



3. Many of the homes and commercial establishments located within the Village are served by failing on-site sewage disposal systems that discharge raw or partially treated sewage to Jackson Cutoff Ditch or to Respondent's storm sewer which flows into Jackson Cutoff Ditch.
4. The Jackson Cutoff Ditch, which flows to the north, with the Village of Custar located to the west and Respondent downstream on the east, is located in the Maumee River drainage basin, and flows into Beaver Creek.
5. The Jackson Cutoff Ditch, Beaver Creek and the Maumee River are defined as waters of the state by ORC § 6111.01.
6. The Jackson Cutoff Ditch is designated, pursuant to OAC Rule 3745-1-24, as primary contact recreation waters, and as such, has the following fecal coliform standard established in OAC Rule 3745-1-07, Table 7-13:

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.

7. On August 5, 1999, August 11, 1999, and August 21, 2003, samples for fecal coliform, which sampling sites are marked on Attachment 1, which is attached hereto and hereby incorporated by reference into these Findings and Orders as if fully written herein, were taken in the Jackson Cutoff Ditch.

Sample Site #	Location in Jackson Cutoff Ditch	Results (#/100ml)		
		8/05/99	8/11/99	8/21/2003
1	At Bay Road, upstream of Respondent	710	400	350
4	250 feet downstream of Mermill Road	>200,00	>100,000	2500
5	Adjacent to Milton Road, 500 feet south of railroad	120,000	>200,000	>200,000
6	Portage Road, downstream of Respondent	240	280	270

8. The detection limit for the above sampling was 2/100ml.
9. The discharges from the on-site sewage disposal systems drain to sample sites numbers 4 and 5 identified above.
10. The owners of the on-site sewage disposal systems do not hold National Pollutant Discharge Elimination System ("NPDES") Permits for the discharges from their systems.
11. The discharge of pollutants to waters of the state without a NPDES Permit is a violation of ORC §§ 6111.04 and 6111.07.
12. During the two sampling events in 1999 and the sampling event in 2003, identified above, sample sites numbers 4 and 5 were observed to have a grey to black color and distinctive "rotten egg" odor, due to anaerobic decomposition of organic matter and resulting emission of hydrogen sulfide. Substrates in the mixing zones were covered with sludge and had growths of bacteria present.
13. OAC Rule 3745-1-04 establishes water quality criteria that apply to all surface waters of the state including mixing zones. To every extent practical and possible as determined by the Director, these waters shall be, among other things:
  - a. Free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life;
  - b. Free from floating debris, oil, scum and other floating materials entering the waters as a result of human activity in amounts sufficient to be unsightly or cause degradation;
  - c. Free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance; and
  - d. Free from public health nuisances associated with raw or poorly treated sewage.
14. A public health nuisance shall be deemed to exist when the conditions set forth in below, as established in OAC Rule 3745-1-04(F)(1), are demonstrated:

- a. An inspection conducted by, or under the supervision of, Ohio EPA or a sanitarian registered under Chapter 4736. of the Revised Code documents odor, color and/or other visual manifestations of raw or poorly treated sewage; and
  - b. Water samples exceed five thousand fecal coliform counts per one hundred milliliters (either MPN or MF) in two or more samples when five or fewer samples are collected, or in more than twenty per cent of the samples when more than five samples are taken; or
  - c. Water samples exceed five hundred seventy-six E. coli counts per one hundred milliliters in two or more samples when five or fewer samples are collected, or in more than twenty per cent of the samples when more than five samples are taken.
15. Pursuant to OAC Rule 3745-1-04(F)(1), a public health nuisance exists in the Village.
  16. The small lot sizes and poor soil conditions prevalent in the Village prohibit the abatement of the discharges through the installation of replacement on-site sewage disposal systems.
  17. Based on the observed conditions and sampling results in the Village, it is necessary for the protection of the health and welfare of the public that Respondent abate, through the construction, operation, and maintenance of a sewerage system and treatment works, the sewage disposal problems and unsanitary conditions resulting from the discharges of raw or partially treated sewage from the on-site sewage disposal systems in the Village.
  18. Respondent and the Village of Custar are members of the Northwest Water and Sewer District ("NWWSD" or "district"), an ORC Chapter 6119. regional water and sewer district, which has as its statutory purposes the supplying of water to users within and without the district, and providing for the collection, treatment, and disposal of wastewater within and without the district.
  19. In the summer of 1999, after the August, 1999 sampling event, Ohio EPA met with Respondent, the Village of Custar and NWWSD to discuss the sanitary needs for the Villages of Custar and Milton Center.
  20. In December, 2001, NWWSD, after discussion with and approval of, the Mayors of both Villages, submitted a proposed schedule for the design, financing and construction of the sewerage system and treatment works, ("project"), which upon review, was determined by Ohio EPA to be satisfactory.

21. In a November 20, 2001 letter, the consultant to NWWSD described the Village of Custar's portion of the project as consisting of the construction of approximately 6,990 linear feet of 8 inch sanitary sewer line, 24 manholes, 1,000 linear feet of storm water replacement, and 140 linear feet of boring railroad 8 inch gravity sewer.
22. The November 20, 2001 letter described Respondent's portion of the project as consisting of the construction of approximately 11,110 linear feet of 8 inch sanitary sewer line, 35 manholes, 1,500 linear feet of storm water replacement, 130 linear feet of boring railroad 8 inch gravity sewer, 1,200 linear feet of 1 ½ inch force main and 1 residential grinder pump.
23. The November 20, 2001 letter stated that a pump station will be provided at each end of the sewerage system to lift the wastewater into the treatment works from both Villages. The treatment works is a joint non-aerated controlled discharge lagoon.
24. Pursuant to the December 2001 proposed schedule, the following has occurred regarding the project: (1) completion and submittal to Ohio EPA of the draft and final general plans, and (2) public meetings regarding the project.
25. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.
26. 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 construct the sewerage system and treatment works as expeditiously as possible, but not later than the dates contained in the following schedule:
  - a. On or before February, 28, 2004, submit a complete NPDES permit application and a permit to install application and detail plans for the construction of the sewerage system and treatment works for the Village. The required submittals may be as an individual applicant or as a co-applicant with the Village of Custar;
  - b. On or before January 2, 2005, initiate construction of the sewerage system and treatment works;

- c. On or before January 31, 2006, complete construction of the sewerage system and treatment works and comply with the final effluent limits of the NPDES permit; and
  - d. On or before February 28, 2006, hire a certified operator with the proper classification to oversee the operation of the treatment works.
2. Respondent shall submit all documents required by these Orders to:

Ohio EPA  
Northwest District Office  
Attn; DSW Enforcement Unit Supervisor  
347 North Dunbridge Road  
Bowling Green, Ohio 434021

#### **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 principle 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 operation of the Facility.

### **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 reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. Ohio EPA and Respondent each reserve all other 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, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders, which right Ohio EPA does not waive, 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.

**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 of 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 AGREED:  
Village of Milton Center**

Albert Torres  
Signature

10-16-03  
Date

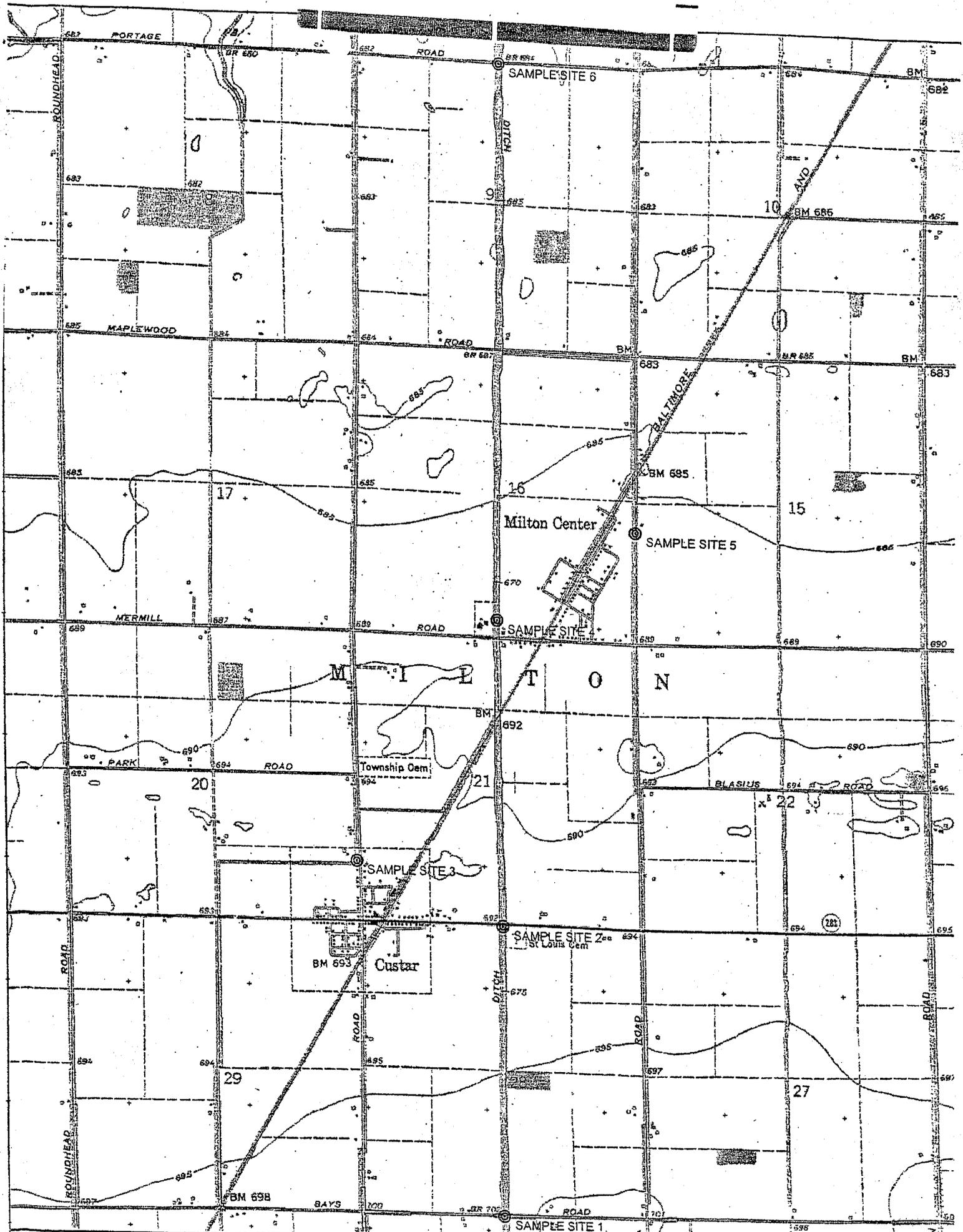
ALBERT TORRES  
Printed or Typed Name

Mayor  
Title

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

Christopher Jones  
Christopher Jones  
Director

11-10-03  
Date



<Default> - 6 Markers, Length = 4 miles, 4544 feet

SAMPLE SITE 1 - 041° 16' 11.1" N, 083° 50' 02.2" W

SAMPLE SITE 3 - 041° 17' 16.1" N, 083° 50' 38.9" W

SAMPLE SITE 4 - 041° 17' 59.7" N, 083° 50' 02.7" W

SAMPLE SITE 5 - 041° 19' 41.3" N, 083° 50' 02.5" W