

OHIO E.P.A.

FEB 27 2004

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ENTERED DIRECTOR'S JOURNAL Effective Date

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: : DIRECTOR'S FINAL  
Muskingum Watershed : FINDINGS AND ORDERS  
Conservancy District :  
1319 Third Street NW :  
P.O. Box 349 :  
New Philadelphia, Ohio 44663 :

Respondent,

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Muskingum Watershed Conservancy District ("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 ownership of the Atwood Resort shall in any way alter Respondent's obligations under these Orders.

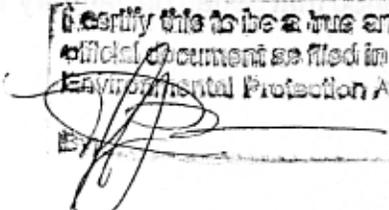
III. DEFINITIONS

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:

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.

By: 

27 FEB 04

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1. Respondent owns and operates a "public water system" (PWS) at the Atwood Resort, which is a "non-transient, non-community water system" (NTNCWS), as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.
2. The Atwood Resort (PWS ID# 1038311) is located on the south side of Atwood Lake in Carroll County, Ohio, and serves a non-transient population of at least twenty-five persons and a transient population of approximately 500 persons at least sixty days a year.
3. Respondent's PWS at the Atwood Resort obtains its source water from the Atwood Lake, which is a "surface water" source as defined by OAC Rule 3745-81-01.
4. In accordance with OAC Rule 3745-81-74, parameters necessary to determine the sufficiency of disinfection prior to the first customer as required in OAC Rule 3745-81-72 shall be measured and recorded at the peak hourly flow rate each day the PWS is in operation. PWSs, which do not record any or all of the parameters set forth in this rule on continuously recording devices, may estimate the period at which peak hourly flow will occur from records of flow rates from previous days for that water plant. The parameters necessary to calculate the actual CT value (residual disinfectant concentration x contact time) may then be those measured during this estimated peak hourly flow period.
5. In violation of OAC Rule 3745-81-74, Respondent failed to monitor the parameters necessary to determine CT at the peak hourly flow rate at the Atwood Resort during the month of January 2001.
6. On December 15, 1998, Ohio EPA issued a chemical contaminant monitoring schedule to Respondent for the Atwood Resort (1999 monitoring schedule) for the compliance period that began on January 1, 1999, and ended on December 31, 1999.
7. On December 17, 1999, Ohio EPA issued a chemical contaminant monitoring schedule to Respondent for the Atwood Resort (2000 monitoring schedule) for the compliance period that began on January 1, 2000, and ended on December 31, 2000.
8. On December 15, 2000, Ohio EPA issued a chemical contaminant monitoring schedule to Respondent for the Atwood Resort (2001 monitoring schedule) for the compliance period that began on January 1, 2001, and ended on December 31, 2001.
9. On December 12, 2001, Ohio EPA issued a chemical contaminant monitoring schedule to Respondent for the Atwood Resort (2002 monitoring schedule) for the compliance period that began on January 1, 2002, and ended on December 31, 2002.

10. In accordance with OAC Rule 3745-81-23, NTNCWSs using a surface water source shall monitor for inorganic chemicals annually with one sample from each sampling point.
11. In violation of OAC Rule 3745-81-23 and the 2000 monitoring schedule, Respondent failed to monitor for inorganic chemicals (arsenic and fluoride) at the Atwood Resort between January 1 and June 30, 2000. Respondent subsequently monitored for arsenic on October 5, 2000.
12. In accordance with OAC Rule 3745-81-24, NTNCWSs serving fewer than three thousand three hundred one persons which do not detect a contaminant listed in OAC Rule 3745-81-12 in their first compliance period may reduce the sampling frequency to a minimum of one sample during each following compliance period.
13. On February 6, 1998, Ohio EPA issued an amended contaminant monitoring schedule to Respondent for the Atwood Resort (1998 amended monitoring schedule) for the compliance period that began on January 1, 1996, and ended on December 31, 1998. This amended schedule required Respondent to monitor for synthetic organic chemicals (SOCs) between May 1 and July 31, 1998, at the Atwood Resort.
14. In violation of OAC Rule 3745-81-24 and the 1998 amended monitoring schedule, Respondent failed to monitor for SOC's between May 1 and July 31, 1998, at the Atwood Resort. Respondent subsequently monitored for SOC's on February 22, 1999.
15. In accordance with OAC Rule 3745-81-24, NTNCWSs using a surface water source shall monitor for volatile organic chemicals (VOCs) with a minimum of one sample from each sampling point annually during the quarter which previously yielded the highest analytical result.
16. In violation of OAC Rule 3745-81-24 and the 2000, 2001, and 2002 monitoring schedules, Respondent failed to monitor for VOCs during the January 1 to March 31, 2000, January 1 to March 31, 2001, January 1 to March 31, 2002, and October 1 to December 31, 2002 monitoring periods. Respondent subsequently monitored for VOCs on June 5, 2001, November 6, 2001, July 8, 2002, and March 11, 2003 at the Atwood Resort.
17. In accordance with OAC Rule 3745-81-24, if a contaminant listed in OAC Rule 3745-81-12 is detected at a level exceeding 0.0005 milligrams per liter in any sample, then the PWS shall monitor for VOCs quarterly.

18. The results of analysis from the July 8, 2002 sample at the Atwood Resort indicated a detection of a regulated VOC. Respondent resampled on August 6, 2002, and confirmed the detection. Ohio EPA then increased the frequency of monitoring for VOCs at the Atwood Resort to quarterly.
19. On August 19, 2002, EPA issued an amended contaminant monitoring schedule to Respondent for the Atwood Resort (2002 amended monitoring schedule) for the monitoring period that began on January 1, 2002, and ended on December 31, 2002. This amended schedule required Respondent to monitor for VOCs quarterly beginning October 1 through December 31, 2002, at the Atwood Resort.
20. In violation of OAC Rule 3745-81-24, Respondent failed to monitor for VOCs quarterly between October 1 and December 31, 2002. Respondent subsequently monitored on March 11, 2003, at the Atwood Resort.
21. In accordance with OAC Rule 3745-81-32 (effective from April 1, 1996 to December 31, 2002), the owner or operator of a NTNCWS, which fails to perform the monitoring established by OAC Chapter 3745-81, shall notify persons served by the water system within thirty days of the violation by continuous posting in conspicuous places throughout the area served by the water system.
22. In violation of OAC Rule 3745-81-32 (effective from April 1, 1996 to December 31, 2002) Respondent failed to timely notify persons served by the water system for failure to monitor for VOCs between January 1 and March 31, 2002, and between October 1 and December 31, 2002.
23. In accordance with ORC § 6111.04(A), no person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state, and any such action shall be declared a public nuisance, unless the Director has issued a valid and unexpired permit, or renewal thereof, as provided in ORC §§ 6111.01 to 6111.08, or an application for renewal permit is pending.
24. In accordance with ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08.
25. In accordance with OAC Rule 3745-33-02(A), no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio national pollutant discharge elimination system (NPDES) permit in accordance with the requirements of OAC Chapter 3745-33.
26. The Atwood Lake constitutes "waters of the state" as defined in ORC § 6111.01(H).

27. The discharge of filter backwash from the Atwood Resort water treatment plant (WTP) constitutes "sewage" as defined in ORC § 6111.01(B).
28. The term "pollution," as defined in ORC § 6111.01(A), includes, but is not limited to, the placing of "sewage" in any "waters of the state."
29. On at least September 26, 2002, Ohio EPA documented discharges of filter backwash from Respondent's Atwood Resort WTP into the Atwood Lake.
30. In violation of ORC §§ 6111.04 and 6111.07 and OAC Rule 3745-33-02(A), Respondent does not hold a valid, unexpired NPDES permit for the discharge of pollutants to waters of the state.
31. On October 3, 2002, Ohio EPA's Northeast District Office (NEDO), Division of Surface Water (DSW) forwarded correspondence to Respondent requesting submittal of a NPDES permit application and a schedule for a permit to install (PTI) application for the installation of pollution control equipment at the Atwood Resort WTP, as the WTP qualifies as a point source under OAC Chapter 3745-33.
32. On or about September 2, 2003, in accordance with ORC § 6111.44 and OAC Chapter 3745-31, Respondent submitted a NPDES permit application to Ohio EPA, NEDO, DSW.
33. Each of the violations cited above represents a separate violation of ORC §§ 6109.31 or 6111.07.
34. With respect to Orders issued pursuant to ORC Chapter 6111 herein, 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 their 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. Within thirty (30) days of the effective date of these Orders, Respondent shall notify the public, in accordance with OAC Rule 3745-81-32, for the violations identified in Findings #22. Respondent shall provide Ohio EPA with copies of all public notices and verification forms.
2. Respondent shall immediately comply with the filtration requirements of OAC Rule 3745-81-72 at the Atwood Resort.

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3. Respondent shall immediately comply with OAC Rules 3745-81-23 and 3745-81-24, the 2003 chemical contaminant monitoring schedule (copy attached hereto and incorporated herein), and all subsequent monitoring schedules for the Atwood Resort.
4. Within eight (8) months of effective date of these Orders, Respondent shall submit a general plan to Ohio EPA, NEDO, DDAGW, regarding the PWS improvements necessary for compliance with surface water treatment requirements at the Atwood Resort.
5. Within fourteen (14) months of effective date of these Orders, Respondent shall submit detail plans to Ohio EPA, NEDO, DDAGW, in accordance with OAC Chapter 3745-91, for PWS improvements necessary for compliance with surface water treatment requirements at the Atwood Resort.
6. Within three (3) months of plan approval, Respondent shall begin construction of PWS improvements necessary for compliance with surface water treatment requirements at the Atwood Resort, in accordance with the detail plans approved by Ohio EPA.
7. Within eighteen (18) months of plan approval, Respondent shall complete construction of PWS improvements at the Atwood Resort necessary for compliance with surface water treatment requirements, in accordance with the detail plans approved by Ohio EPA.
8. Within nineteen (19) months of plan approval, Respondent shall begin operation of PWS improvements at the Atwood Resort and shall comply with surface water treatment requirements of OAC Rules 3745-81-71 through 3745-81-75.
9. Within eight (8) months of the effective date of these Orders, Respondent shall submit a PTI application with approvable detail plans for installation of pollution control equipment at the Atwood Resort.
10. Within ten (10) months of the effective date of these Orders, Respondent shall initiate installation of the pollution control equipment at the Atwood Resort pursuant to the PTI issued by Ohio EPA.
11. Within thirteen (13) months of the effective date of these Orders, Respondent shall complete installation of the pollution control equipment at the Atwood Resort.
12. Within fourteen (14) months of the effective date of these Orders, Respondent shall achieve compliance with the effluent limits contained in its NPDES permit at the Atwood Resort.

13. Within fourteen (14) days of the milestone dates in Orders #10, and #11, Respondent shall submit written notification and documentation demonstrating compliance with these milestone dates to Ohio EPA, NEDO, DSW.
14. Within thirty (30) days of notification, Respondent shall respond in writing to address any comments or deficiencies noted by Ohio EPA on any plan or report submitted by Respondent.
15. Respondent shall pay Ohio EPA three thousand six hundred dollars (\$3,600.00) in settlement of Ohio EPA's claim for civil penalties which may be assessed pursuant to ORC Chapter 6109., for the violations cited herein. Payment shall be made by tendering a certified check for \$3,600.00 drawn to the "Treasurer, State of Ohio" and submitted to Fiscal Administration, General Accounting Section, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, for deposit into the Drinking Water Protection Fund established by ORC Section 6109.30. Payment shall be made within thirty (30) days of the effective date of these Orders.

#### **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 Division of Drinking and Ground Waters and Division of Surface Water 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.

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 defined in OAC Rule 3745-33-03(D)(4).

#### **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 Atwood Resort PWS or water pollution control equipment.

### **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  
Northeast District Office  
Division of Drinking and Ground Waters or Division of Surface Water  
2110 Aurora Road  
Twinsburg, Ohio 44087-1969

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.

PUBLIC NOTICE

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**

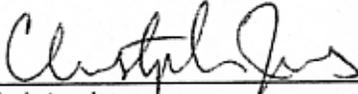
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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:**

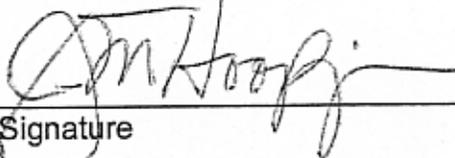
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Christopher Jones  
Director

2-26-04  
Date

**IT IS SO AGREED:**

John M. Hoopingarner  
Executive Director

  
\_\_\_\_\_  
Signature

1-28-04  
Date

PUBLIC NOTICE

OHIO ENVIRONMENTAL PROTECTION AGENCY

Notice is hereby given that the Director of the Ohio Environmental Protection Agency, pursuant to Sections 3745.01 and 6109.04 of the Ohio Revised Code, has issued Final Findings and Orders to the Muskingum Watershed Conservancy District to ensure that the Atwood Resort public water system is operated in compliance with the State's safe drinking water laws. These Final Findings and Orders provide the Muskingum Watershed Conservancy District with a schedule for resolving its drinking water violations. This final action will be effective on February 27, 2004, and may be appealed to the Environmental Review Appeals Commission (ERAC) pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be filed with the ERAC within thirty (30) days after notice of the Director's action. A copy of the appeal must be served upon the Director of the Ohio Environmental Protection Agency within three (3) days of filing at the ERAC. The ERAC's address is:

Environmental Review Appeals Commission  
309 South Fourth Street  
Room 222  
Columbus, Ohio 43215

5-28-04  
Date

  
Christopher Jones  
Director

1-28-04  
Date

John M. Hoopinger  
Executive Director  
