

OHIO E.P.A.

MAY 30 2006

ENTERED DIRECTOR'S JOURNAL



Effective Date MAY 30 2006

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:
City of Defiance :
324 Perry Street :
Defiance, OH 43512 :

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Respondent,

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 Defiance, (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 and successors in interest liable under Ohio law. No change in ownership of Respondent's public water system 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 6109 and the rules promulgated thereunder.

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

Amey Jacobs 5-30-06

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a "public water system" (PWS), which is also a "community water system" as defined by ORC § 6109.01.
2. Respondent's PWS (PWS ID# 2000111) is located at 1356 Baltimore Street, Defiance, Defiance County, Ohio, 43512.
3. Respondent's PWS obtains its drinking water from a "surface water" source as defined by OAC Rule 3745-81-01 and serves a population of 17,000 persons.
4. In accordance with OAC Rule 3745-81-12(B), a surface water system serving a population of ten thousand or more persons is in compliance with the maximum contaminant level (MCL) for total trihalomethanes (TTHM) if the running annual average is not greater than 0.080 mg/L.
5. In accordance with OAC Rule 3745-81-24(D)(14), for PWSs monitoring quarterly for TTHM, compliance is determined by a running annual arithmetic average of quarterly arithmetic averages of all samples collected by the PWS. If the running annual arithmetic average of quarterly averages covering any consecutive four quarter period exceeds the MCL, then the PWS is in violation.
6. In violation of OAC Rule 3745-81-12(B) and OAC Rule 3745-81-24(D)(14), Respondent exceeded the MCL for TTHM in the October through December 2002, January through March 2003, April through June 2003, July through September 2003, July through September 2004, October through December 2004, January through March 2005, and April through June 2005 quarters. Respondent's running annual average through December 2005 was 0.0874 mg/L.
7. Respondent has returned to compliance with the MCL for TTHM as of January through March 2006 with a running annual average of 0.075 mg/L.
8. On December 17, 1999, the Director issued a chemical contaminant monitoring schedule to Respondent (2000 monitoring schedule) for the compliance period that began on January 1, 2000 and ended on December 31, 2000.
9. On December 15, 2000, the Director issued a chemical contaminant monitoring schedule to Respondent (2001 monitoring schedule) for the compliance period that began on January 1, 2001 and ended on December 31, 2001.

10. On December 12, 2001, the Director issued a chemical contaminant monitoring schedule to Respondent (2002 monitoring schedule) for the compliance period that began on January 1, 2002 and ended on December 31, 2001.
11. On December 6, 2002, the Director issued a chemical contaminant monitoring schedule to Respondent (2003 monitoring schedule) for the compliance period that began on January 1, 2003 and ended on December 31, 2003.
12. In accordance with OAC Rule 3745-81-23(B)(2) and Respondent's 2000, 2001, 2002, and 2003 monitoring schedules, PWSs which are surface water systems are required to monitor monthly to determine compliance with the MCL for nitrate in OAC Rule 3745-81-11.
13. In violation of OAC Rule 3745-81-11(A), Respondent exceeded the nitrate MCL during the months of February 2000, June 2000, May 2001, December 2002, January 2003, and June 2003.
14. In accordance with OAC Rule 3745-81-24 and Respondent's 2000 monitoring schedule, Respondent was required to monitor for synthetic organic chemicals (SOCs) monthly during the February through July 2000 monitoring period.
15. In violation of OAC Rule 3745-81-24 and Respondent's 2000 monitoring schedule, Respondent failed to monitor for the appropriate number of samples for SOC's during the month of May 2000.
16. In accordance with OAC Rule 3745-81-75(B)(2)(d), version effective January 1, 2002 until December 31, 2004, a PWS that uses a surface water source shall report to the Director individual turbidity monitoring results for any filter that has a measured turbidity level of greater than 2.0 nephelometric turbidity units (NTU) in two consecutive measurements taken fifteen minutes apart at any time in each of two consecutive months. The PWS shall report the filter number, the turbidity measurements, and the dates and time(s) on which the exceedance occurred. In addition, no later than thirty (30) days following the exceedance, the PWS shall arrange for a comprehensive performance evaluation (CPE) to be conducted, and, within ninety (90) days following the exceedance, submit a report of the CPE to the Director.
17. In violation of OAC Rule 3745-81-75(B)(2)(d), version effective January 1, 2002 until December 31, 2004, Respondent's individual filter effluent turbidity levels exceeded 2.0 NTU in two consecutive measurements taken fifteen minutes apart in January and February 2004, and Respondent failed to complete and submit a report of a CPE to the Director no later than ninety (90) days following the turbidity exceedances.

18. In accordance with OAC Rules 3745-96-01(E) and 3745-96-02(A), each community water system shall deliver a consumer confidence report (CCR) to its customers and meet the requirements of OAC Rule 3745-96-03 by July first annually. Each CCR shall contain data collected during, or prior to, the previous calendar year as prescribed in OAC Rule 3745-96-02.
19. In violation of OAC Rule 3745-96-02, Respondent failed to provide all the required information in the 2000, 2002, and 2003 CCRs.
20. In accordance with OAC Rule 3745-81-32, the owner or operator of a PWS shall provide public notification for violations.
21. In violation of OAC Rule 3745-81-32, Respondent failed to public notice for the filter effluent turbidity violations in the months of January and February 2004.
22. Each of the violations cited above represents a separate violation of ORC § 6109.31.

V. ORDERS

1. Respondent shall immediately take any necessary actions to return to compliance and provide the required public notice should noncompliance with the TTHM MCL occur, in accordance with OAC Rules 3745-81-12(B), 3745-81-24(D)(14), and 3745-81-32.
2. Within ninety (90) days of the effective date of these Orders, Respondent shall award a contract for the construction of the new upground raw water storage reservoir in accordance with the August 28, 2003 Ohio EPA detailed plan approval.
3. Within one hundred twenty (120) days from the effective date of these Orders, Respondent shall begin construction of the upground raw water storage reservoir.
4. On or before December 1, 2007, in accordance with detail plans approved by Ohio EPA and OAC Chapter 3745-91, Respondent shall complete construction of the new upground raw water storage reservoir and place the reservoir into operation.
5. Respondent shall comply with its chemical contaminant monitoring schedule for the calendar year 2006 and all subsequent monitoring schedules issued by Ohio EPA.
6. Respondent shall pay the amount of twenty six thousand dollars (\$26,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6109. Within fourteen (14) days after the effective date of these

Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for three thousand dollars (\$3,000.00) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

7. In lieu of paying the remaining five thousand two hundred dollars of civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of \$5,200.00 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for five thousand two hundred dollars. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

A copy of each check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, OH 43216-1049

8. Should Respondent fail to fund the SEP within the required timeframe set forth in Order No. 7, Respondent shall pay to Ohio EPA \$5,200.00 of the civil penalty in accordance with the procedures in Order No. 6.
9. In lieu of paying the remaining seventeen thousand eight hundred dollars of civil penalty, Respondent shall within ninety (90) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) at a cost of not less than fifty thousand dollars by proceeding with an engineering evaluation and purchasing and installing solid state controllers to improve the efficiency of motors in the water treatment plant for energy savings.

10. Should Respondent fail to fund the SEP within the required timeframe set forth in Order No. 9, Respondent shall pay to Ohio EPA \$17,800.00 of the civil penalty in accordance with the procedures in Order No. 6.

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 DDAGW 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 as defined in OAC Rule 3745-33-03(D)(4) for a municipal facility.

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 Respondent's PWS.

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 (with the exception of the penalty payment referenced in Orders No. 6 - 10) shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Drinking and Ground Waters
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: Justin Bowerman

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

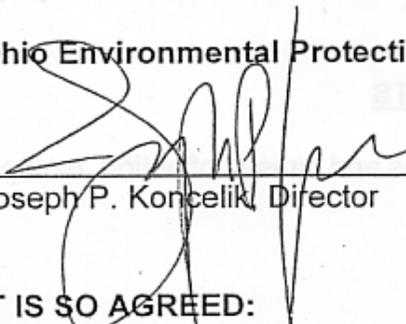
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



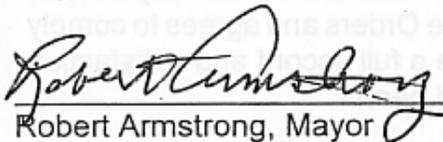
Joseph P. Koncelik, Director

MAY 30 2006

_____ Date

IT IS SO AGREED:

City of Defiance



Robert Armstrong, Mayor

5-10-06

_____ Date