



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Scott J. Nally, Director

**COPY**

September 13, 2013

Mayor Mike Zita  
City of Norton  
4060 Columbia Woods Drive  
Norton, Ohio 44203

**Certified Mail**

**Re: Proposed Director's Final Findings and Orders-City of Norton**

Dear Mayor Zita:

Ohio EPA's staff in the Division of Surface Water (DSW) has informed me of unsanitary conditions occurring within the City of Norton that are resulting from the discharge of pollutants from inadequate or failing home sewage disposal systems. Sampling data collected during the summer of 2012 and on June 19, 2013 throughout the area of concern has revealed elevated levels of fecal coliform and *E. Coli* bacteria in violation of Ohio's water quality standards. Such conditions constitute a public health nuisance in accordance with Ohio Administrative Code Rule 3745-1-04. On April 11, 2013, the Board of Health of the Summit County Combined General Health District passed resolution number 116-13 which declared a Public Health Nuisance in the City of Norton.

In order to abate the unsanitary conditions within the City of Norton, I am proposing the enclosed administrative orders which will require the City to submit a general plan for abating pollution and correcting the unsanitary conditions. I believe this is the most appropriate course of action in this matter as it will provide the City the flexibility in determining the most appropriate alternatives to abate the unsanitary conditions and achieve compliance with Ohio Revised Code Chapter 6111.

I am enclosing a guide to the Division of Surface Water's Administrative Enforcement Process. It provides a brief explanation to some questions that are frequently asked by parties involved in the enforcement process.

It is my expectation that this matter will be resolved expeditiously. If the terms of the proposed Orders are acceptable, please sign the attached "Waiver" and return the entire document within fourteen (14) days of receipt, to Mr. Bill Fischbein, Ohio EPA, Legal Office, at the address below. You will waive your right to appeal the terms and issuance of the proposed Orders by signing the Waiver. However, if you wish to

negotiate changes to the proposed Orders, please notify Mr. Fischbein at (614) 644-3037 within fourteen (14) days of receipt to schedule a settlement meeting with Ohio EPA.

If you do not reply to Ohio EPA within fourteen (14) days of receipt of this letter to initiate negotiations or if negotiations are not progressing toward reaching an expeditious agreement on the Final Findings and Orders, I will withdraw this offer to resolve the violations. If the offer is withdrawn, I will consider other enforcement options to address the noncompliance including a referral of this matter to the Attorney General's Office. Because this letter and the enclosed documents summarize a proposed settlement, I consider them to be inadmissible by you for any purpose in any subsequent enforcement action taken by the State should we be unable to reach an agreement.

I hope that we are able to resolve this matter via the enclosed proposal, and I thank you in advance for your cooperation. Your prompt attention to this matter is requested and appreciated.

Sincerely,



Scott J. Nally  
Director

Enclosures

cc: Jennifer Bennage, DSW, NEDO  
Brittany Schuch, DSW, CO  
Bill Fischbein, Legal

## Administrative Enforcement Process

Within the Division of Surface Water

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### Introduction

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This information sheet has been prepared to help you understand the administrative enforcement process within the Division. With an understanding of the process and adequate preparation, prompt resolution of this enforcement action can be facilitated. Included are answers to the questions most frequently asked by parties involved in the surface water enforcement process.

### I have been working with the District inspector to fix violations. Why is an enforcement action necessary?

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The Division considers the following factors in deciding that an enforcement action is necessary: (1) Ohio EPA needs to obtain reparation for your violations; (2) your violations are serious; (3) you have taken too long to address the violations; (4) you need to be on a formal schedule to address the violations; (5) you have been recalcitrant in addressing the violations; and/or (6) your facility is a chronic violator.

### Why should I try to negotiate an administrative consent order with Ohio EPA?

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- Negotiating an administrative consent order ("Order" or "Director's Final Findings and Orders") with Ohio EPA avoids expensive and time-consuming litigation.
- It can be a swifter resolution of the State's claims against your facility for its noncompliance.
- We can quickly identify any obstacles to agreement.

### Should I continue working with the District inspector?

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Yes, the district inspector is the best person to work with you to resolve the technical aspects of the violations.

### What should I do now that I have received the proposed administrative consent order?

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You should review the enclosed Order and the summary of the penalty calculation (if applicable). If you accept the enclosed Order as written, sign the waiver and send it to the staff attorney referenced in the Director's cover letter within two weeks. If you cannot accept the Order as written, the Agency would like to meet with you to discuss your concerns. Please contact the staff attorney at (614) 644-3037 within two weeks to arrange a meeting.

### If I want to have a meeting, what should I do to prepare for it?

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Generally, the most productive meetings occur when both parties come prepared to discuss all issues. The proposed administrative consent order contains the Agency's position. Since you were not willing to agree to the Order as written, Ohio EPA needs to know whether you: (1) disagree with the facts outlined in the Order; (2) are not able or willing to comply with the Order; or (3) have information you believe may mitigate the civil penalty settlement amount. Send the staff attorney a written summary of your issues within two weeks from the date of the Director's cover letter. Additionally, if you believe you are financially unable to pay the penalty, contact the staff attorney for a list of information we need to evaluate your ability to pay.

### What will happen at the meeting?

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During the meeting, Ohio EPA will respond to any information you have previously provided. We are willing to work with you to arrive at mutually agreed upon modifications to the Order. Ohio EPA expects to make significant progress on the negotiations at the meeting. If we reach an agreement at the meeting, the Division will finalize the Order for your signature within two weeks. If we cannot agree at the meeting, and we believe adequate progress is being made, the Agency will hold its offer of settlement open and a follow-up

meeting will be scheduled. If we do not believe we are making adequate progress, the offer of settlement may be withdrawn and the Agency may consider other enforcement alternatives, including a referral to the Office of the Ohio Attorney General. Except in the most complex cases, it is the Division's goal to complete all of the negotiations within 120 days of receipt of the Director's letter. If resolution of the case is not achieved within this time frame, the Division may withdraw its settlement offer and consider other enforcement alternatives.

### **Why do I have to pay a civil penalty settlement?**

A penalty is necessary to deter future violations and to remove any economic incentive that may have been realized from not complying with Ohio's surface water law. Instead of a full cash payment, the Agency may be willing to accept a Supplemental Environmental Project ("SEP"). An SEP should include activities that provide a direct environmental benefit to the citizens of Ohio and cannot be something that is already required by law.

### **How did Ohio EPA arrive at the civil penalty settlement amount?**

Ohio Revised Code Chapter 6111 provides for penalties of up to \$10,000 per day per violation. For the purposes of settlement, the Division has developed a penalty calculation methodology which allows us to gauge the relative significance of the violations and establish penalties accordingly. The basis of the methodology is the U.S. EPA Clean Water Act Settlement Penalty Policy and contains the following three basic components:

- 1) Economic Benefit – this value is an estimate of the monetary benefit realized from the failure to adhere to the applicable regulations.
- 2) Gravity – this is the dollar value related to the actual or potential impacts associated with the violations. Worksheets were developed by Ohio EPA to fairly and consistently gauge the impacts on human health and the aquatic environment.
- 3) Adjustments – this is the dollar value associated with your response to the Division's efforts to return the facility to compliance. Traditionally called "Recalcitrance," the Division of Surface

Water's calculations include this concept, as well as factor that can reduce penalties.

### **Who from Ohio EPA will be at the meeting?**

Everyone necessary to resolve the matter will be at the meeting or available during the meeting to provide settlement authority – specifically, the staff attorney, the district inspector, and the environmental specialist from the enforcement unit. The manager of the Division's enforcement program may also attend the meeting.

### **Who should I bring to the meeting?**

Similarly, you should bring people who are familiar with the issues and have the authority to settle this matter. You should contact your attorney if you want legal representation in the meeting.

### **Will Ohio EPA issue a news release?**

Please be aware that Ohio EPA may issue a news release to the media to inform the community about the settlement of this case, after all parties have signed it. As a public agency whose primary mission is to promote compliance with environmental laws, we believe it is important to inform citizens about our enforcement efforts. Ohio EPA's news release represents our position, and so we do not negotiate the language in the news release with you. If we prepare a news release, you will receive a courtesy copy shortly before it is released to the media and posted on our Web site. You can read all of our news releases at <http://www.epa.state.oh.us/pic/current.html>.

## **OhioEPA Contacts**

Legal Section	(614) 644-3037
Division of Surface Water	(614) 644-2001
Central District Office	(614) 728-3778
Northeast District Office	(330) 963-1200
Northwest District Office	(419) 352-8461
Southeast District Office	(740) 385-8501
Southwest District Office	(937) 285-6357

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:  
City of Norton  
4060 Columbia Woods Drive  
Norton, Ohio 44203**

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:  
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**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 the City of Norton ("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 the composition of 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 Chapters, 6111 and 3745, and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. The Nash Heights area is within the corporate boundaries of the City of Norton, Summit County, Ohio wherein centralized wastewater facilities are unavailable. For purposes of these Orders, the Nash Heights area consists of those areas depicted in Attachment A. Attachment A is incorporated by reference as if fully rewritten herein.

2. Homes within the Nash Heights area are served by individual home sewage disposal systems, many of which are failing to adequately treat sewage from these homes.
3. In the summer of 2012, the Summit County Health Department (SCHD) sampled surface waters in the Nash Heights neighborhood. Their sampling results showed elevated levels of fecal coliform ranging from 20 to greater than 240,000 fecal colonies per 100 ml.
4. On April 11, 2013, the Board of Health of the Summit County Combined General Health District passed resolution number 116-13 which declared a Public Health Nuisance in the City of Norton; Nash Heights Neighborhood.
5. The Director of Ohio EPA received a letter dated April 26, 2013 from Summit County Public Health requesting assistance in alleviating a public health nuisance due to poorly operating and antiquated sewage treatment systems.
6. On June 19, 2013, Ohio EPA conducted sampling from the same sites. Ohio EPA sampling showed elevated levels of *E.coli* ranging from 3,600 to 2,400,000 *E.coli*/100 ml.
7. The sampling data and subsequent investigation by Ohio EPA confirmed the existence of unsanitary conditions and documented violations of Ohio's general water quality criteria.
8. In general, the residential lots within the Nash Heights area exhibit characteristics unsuitable for or detrimental to, new or upgraded on-lot individual sewage disposal systems due to their respective size and soil conditions. Accordingly, the replacement or repair of existing on-site sewage disposal systems is an unacceptable solution to remedy the unsanitary conditions.
9. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
10. 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 permit to install and plan approval requirements of ORC §§ 6111.44 and 6111.45 and OAC Rule 3745-42.
11. The Director has given consideration to the factors set forth in ORC Sections 6111.03 and 6111.60, 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. As soon as possible, but not later than six (6) months from the effective date of these Orders, Respondent shall submit to Ohio EPA for approval a general plan for sewage improvements or other methods of abating pollution and correcting the unsanitary conditions, consistent with the applicable 208 areawide plan. The General Plan shall include:
  - a. Alternatives for treating sewage from the affected area;
  - b. Proposed locations of collection and treatment facilities;
  - c. Cost estimates for the required improvements and cost effectiveness analysis of the alternatives based on total present worth.
  - d. An implementation schedule for submitting a complete permit to install ("PTI") application and approvable detail plans, awarding construction bids, starting and completing construction, and attaining compliance with ORC Chapter 6111 and the administrative rules promulgated thereunder. The implementation of the schedule, including completion of construction and compliance with ORC shall be achieved as soon as possible, but no longer than one (1) year from the date of Ohio EPA's approval of the general plan.
2. Upon Ohio EPA's approval of the general plan, Respondent shall implement the general plan in accordance with the approved schedule required by Order 1.d.

## **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 as defined in OAC Rule 3745-33-03.

#### **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 in the affected area.

#### **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  
Southeast District Office  
Division of Surface Water  
Attn: Enforcement Supervisor  
2110 East Aurora Road  
Twinsburg, Ohio 44087

and to:

Ohio Environmental Protection Agency



Division of Surface Water  
Attn: Enforcement Section  
P.O. Box 1049  
Columbus, Ohio 43216-1049

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

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

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII 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 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 ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

\_\_\_\_\_  
Scott J. Nally  
Director

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**City of Norton**

\_\_\_\_\_  
Signature

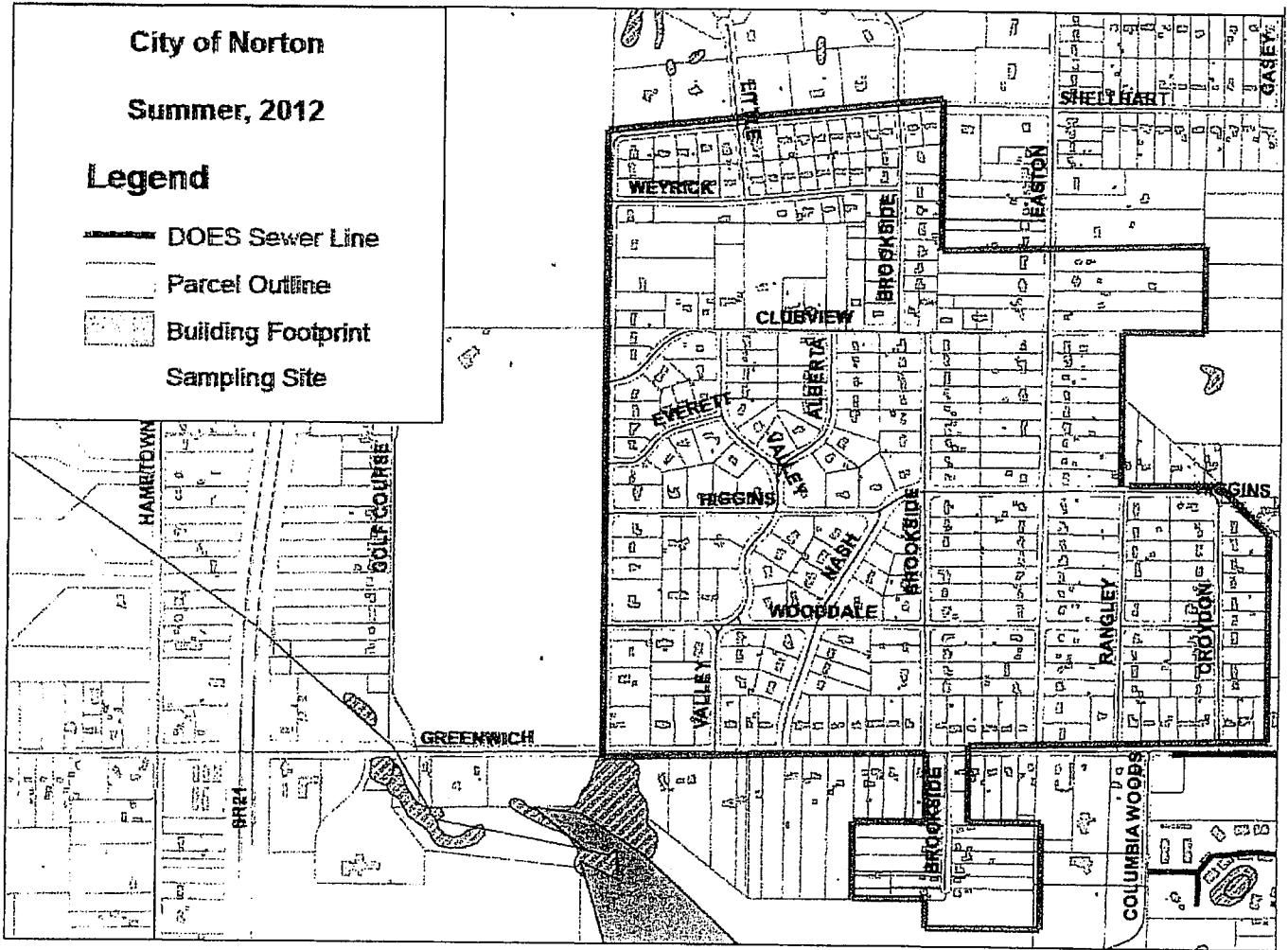
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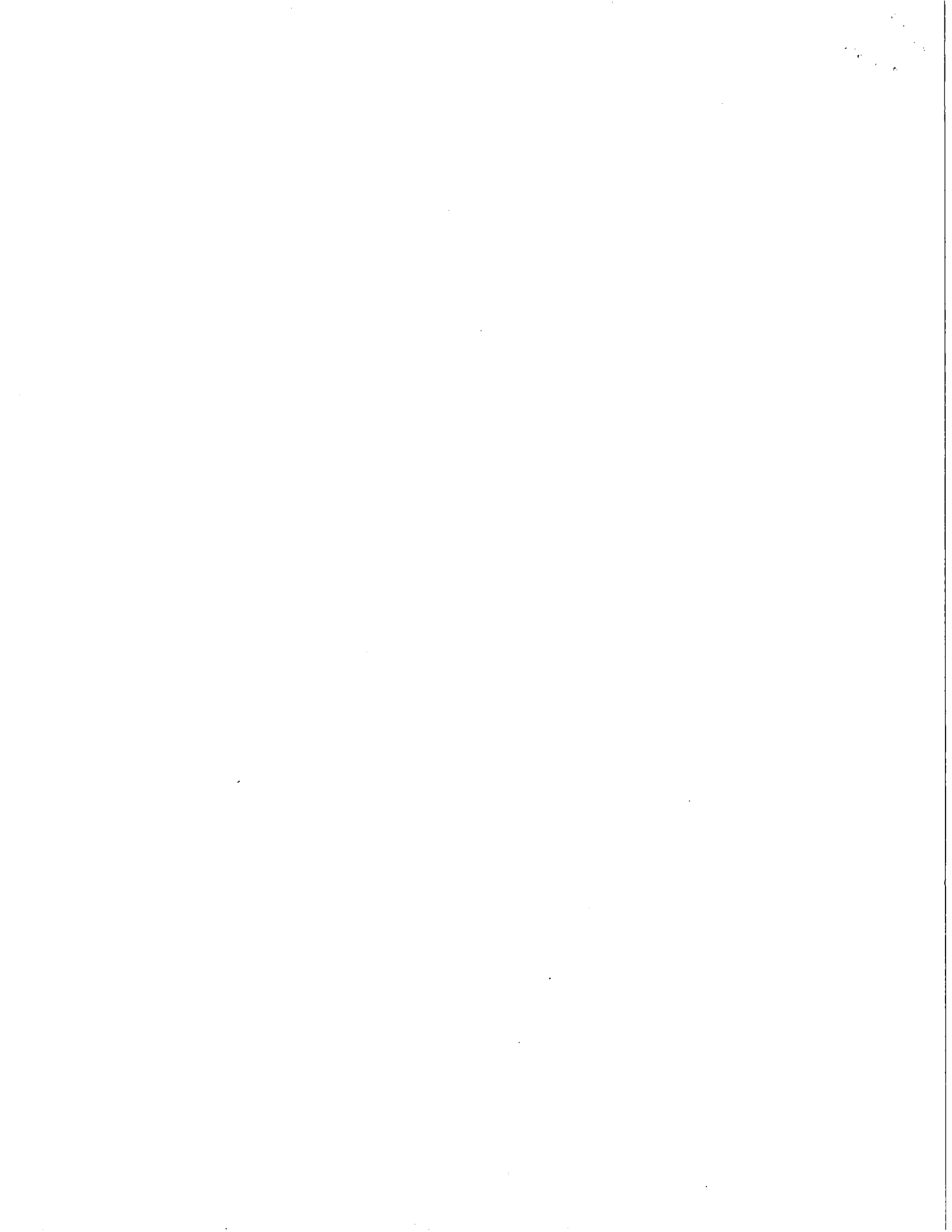
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Printed or Typed Name

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Title

**Attachment A:**

Area proposed to be included in the nuisance resolution and where sewer is proposed.  
The area is enclosed by the blue line.





SPONSORED BY: Utilities Committee  
REFERRED TO: Committee Work Session  
INTRODUCED BY: John Conklin-Utilities Chair

## CITY OF NORTON RESOLUTION NO. 63-2013

A RESOLUTION AUTHORIZING THE MAYOR AND/OR THE CITY ADMINISTRATOR TO ENGAGE THE OHIO EPA IN NEGOTIATIONS REGARDING THE DIRECTOR'S PROPOSED FINDINGS AND ORDERS DEALING WITH UNSANITARY CONDITIONS IN THE CITY OF NORTON, IDENTIFIED AS THE NASH HEIGHTS AREA, AND DECLARING AN EMERGENCY.

WHEREAS, Mayor Zita has received, by certified mail, a letter from the Ohio EPA Director proposing Findings and Orders relating to the Nash Heights area. A copy of such letter is attached and marked as **Exhibit "A"**; and

WHEREAS, the Administration has requested Council's support to negotiate with the Director the terms of the Findings and Orders; and

WHEREAS, upon reviewing all options with the City's legal counsel, the Administration and Council have determined this option to be in the best interest of the City and its residents.

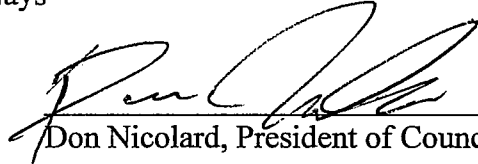
NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Norton, Counties of Summit and Wayne, State of Ohio:

- Section 1. That the Mayor and/or the City Administrator are hereby authorized to respond to the Director of the Ohio EPA within 14 days of receipt of the Director's letter.
- Section 2. That the Mayor and/or City Administrator is hereby authorized to negotiate with the Agency regarding the proposed Director's Findings and Orders as they relate to the Nash Heights area and upon completion of said negotiations returned to Council for final approval.
- Section 3. All formal actions of this Council related to this Resolution and all deliberations of Council and any of its Committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.
- Section 4. This Resolution is declared to be an emergency measure necessary for the immediate preservation for the public peace, health, and safety of the City of Norton and its inhabitants thereof for the reason that it is necessary to respond to the Director of the Ohio EPA in order to protect the City's legal rights and potential liabilities, and provided it receives the approval of two-thirds of the members of Council, this Resolution shall take effect and be in full force and

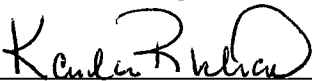
effect immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest period allowed by law.

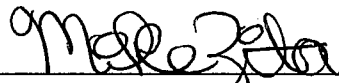
Emergency vote: 7 Yeas 0 Nays

Date passed: 9-23-13

  
Don Nicolard, President of Council

Date submitted to the Mayor 9-24-13

Attest:   
Karla Richards, CMC- Clerk of Council

  
Mike Zita, Mayor

Date approved by the Mayor 9-24-13

I, Karla Richards, CMC-Clerk of Council for the City of Norton, Summit and Wayne Counties, Ohio do hereby certify that the foregoing **Resolution No. 63-2013** was duly and regularly passed by the Council of the City of Norton, Summit County, Ohio at a meeting held on September 23rd 2013.

That this legislation was posted according to law on September 27th, 2013 and will become effective on September 24th, 2013.

  
Karla Richards, CMC-Clerk of Council

Prepared and approved as to legal form by Peter M. Kostoff, Law Director, City of Norton, on September 19, 2013.



September 25, 2013

Mr. William T. Fischbein  
Ohio EPA Office of Legal Services  
P.O. Box 1049  
Columbus, OH 43216-1049

Re: City of Norton  
Proposed Director's Final Findings and Orders

Dear Bill:

The purpose of this letter is to confirm the voicemail that I left for you on Tuesday, September 24, 2013 regarding Director Nally's September 13, 2013 letter to Mike Zita, Mayor of the City of Norton.

The Director's letter alleges unsanitary conditions within the City of Norton regarding the discharge of pollutants from inadequate or failing home sewage disposal systems. The letter also proposes that the City of Norton enter into Director's Final Findings and Orders for the abatement of pollution and correction of the unsanitary conditions. Finally, the letter requests a response within fourteen (14) days of the City's receipt of the letter.

Consistent with the voicemail that I left for you on Tuesday, the City of Norton is interested in working with the Ohio EPA to negotiate changes to the proposed Director's Findings and Orders. Enclosed for your file, please find a certified copy of City of Norton Resolution No. 63-2013. This resolution authorizes the Mayor and/or the City Administrator to negotiate the proposed Director Findings and Orders with Ohio EPA. Please note that the enclosed resolution further provides that once the negotiations are completed, the negotiated Director's Final Findings and Orders need to be submitted to City Council for final approval.

Mr. William T. Fischbein  
Ohio EPA Office of Legal Services  
September 25, 2013  
Page 2

I would appreciate it if you would contact me at your convenience to schedule an appropriate time to discuss changes to the proposed Director's Findings and Orders. I look forward to hearing from you.

Sincerely,

ROETZEL & ADDRESS, LPA

A handwritten signature in black ink, appearing to read "Terrence S. Finn". The signature is stylized with a large, sweeping initial "T" and "F".

Terrence S. Finn

TSF/lko  
Enclosure

cc: The Hon. Mike Zita, Mayor, City of Norton (w/o enc.) ✓  
Mr. Rick Ryland, Administrative Officer, City of Norton (w/o enc.)  
Mr. Peter M. Kostoff, Law Director, City of Norton (w/o enc.)  
Mr. Don Nicolard, President, Norton City Council (w/o enc.)

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