

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
SEP 15 2004

ENTERED DIRECTOR'S JOURNAL

In the matter of:

Key Bank
2025 Ontario Street
Fourth Floor
Cleveland, Ohio 44115

Director's Final Findings and
Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Key Bank ("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. No change in ownership of the Respondent, or of the Facility owned by Respondent shall in any way alter Respondent's obligations under these Orders.

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 OF FACT

Respondent is the developer of the Key Bank-New Albany site ("the Site"), a commercial development located at 5300 North Hamilton Road, city of Columbus, Franklin County, Ohio.

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 Emily Jackson Date 9-15-04

2. Ohio Administrative Code ("OAC") Rule 3734-42-02 requires the Director's issuance of a permit to install (PTI) prior to the installation of a new "disposal system," as such term is defined in ORC Section 6111.01 (G).
3. ORC Section 6111.07 (A) prohibits any person from violating, or failing to perform, any duty imposed by ORC 6111.01 to 6111.08, or violating any rule adopted by the Director pursuant to those sections, including OAC Rule 3745-42-02.
4. PTI Application 01-11000 and detailed plans were received at Ohio EPA Central District Office on April 19, 2004 for the installation of a sanitary sewer extension to serve the Site.
5. The sanitary sewer extension proposed in PTI Application 01-11000 is a "disposal system" as defined in ORC Section 6111.01(G).
6. On July 22, 2004, an inspection of the Site was conducted by Ohio EPA Central Office. The inspection confirmed that the installation of the sanitary sewer extension had been completed prior to approval of the plans and issuance of a PTI by Ohio EPA. Based on Ohio EPA's investigation of this matter, it appears that construction was substantially completed by mid-June 2004.
7. By letter dated July 23, 2004, Respondent was notified via certified mail that the sanitary sewer extension installation was in violation of ORC Chapter 6111, and OAC Rule 3745-42-02.
8. 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 not install sewerage, or treatment works for sewage disposal or new disposal systems, including, but not limited to, sanitary sewers, at any location in Ohio without first receiving prior approval from the Director as required by law. Respondent may request termination of the 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.
2. Respondent shall pay to the Ohio EPA the amount of one thousand dollars (\$1,000.00) in settlement of the Ohio EPA's claim for civil penalties, which may be

assessed pursuant to Chapter 6111 of the Ohio Revised Code. Payment shall be made by tendering an official check made payable to the "Treasurer, State of Ohio" for the full amount within thirty (30) days after the effective date of these Findings and Orders to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the project (Key Bank New Albany)

A photocopy of the check shall be sent to Ohio EPA Central District Office at the address listed below:

Ohio Environmental Protection Agency
Central District Office
3232 Alum Creek Drive
Columbus, Ohio 43207-3417

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. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function 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. 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.

XI. 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 of 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 comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

XII. EFFECTIVE DATE

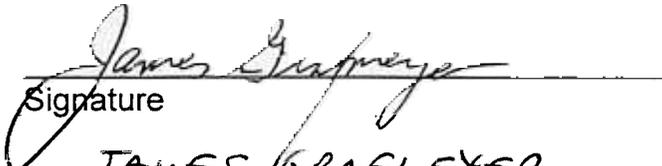
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIII. SIGNATORY AUTHORITY

Each undersigned representative or 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 AGREED:

KEY BANK


Signature
JAMES GRAFMAYER
Printed or Typed Name

9/1/04
Date

PROJECT MANAGER
Title

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency


Christopher Jones
Director

9-13-04
Date