Ohio | Environmental Protection Agency

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

May 3, 2012

Edward S. McCormick
530 Elm Court
Niles, OH 44446

RE: Director's Findings and Orders

CERTIFIED MAIL
91710821333937150167 05

Dear Mr. McCormick:

I have enclosed a certified copy of the journalized, agreed upon Final Findings and Orders. This document is a final action of the Director and will be public noticed as required by Rule 3745-47-07(A) of the Ohio Administrative Code.

If you have any questions concerning compliance with these Findings and Orders, please feel free to contact me at (614) 728-1216.

Sincerely,

Andrew Barienbrock
Environmental Supervisor
Operator Certification Unit

Enclosure

cc: Holly Kaloz, DDAGW-CO (w/enclosure)
Nancy Rice, DDAGW-NEDO (w/enclosure)
Kim Rhoads, Office of Legal Services (w/enclosure)
Carol Hester, PIC (w/enclosure)
File

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P.O. Box 1049
Columbus, OH 43216-1049

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OHIO E.P.A.

MAY -3 2012

ENTERED DIRECTOR'S JOURNAL

Effective Date MAY 0 3 2012

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: Edward S. McCormick 530 Elm Court Niles, OH 44446	: : : :	DIRECTOR'S FINAL FINDINGS AND ORDERS

Respondent,

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Findings and Orders (Orders) are issued to Edward S. McCormick (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Chapter 6109 and § 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6109 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA (Director) has determined the following findings:

1. Respondent holds a Class 3 Water Supply certificate number WS3-1012482-85.

2. Respondent was the Superintendent and operator of record for the Village of West Farmington (Village) public water system (PWS), which is a Class 3 surface water treatment facility.

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: [signature] Date: 5-3-12

3. In accordance with Ohio Administrative Code (OAC) Rule 3745-7-12(A)(2), the Director may suspend or revoke the certification of an operator upon finding that the operator has performed the duties of an operator in a negligent or incompetent manner.

4. In accordance with OAC Rule 3745-7-12(A)(3), the Director may suspend or revoke the certification of an operator upon finding that the operator knowingly or negligently submitted misleading, inaccurate, or false reports to the Ohio EPA.

5. In accordance with OAC Rule 3745-7-12(A)(4), the Director may suspend or revoke the certification of an operator upon finding that the operator has operated in a manner endangering the public health or welfare.

6. In accordance with OAC Rule 3745-7-12(A)(5), the Director may suspend or revoke the certification of an operator upon finding that the operator has operated in such a manner to have violated or caused to be violated any provisions of ORC Chapters 6109 or 6111.

7. Ohio EPA's Division of Environmental Services (DES) conducted an on-site survey of the Village's Laboratory (Lab) on June 2, 2011 to determine the Lab's capability to perform turbidity, pH, alkalinity, hardness and chlorine analysis.

8. During the June 2, 2011 survey, Ohio EPA, DES personnel determined Respondent had failed to perform laboratory quality control (QC) measures at the Lab since January of 2011. QC data for turbidity and chlorine was not available from May 1, 2011 to June 2, 2011, and QC data for pH, alkalinity, hardness and stability was not available from February to May of 2011.

9. On July 20, 2011, Ohio EPA sent a letter to the Village indicating that Lab sample results obtained between February and May of 2011 were considered invalid.

10. Respondent submitted undated letters to Ohio EPA, DES and the Mayor of the Village apologizing for his failure to comply with laboratory standards.

11. A similar failure to document QC data at the Lab occurred between April 2008 and March 2009; this was documented in a Ohio EPA letter to the Village on April 10, 2009.

12. During an unannounced survey in March of 2010, Ohio EPA DES personnel again documented the Lab had failed to maintain QC records since February of 2009.

13. In accordance with the Village's approved laboratory quality assurance plan and OAC Rule 3745-89-05, the Lab's inline turbidimeter's calibration must be checked versus a bench top meters readings and the results must be within 10% of the bench top meter results. If the results are not within 10%, the inline turbidimeter should be calibrated to agree with the bench top meter.

14. An Ohio EPA review of the Village's Lab records, from periods when they were maintained, indicate the difference between the inline turbidimeter readings and calibration verification samples was greater than 10% on a number of occasions. The Village's records do no indicate any measures were taken to ensure the inline turbidimeter was accurately reading turbidity when these differences were noted.

15. Respondent's failure to conduct QC sampling, failure to respond to differences between the inline turbidimeter and calibration verification samples and submittal of data on drinking water monitoring reports while knowing QC data was either not being collected or was indicating problems with the monitoring equipment constitutes the performance of his duties as an operator in a negligent or incompetent manner.

16. Respondent's submittal of data on drinking water monitoring reports while knowing QC data was either not being collected or was indicating problems with the monitoring equipment constitutes the knowing or negligent submission to Ohio EPA of misleading, inaccurate, or false reports.

17. Respondent's failure to conduct QC sampling, failure to respond to differences between the inline turbidimeter and calibration verification samples and submittal of data on drinking water monitoring reports while knowing QC data was either not being collected or was indicating problems with the monitoring equipment constitutes the performance of his duties as an operator in a manner endangering the public health or welfare.

18. Respondent's failure to conduct QC sampling, failure to respond to differences between the inline turbidimeter and calibration verification samples and submittal of data on drinking water monitoring reports while knowing QC data was either not being collected or was indicating problems with the monitoring equipment constitute violations of ORC Chapter 6109.

V. ORDERS

1. Upon the effective date of these Orders, Respondent's Class 3 Water Supply Certificate, number WS3-1012482-85, is revoked.

2. Within ten (10) days of the effective date of these Orders, Respondent shall return his Class 3 Water Supply Certificate in accordance with the provisions in Paragraph X below.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon the submission of his Class 3 Water Supply certificate in accordance with Paragraph X below.

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 operations.

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. 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
Operator Certification Unit
Division of Drinking and Ground Waters
PO Box 1049
Columbus, Ohio 43216-1049
Attn: Andrew Barienbrock, Environmental Supervisor, DDAGW

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. Except for the right to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders, which 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.

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: 5/2/12

IT IS SO AGREED:

Edward S. McCormick

Signature — Date: 4-18-12