one is a fallow farm field.
11. Saint Mary's Catholic Church is a semi public system located along Groveport Road. Sewage from this facility is handled by a small sewage treatment plant (STP) consisting of a holding tank, aeration, clarification, sand filters, and a chlorine contact tank with tablet chlorination. This system discharges to waters of the state without an NPDES permit in violation of ORC Section 6111.04 and 6111.07 and Ohio Administrative Code Chapter 3745-33.
12. Recent water quality sampling by Ohio EPA of the pool of water in the ditch at the outlet of the Saint Mary's storm water pump station has provided the following data:

Date	Fecal Coliform ¹	E. Coli ²	Conditions
10-4-07	2500	700	Dry weather
6-9-08	600	700	Dry weather
6-23-08	50000	N/A ³	Dry weather
7-7-08	400	180	Upstream flow

(counts / 100 ml)

¹ Secondary contact recreation criteria is 5000 FC counts/100 ml

² Secondary contact recreation criteria is 587 E. coli counts/100 ml

N/A – Not available

Indicates an exceedance of the secondary contact recreation criteria.

13. This water quality data unhealthy conditions in the roadside ditch immediately opposite its storm water pumping system. Some of these high bacterial counts

exceed the water quality criteria for secondary contact recreation in Ohio Administrative Code Rule 3745-1-07.

14. Access Storage is a semi-public system located along Groveport Road. It consists of an office, rental house, and commercial garage. Sewage treatment for these facilities is reported to be handled by a septic system and leach field. However, no records exist for such a system. As such, it is considered an unpermitted system.
15. The First Baptist Church of Groveport is a semi-public system located along Groveport Road. The church officially annexed into Groveport on November 13, 2003. In March 2004, First Baptist Church contacted Ohio EPA desiring to add a 100 child daycare facility. The wastewater system at the time of the proposed expansion was inadequately sized for this type of use. The church represented that Village officials were planning on extending the Greene Pointe Business Park Sanitary Sewer to serve properties along Groveport Road and anticipated that sewer would be constructed sometime in early 2005. Based on that representation, Ohio EPA, on April 28, 2004, approved the temporary use of the existing septic/leach system providing certain conditions were met. These conditions included that the church would have the septic tanks pumped out weekly and that if after 18 months from April 28, 2004 sanitary sewers were still not constructed, the church was to notify Ohio EPA so Ohio EPA could reevaluate the continued use of the leach field along with the weekly pumping. Given the extremely frequent need for pump out, the system is considered to be failing. This sewer line has yet to be extended.
16. The Groveport Church of Christ is a semi-public system located along Groveport Road. It has a permitted 1,500 gallon septic tank. This system appears to be adequate for the current church size. However, the Groveport Church of Christ has informed the Groveport Village Council that they wish to expand the church and include daycare facility within the near future. As such, they requested sanitary and water service be provided to allow for adequate treatment of wastewater from this facility.
17. The State Water Quality Management (WQM) Plan - Appendix 9-1 Section 25-P1b - *Southeast Quadrant, Management Agencies and Prescriptions* - Table 25-B identifies the Village of Groveport as a management agency with its own satellite sewage collection system within the Columbus City FPA.
18. The WQM plan provide that isolated pockets of existing residential and commercial development presently served by on-lot sewage disposal systems or aeration systems should be connected to central sewer systems where ever practical and feasible.

19. The WQM plan provides that the following factors should be assessed in deciding whether sewers are available and accessible:
 - o The legislative determination that household sewage treatment systems constitute a potential hazard to public health and a potential nuisance to be prevented when possible;
 - o whether a public health nuisance exists;
 - o whether sewers are required by the sanitary code;
 - o best available technology;
 - o technical feasibility;
 - o necessity of obtaining easements;
 - o cost; and
 - o other relevant considerations.
20. An engineering study undertaken by the Village of Groveport to provide sewers, in part, to the unsewered area along Groveport Road indicates sewers are technically feasible.
21. Long term sewer infrastructure needs for this area dictate that the sewer line serving the properties along Groveport Road be a gravity system designed to account for future growth as opposed to multiple force main connections that would have to be abandoned in the future.
22. By Orders dated August 13, 2008, the Catholic Diocese of Columbus is required to extend then tie into the Greene Pointe Business Park Sanitary Sewer owned by the Village of Groveport to the northwestern edge of its property at 5670 Groveport Road. At the completion of this project, the sewer will be available and accessible to Respondent's properties.
23. OAC Rule 3745-33-08(C) provides that "[n]otwithstanding the issuance or non-issuance of an NPDES permit to a semi-public disposal system, whenever the sewage system of a publicly owned treatment works becomes available and accessible, the permittee operating any semi-public disposal system shall abandon the semi-public disposal system and connect it into the publicly owned treatment works."
24. The Director has examined the facts at issue and has determined that upon completion of the work by the Catholic Diocese of Columbus as described in Finding 22, a publicly owned treatment works will be available and accessible to Respondent's properties.
25. The Director intends to require other semi public systems to extend the sewer and tie in as the sewer becomes available and accessible to the property in question.

26. 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 PTI requirements of Ohio Administrative Code ("OAC") Chapter 3745-42.
27. Compliance with the ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
28. 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

The Director hereby issues the following Orders:

1. As soon as possible but not later than 90 days from the completion of the sewer line installation by the Catholic Diocese of Columbus as described in Finding 22, Respondent shall submit a Permit to Install (PTI) application along with detailed plans necessary to:
 - a. Extend and then tie into the Greene Pointe Business Park Sanitary Sewer owned by the Village of Groveport from northwestern edge of property owned by Saint Mary Catholic Church's located at 5670 Groveport Road to where the property line of 5600 Saltzgaber Road abuts the intersection of Groveport Road and Saltzgaber Road (i.e. the northwest corner of the intersection of Groveport and Saltzgabor Road) and tie in both properties at 5650 Groveport Road and 5600 Saltzgaber Road; and
 - b. Properly abandon the current wastewater treatment systems for these properties.
2. Should Ohio EPA provide any written comments on the PTI application, Respondent shall respond to Ohio EPA within 14 days with the requested modifications/clarifications.
3. As soon as possible but not later than 120 days from the effective date of the PTI approval, Respondent shall commence construction in accordance with its PTI.

4. As soon as possible but not later than 60 days from commencing construction, Respondent shall complete construction and tie its wastewater into the sewer.
5. Until the compliance date set forth in Order 4, Respondent shall maintain in good working order and operate as efficiently as possible the treatment works and sewerage system currently serving Respondent's facility.

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 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.

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 the Director in accordance with OAC Chapter 3745-47.

X. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce 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 and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 6111 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

XI. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency



Chris Korleski
Director

8/13/08
Date