BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	:	
Columbiana County Board of Commissioners **County Courthouse** **Lisbon, OH 44432** **Re: Village of Kensington** **Respondent**	:	**Director's Final Findings and Orders**

OHIO E.P.A.
MAR 26 2002
ENTERED DIRECTOR'S JOURNAL

Jurisdiction

Pursuant to Ohio Revised Code ("ORC") Chapter 6111. and § 3745.01, the Director of the Ohio Environmental Protection Agency ("Ohio EPA") hereby makes the following Findings and issues the following Orders.

Parties Bound

These Director's Final Findings and Orders ("Orders") shall apply to and be binding upon the Columbiana County Board of Commissioners ("Respondent" or "Commissioners") 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 Ohio EPA.

Findings

The Director makes the following Findings:

1. The Village of Kensington ("Village") is an unincorporated area in Hanover Township, Columbiana County, Ohio.

2. Centralized wastewater treatment facilities are currently unavailable in the Village.

3. Sewage disposal in the Village is completely through the use of on-site sewage disposal systems, with many of the residential systems failing and discharging raw or partially treated sewage to Sandy Creek, which travels directly through the Village, and an unnamed tributary of Sandy Creek, which flows adjacent to a park and playground. Ohio EPA has not authorized these discharges.

4. Sandy Creek has a recreation use designation of primary contact, as established in Ohio Administrative Code ("OAC") rule 3745-1-24, with the following applicable criteria, as set forth in OAC rule 3745-1-07, Table 7-12:

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 Donya Jackson Date 3/26/02

Fecal coliform - geometric mean fecal coliform content (either MPN or MF), based on not less than five samples within a thirty-day period, shall not exceed 1,000 per 100 ml and fecal coliform content (either MPN or MF) shall not exceed 2,000 per 100 ml in more than ten per cent of the samples taken during any thirty-day period.

E. coli - geometric mean E. coli content (either MPN or MF), based on not less than five samples within a thirty-day period, shall not exceed 126 per 100 ml and E. coli content (either MPN or MF) shall not exceed 298 per 100 ml in more than ten per cent of the samples taken during any thirty-day period

5. Sampling of Sandy Creek was conducted by Ohio EPA on September 13, 2001, at two locations: (1) a bridge near the Dairy Mart, downstream from a sewage pipe; and (2) Route 30, under the bridge, downstream from the Village.

6. The results of the September 13, 2001 sampling event were:

   a. Dairy Mart: 25,000 fecal coliform/100ml; 410 *E.Coli*/100ml. Sewage sludge was observed in the stream, a moderate odor was detected, and septic water was observed discharging from the sewage pipe.

   b. Route 30: 2,600 fecal coliform/100ml; 1,600 *E.Coli*/100ml. Sewage odor and sewage sludge were present.

7. The result of the sampling event described in Findings Nos. 5 and 6 demonstrate violations of the primary contact criteria for fecal coliform and *E. Coli* criteria, as set forth in OAC rule 3745-1-07, Table 7-12.

8. The unnamed tributary to Sandy Creek has a recreation use designation of secondary contact, as established in OAC rule 3745-1-24, with the following applicable criteria, as set forth in OAC rule 3745-1-07, Table 7-12:

   Fecal coliform - shall not exceed 5,000 per 100 ml (either MPN or MF) in more than ten per cent of the samples taken during any thirty-day period.

   E. coli - shall not exceed 576 per 100 ml in more than ten per cent of the samples taken during any thirty-day period.

9. Sampling of the unnamed tributary of Sandy Creek was conducted by Ohio EPA on September 13, 2001, at two locations: (1) the bridge near the First Christian Church; and (2) at the mouth, upstream from Route 30.

10. The results of the September 13, 2001 sampling event were:

    a. First Christian Church: 1,400 fecal coliform/100ml; 1,400 *E.Coli*/100ml.

    b. Route 30: 89,000 fecal coliform/100ml; 24,000 *E.Coli* /100ml. The water was turbid, but clear immediately upstream.

11. The results of the sampling event described in Findings Nos 9 and 10.b. demonstrate violations of the secondary contact criteria for fecal coliform and *E. Coli*, as set forth in OAC rule 3745-1-07, Table 7-12.

12. During meetings and discussions with the Columbiana County Health Department, it was established that the small lot sizes in the Village precluded the modification and upgrading of the failing on-site sewage disposal systems.

13. Sandy Creek and its tributary constitute "waters of the state" as defined by ORC § 6111.01. Discharge of sewage to waters of the state without authorization from Ohio EPA is a violation of ORC §§ 6111.04 and 6111.07.

14. It is necessary for the protection of the health and welfare of the public that the Commissioners abate the sewage disposal problem and unsanitary conditions resulting from discharges of raw or partially treated sewage in the Village.

15. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.

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 their relation to the benefits to the people of the state to be derived from such compliance in accomplishing the purposes of ORC Chapters 6111.

Orders

1. Respondent shall submit a General Plan for sewage improvements or other methods of abating pollution and correcting the unsanitary conditions in the Village as soon as possible but not later than twelve (12) months from the effective date of these Orders. The General Plan shall address, at a minimum, the following:

a. Alternatives for treating sewage from the affected areas, including centralized treatment;

b. Proposed locations for collection and treatment facilities, if deemed appropriate;

c. Cost estimates for the required improvements and cost effective 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 a complete NPDES permit application, if necessary; a complete permit to install application and approvable detailed plans; awarding bids; starting and completing construction; and/or all other significant milestones.

2. Three copies of the General Plan shall be submitted to:

Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, OH 44087
Attn: DSW Enforcement Group Leader

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. 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 Respondent and its operations.

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 RC Chapter 6111. 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 terminated when Respondent demonstrates in writing and certifies to the satisfaction of Ohio EPA that it has satisfied all its obligations under these Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges the termination of these orders in writing.

This certification shall be submitted by Respondent to the Northeast District Office (attention: DSW Enforcement Group Leader) and shall be signed by a responsible official of the 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 are familiar with the information contained in or accompanying this certification, and based on 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.*

IT IS SO ORDERED:

Christopher Jones
Director

3-22-02
Date

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 agrees to comply with these Orders, Respondent agrees that these Orders are lawful and reasonable, and Respondent agrees that the times provided

for compliance herein are reasonable. Compliance with these Orders shall be a full accord and satisfaction of Respondent's liability for the violations specifically cited herein. 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 right 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.

SIGNATORY AUTHORITY

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:

Columbiana County Board of Commissioners

Jim Hoppel
Signature

Date: 3-13-02

County Commissioner
Title

Sean D. Joyce
Signature

Date: 3/13/02

County Commissioner
Title

Dave Chamer Date: 3-13-02
Signature

Commissioner
Title

IT IS SO AGREED:

Ohio Environmental Protection Agency

Christopher Jones Date: 3-22-02
Christopher Jones
Director

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