

OHIO E.P.A.

Effective Date DEC 23 2011

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BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

IRBW Properties, Ltd.  
9 Corporation Center  
Broadview Heights, OH 44147

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:

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

This document is to be a true and accurate copy of the  
official document to be filed in the records of the Ohio  
Environmental Protection Agency.

Respondent,

PREAMBLE

*M. A. Shabiro* Date: 12/23/2011

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to the IRBW Properties, Ltd., (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Chapter 6109, § 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 6109 and 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a "public water system" (PWS) as defined by ORC § 6109.01, which is also a "community water system" as defined by Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS, Willard Mobile Home Park (PWS ID# OH3901612), is located at 3265 Neal Zick Road, Willard (Huron County), Ohio, 44890, obtains its drinking water from a "ground water" source as defined by OAC Rule 3745-81-01, and serves a population of 86 persons.

3. In accordance with OAC Rule 3745-83-01(I)(1), the owner or operator of a PWS shall prepare an operation report for each month of operation on forms acceptable to the Director.
4. In accordance with OAC Rule 3745-83-01(I)(2), the operation report (MOR) shall be signed by the operator of record designated in accordance with OAC Rule 3745-7-02.
5. In violation of OAC Rule 3745-83-01(I)(2), MORs submitted by Respondent from September 2010 to the effective date of these Orders have failed to be signed by the operator of record.
6. In accordance with OAC Rule 3745-82-02, the secondary maximum contaminant level (SMCL) for iron is 0.3 mg/L.
7. In violation of OAC Rule 3745-82-02, Respondent exceeded the SMCL for iron during the months January 2010, February 2010, April 2010, May 2010, June 2010, July 2010, August 2010, September 2010, October 2010, November 2010, December 2010, January 2011 and February 2011.
8. In accordance with OAC Rule 3745-83-01(G)(2) and (I), a PWS that provides water treated with chlorine shall monitor for combined chlorine at least once every day that water is available to the public at each entry point to the distribution system and a representative point in the distribution system and shall prepare an operation report for each month of operation including such sampling.
9. In violation of OAC Rule 3745-83-01(G)(2) and (I), Respondent failed to report for combined chlorine residual at the entry point to the distribution system and/or a representative point in the distribution system at the following frequency:

Month	Chlorine Residual monitoring was not conducted at entry point (days)	Chlorine Residual monitoring was not conducted at representative point (days)
April 2010	4	5
May 2010	13	10
June 2010	4	3
July 2010	4	31
August 2010	1	2
September 2010	1	2
November 2010	5	4
December 2010	7	12

10. In accordance with OAC Rule 3745-83-01(G)(5), a PWS that adds phosphate to the water supply for optimization of corrosion control pursuant to the lead and copper requirements of OAC Rules 3745-81-81 and 3745-81-82 shall monitor for orthophosphate once every two weeks at regular intervals at each entry point to the distribution system.

11. In violation of OAC Rule 3745-83-01(G)(5), Respondent failed to monitor for orthophosphate once every two weeks at regular intervals at each entry point to the distribution system from at least December 6, 2006 until July 2010.
12. In accordance with OAC Rule 3745-96-02(B)(2), each community system shall provide to its customers an annual report that contains information on a source water assessment summary received from the Director using language provided by the Director or equivalent language acceptable to the Director.
13. In violation of OAC Rule 3745-96-02(B)(2), Respondent failed to include the required source water susceptibility language in the 2006 consumer confidence report.
14. In accordance with OAC Rule 3745-81-21(B)(7), when a PWS monitoring with fewer than five routine samples per month has one or more total coliform-positive samples, the PWS shall monitor with at least five routine samples during the next month that the PWS provides water to the public.
15. In violation of OAC Rule 3745-81-21(B)(7), Respondent failed to monitor with at least five routine samples for the next month after a monthly routine positive sample in August 2010.
16. In accordance with OAC Rule 3745-81-24(C), a community PWS that treats their water with any combination of primary or residual disinfectant shall monitor for total trihalomethanes (TTHM) and haloacetic acids five (HAA5).
17. In violation of OAC Rule 3745-81-24(C), Respondent failed to monitor for TTHM and HAA5 during the October 1 to December 31, 2008 monitoring period.
18. In accordance with OAC Rule 3745-81-12(B), the maximum contaminant level (MCL) for HAA5 is 0.060 mg/L.
19. In accordance with OAC Rule 3745-81-24(C)(14), compliance with the MCL for HAA5 is determined by the running annual average (RAA). A PWS is not considered in violation until it has completed one year of sampling unless any one sample result would cause the RAA to exceed the MCL.
20. In violation of OAC Rule 3745-81-12(B), as determined by OAC Rule 3745-81-24(C)(14), Respondent exceeded the MCL for HAA5 during the monitoring periods of July 1 to September 30, 2009; January 1 to March 31, 2010; April 1 to June 30, 2010; July 1 to September 30, 2010; October 1 to December 31, 2010; January 1 to March 31, 2011; and April 1 to June 30, 2011. Respondent's RAA calculated through the April 1 to June 30, 2011 monitoring period is 0.077 mg/L.
21. In accordance with OAC Rule 3745-81-12(B), the MCL for TTHM is 0.080 mg/L.
22. In accordance with OAC Rule 3745-81-24(C)(14), compliance with the MCL for TTHM is determined by the running annual average (RAA). A PWS is not considered in

violation until it has completed one year of sampling unless any one sample result would cause the RAA to exceed the MCL.

23. In violation of OAC Rule 3745-81-12(B), as determined by OAC Rule 3745-81-24(C)(14), Respondent exceeded the MCL for TTHM during the monitoring periods of July 1 to September 30, 2010; October 1 to December 31, 2010; January 1 to March 31, 2011; and April 1 to June 30, 2011. Respondent's RAA calculated through the April 1 to June 30, 2011 monitoring period is 0.092 mg/L.
24. Effective December 21, 2006, Respondent's PWS was designated as a Class A PWS in accordance with OAC Rule 3745-7-03.
25. In accordance with OAC Rule 3745-7-02(A)(1), each person owning or operating a PWS shall designate one or more operators of record to oversee the technical operation of the PWS. Each operator of record shall have a valid certification of a class equal to or greater than the classification of the PWS.
26. Effective May 1, 2012, should Respondent fail to complete the tie-in to the City of Willard PWS, Respondent's PWS will be reclassified as a Class 1 PWS for treatment of a serious public health or environmental hazard associated with the operation of the PWS, in accordance with OAC 3745-7-03(B)(1)(a), as Respondent's PWS has treatment for corrosivity.
27. Since November 23, 1998, Respondent has retained an operator with a valid certificate that is equal to or greater than the classification of the PWS.
28. In accordance with OAC Rule 3745-81-32, the owner or operator of a PWS having violations shall notify the persons served by the PWS of violations.
29. In violation of OAC Rule 3745-81-32, Respondent failed to properly issue public notice for the following violations:
  - a. Failure to monitor TTHM and HAA5 during the October 1 to December 31, 2008 monitoring period (Ohio EPA untimely received the public notice verification on September 19, 2011); and,
  - b. Exceeding the HAA5 MCL during the July 1 to September 30, 2009 monitoring period (Ohio EPA untimely received the public notice verification on September 19, 2011).
30. Each violation cited above represents a separate violation of ORC § 6109.31.
31. Between September 2006 and July 2009, numerous complaints regarding water pressure, color, odor and turbidity were received by the Ohio EPA Northwest District Office (NWDO) from residents served by the Respondent's PWS.
32. To address the violations cited above, Respondent has agreed to the tie-in to the City of Willard's municipal PWS and properly abandon their existing water system.

33. Respondent holds National Pollutant Discharge Elimination System Permit (NPDES) No. 2PY00052\*BD for the Willard Mobile Home Park located at 3265 Neal Zick Rd Willard, Huron County, OH, 44147 (Site).
34. The Site is currently served by a 22,500 gallon per day design flow wastewater treatment works plant (WWTP). The WWTP discharges final effluent to Marsh Run.
35. Marsh Run is "waters of the state" as defined by ORC § 6111.01; this stream has been found to be in non-attainment of its Warm Water Habitat Use Designation.
36. Respondent's NPDES permit included a schedule of compliance that required completion of WWTP improvements by October 1, 2008; Respondent has violated this permit condition and failed to begin construction of the WWTP improvements until July 5, 2010.
37. On July 22, 2008, NWDO conducted a compliance inspection at the Site and observed that the WWTP sand filters were being bypassed via the installation of a bypass pipe, constituting a violation of Part III of Respondent's NPDES permit, and effluent violations were also noted. Ohio EPA sent a Notice of Violation (NOV) letter to Respondent on August 8, 2008.
38. On September 8, 2008, Respondent submitted a Permit to Install (PTI) application for WWTP improvements; revisions were requested by Ohio EPA on September 22, 2008.
39. On January 27, 2009, final requested revisions for WWTP upgrades were received by Ohio EPA and on February 2, 2009 PTI approval was given to Respondent.
40. On June 10, 2009, NWDO conducted a compliance inspection at the Site and observed that the WWTP sand filters and chlorine contact tank were being bypassed in violation of Part III of the NPDES permit. In violation of OAC Rule 3745-7-09, the operator's log book was not accessible and effluent violations were also cited. Ohio EPA sent an NOV to Respondent on July 13, 2009.
41. On April 7, 2010, NWDO conducted a compliance inspection at the Site and it was noted that the sand filters were plugged and ponded, and the sand filters and chlorine contact tank were still being bypassed in violation of Part III of Respondent's NPDES permit. In violation of OAC Rule 3745-7-09, the operator's log book was not accessible, and effluent violations were also cited. Ohio EPA sent an NOV to Respondent on May 14, 2010.
42. On June 18, 2010, Ohio EPA received notice from Respondent that construction of the WWTP improvements would begin on July 5, 2010, twenty-seven (27) months after the construction date required by Part I, C-Schedule of Compliance, Item 1b of Respondent's NPDES permit.
43. On November 16, 2010, NWDO and the Huron County Health Department received a complaint about the Site; during an inspection on November 16, 2010, it was

discovered that WWTP upgrades were partially constructed and that some of the tanks were leaking sewage. The tanks were not backfilled and piping and electrical work remained to be completed. There was an odor downwind of the Site as a result of the sewage leaking from the tanks. No fence or construction barrier was installed to limit access to the construction site. Violations of record keeping requirements were also noted. Ohio EPA emailed Respondent on November 17, 2010, requesting the issues be addressed by November 30, 2010. Ohio EPA sent an NOV to Respondent on December 2, 2010.

44. On December 1, 2010, NWDO conducted a follow-up inspection and noted the tanks had not been backfilled. Respondent was present and indicated the fence contractor would be on-site on December 2, 2010. Respondent provided a log book containing entries documenting the amount of operator time spent at the plant and indicated the records were not kept at the Site; NWDO indicated that records needed to be maintained at the WWTP.
45. On January 4, 2011, NWDO conducted another follow-up inspection and noted the tanks had not been backfilled and there was no operator log book accessible at the Site. A chain link fence had been installed.
46. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by § 6111.01 through § 6111.08 of the ORC or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Environmental Protection pursuant to those sections. Each day of violation is a separate offense.
47. 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 ORC §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.
48. These Orders do not modify NPDES No. 2PY00052\*BD. The purpose of these Orders is to correct Respondent's noncompliance with permit No. 2PY00052\*BD and not to alter said permit.
49. 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.
50. Respondent has provided Ohio EPA with documentation for a determination of Respondent's ability to pay the \$62,820.00 total penalty assessed by Ohio EPA for the PWS and NPDES violations cited above. Upon review of this financial documentation, Ohio EPA has determined that Respondent does not have the ability to pay the \$62,820.00 penalty but can pay one thousand seven hundred dollars (\$1,700.00) of penalty.

## V. ORDERS

1. From the effective date of these Orders, Respondent shall comply with total coliform bacteria monitoring and MCL requirements, in accordance with OAC Rule 3745-81-14 and OAC Rule 3745-81-21.
2. From the effective date of these Orders, Respondent shall comply with all chemical monitoring schedules issued by the Director, in accordance with OAC Rule 375-81-23 and OAC Rule 3745-81-24.
3. From the effective date of these Orders, Respondent shall ensure that MORs are signed by the designated operator of record, in accordance with OAC Rule 3745-83-01(I)(2).
4. From the effective date of these Orders, Respondent shall issue public notice for any violations in accordance with OAC Rule 3745-81-32.
5. From the effective date of these Orders, Respondent shall comply with the manganese and iron SMCLs, in accordance with OAC Rule 3745-82-02.
6. On or before April 30, 2012, Respondent shall complete the tie-in to the City of Willard's PWS and, on or before May 31, 2012, shall properly abandon their existing water system. Within seven (7) days of completion of each item, Respondent shall provide written notification to the drinking water contact listed in Section X of these Orders.
7. Should Respondent fail to complete the tie-in to the City of Willard's PWS in Order No. 6 by April 30, 2012, Respondent shall:
  - a. On or before June 1, 2012, submit a Distribution System Optimization Plan (DSOP) to the DDAGW contact in Section X;
  - b. Within fourteen (14) days of approval of the DSOP, Respondent shall implement the approved DSOP;
  - c. On or before June 1, 2012, in accordance with the detail plans approved by the Director on June 14, 2011, Respondent shall begin installation of the TTHM and HAA5 removal system;
  - d. On or before August 30, 2012, in accordance with detail plans approved by the Director on June 14, 2011, Respondent shall complete construction and commence operation of the TTHM and HAA5 removal system and hire and retain the services of at least a Class I water supply certified operator; and
  - e. On or before August 30, 2013, Respondent shall achieve compliance with the TTHM and HAA5 MCLs.

8. Respondent shall continue to comply with the wastewater operator of record and minimum staffing requirements set forth in NPDES permit No. 2PY00052\*BD.
9. Within sixty (60) days of the effective date of these Orders, Respondent shall meet and maintain compliance with the final effluent limits set forth in NPDES permit No. 2PY00052\*BD.
10. Within thirty (30) days of the effective date of these Orders, Respondent shall pay to the Ohio EPA the amount of one thousand seven hundred dollars (\$1,700.00) in settlement of the Ohio EPA Division of Surface Water's claim for civil penalties, which may be assessed pursuant to ORC § 6111.09. Payment shall be made to Ohio EPA by an official check, made payable to "Treasurer, State of Ohio" for one thousand seven hundred dollars (\$1,700.00). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

#### **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 Chiefs of Ohio EPA's DDAGW and DSW both acknowledge, 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.

This 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 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, the Respondent's PWS, WWTP or sewer system.

#### **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 the Respondent.

#### **IX. MODIFICATIONS**

These Orders may be modified by the 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 EPA, Northwest District Office  
Division of Drinking and Ground Waters  
347 North Dunbridge Rd.  
Bowling Green, OH 43402  
Attn: Justin Bowerman

Ohio EPA, Northwest District Office  
Division of Surface Water  
347 North Dunbridge Rd.  
Bowling Green, OH 43402  
Attn: Andrew Gall

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 those 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**

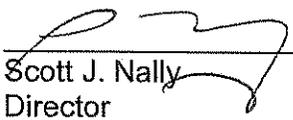
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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

DEC 23 2011

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**IRBW Properties, Ltd.**

  
\_\_\_\_\_  
Signature

12-13-2011

\_\_\_\_\_  
Date

DANIEL E. INKS, MANAGER  
Printed or Typed Name and Title