

OHIO E.P.A.

DEC 29 2005

Effective Date DEC 29 2005

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: : DIRECTOR'S FINAL  
Village of McClure : FINDINGS AND ORDERS  
145 Haley Street :  
McClure OH 43534-0340 :

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 Village of McClure (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.

IV. FINDINGS

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

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

*Michael A. Shogren* Date 12/29/05

1. Respondent owns and operates a "public water system" (PWS) at the Village of McClure, which is a "community water system" (CWS) as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID: 3500711) is located at 145 Haley Street, McClure (Henry County), Ohio.
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 850 persons.
4. OAC Rule 3745-81-23 requires all PWSs which are surface water systems to monitor for nitrate monthly.
5. In violation of OAC Rule 3745-81-23, Respondent failed to monitor monthly for nitrate during the months of August 1999 and October 1999.
6. OAC Rule 3745-81-11(A) establishes a maximum contaminant level (MCL) of 10 milligrams per liter (mg/L) for nitrate in drinking water for PWSs.
7. In violation of OAC Rule 3745-81-11(A), Respondent exceeded the nitrate MCL during the months of June 1998, June 1999, March 2000, June 2000, May 2001, December 2002, January 2003, February 2003, March 2003, and June 2003.
8. On December 15, 1998, the Director issued a chemical contaminant monitoring schedule to Respondent (1999 monitoring schedule) for the compliance period that began on January 1, 1999 and ended on December 31, 1999.
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. In accordance with OAC 3745-81-24, CWSs shall monitor for organic chemicals according to a schedule provided by the Director.
11. In violation of OAC Rule 3745-81-24 and Respondent's 1999 monitoring schedule, Respondent failed to monitor for synthetic organic chemicals (SOCs) during the May through July 1999 monitoring period.
12. In violation of OAC Rule 3745-81-24 and Respondent's 2001 monitoring schedule, Respondent failed to monitor for volatile organic chemicals (VOCs) during the October through December 2001 monitoring period.

13. In violation of OAC Rule 3745-81-24 and Respondent's 2001 monitoring schedule, Respondent failed to monitor for SOCs during the May through July 2001 monitoring period. Respondent monitored untimely for SOCs in December 2001.
14. In accordance with OAC Rule 3745-81-72(B)(1), a PWS that uses a surface water source, in whole or in part, shall provide disinfection treatment. The disinfection treatment shall be considered sufficient when the total treatment processes of that PWS would reliably achieve at least 99.9 per cent (3 log) inactivation and/or removal of *Giardia lamblia* cysts and at least 99.99 per cent (4 log) inactivation and/or removal of viruses, as determined in the appendix of this rule. The appendix sets forth that each day when the actual CT (residual disinfection concentration x contact time) value does not meet or exceed the required CT, the water treatment plant is in violation.
15. In violation of OAC Rule 3745-81-72 (B)(1), Respondent failed to provide disinfection treatment of drinking water when the actual CT (residual disinfection concentration x contact time) value during the maximum hourly flow rate did not meet or exceed the required minimum CT value set forth in the appendix of this rule during the months of October 2000, and November 2000.
16. In accordance with OAC Rule 3745-81-14 (B), version effective from September 13, 1993 to March 31, 1999, a PWS which monitors with fewer than forty (40) samples per month is in compliance with the MCL for total coliforms when no more than one sample during a month is total coliform-positive (monthly MCL).
17. In violation of OAC Rule 3745-81-14 (B), version effective from September 13, 1993 to March 31, 1999, Respondent received a total coliform monthly MCL violation in October 1998 when more than one sample result during the month was total coliform-positive.
18. In accordance with OAC Rule 3745-81-21(A)(1)(b), a community water system using a surface water source, in whole or in part, serving fewer than three thousand three hundred one (3,301) persons shall monitor at regular intervals for total coliforms no less than four (4) times per month.
19. In violation of OAC Rule 3745-81-21(A)(1)(b), Respondent failed to monitor for total coliform bacteria at least four (4) times per month during February 2002.
20. In accordance with OAC Rule 3745-81-21(B)(6), when a PWS monitoring with fewer than five samples per month has one or more total coliform-positive samples, the PWS shall monitor with at least five (5) samples during the next month that the PWS provides water to the public.

21. In violation of OAC Rule 3745-81-21(B)(6), Respondent failed to monitor for total coliform bacteria with five (5) routine samples for the month of September 2000 following a total coliform-positive result in the month of August 2000.
22. In accordance with OAC Rule 3745-83-02(B), version effective from November 26, 1980 to April 20, 2001, each CWS shall maintain a minimum chlorine residual of at least two-tenths mg/L free chlorine throughout the distribution system.
23. In violation of OAC Rule 3745-83-02(B), version effective November 26, 1980 to April 20, 2001, Respondent failed to maintain a minimum chlorine residual of at least two-tenths mg/L free chlorine throughout the distribution system in the month of May 1999.
24. In accordance with OAC Rule 3745-83-05(A)(1), version effective November 26, 1980 to April 20, 2001, the operator of a CWS shall prepare an operation report for each month of operation and submit the report to the district office no later than the tenth of the month following the month for which the report was prepared.
25. In violation of OAC Rule 3745-83-05(A)(1), version effective November 26, 1980 to April 20, 2001, Respondent failed to submit monthly operating reports for the months of March 1999 and February 2001.
26. In accordance with OAC Rule 3745-81-77(B)(1), PWSs using surface water as a source which use conventional filtration treatment shall monitor for total organic carbon (TOC) monthly.
27. In violation of OAC Rule 3745-81-77(B)(1), Respondent failed to perform routine TOC monitoring for the month of January 2004.
28. In accordance with OAC Rule 3745-91-02, no person shall make a substantial change in a PWS until plans therefor have been approved by the Director. OAC Rule 3745-91-01(G)(1)(b) defines a substantial change as: "For water sources: any new source or alteration in source, including connection to another source or distribution system; any alteration in collection facilities or equipment."
29. In violation of OAC Rule 3745-91-02, Respondent replaced one of two raw water pumps with a pump of larger capacity without receiving Director's plan approval.
30. In accordance with OAC Rule 3745-95-03(A) the supplier of water shall conduct or cause to be conducted periodic surveys and investigations, of frequency acceptable to the director, of water use practices within a consumer's premises to determine whether there are actual or potential cross-connections to the consumer's water system through which contaminants or pollutants could backflow into the PWS .

31. In accordance with OAC Rule 3745-95-04(A), November 16, 1980 to April 30, 2003, an approved backflow prevention device shall be installed on each service line to a consumer's water system serving premises, where in the judgment of the supplier of water or the Director, a pollutional, system, health or severe health hazard to the PWS exists.
32. In accordance with OAC Rule 3745-95-06(C), version effective from November 16, 1980 to April 30, 2003, it shall be the duty of the consumer to have thorough inspections and operational tests made of the devices at such intervals and in such manner as may be reasonably required by the supplier of water or the Director. These inspections and tests shall be performed by the supplier of water or a person approved by the supplier. It shall be the duty of the supplier of water to see that these tests and inspections are made.
33. In accordance with OAC Rule 3745-95-04(A), version effective from May 1, 2003 to present, an approved backflow prevention device shall be installed on each service line to a consumer's water system serving premises, where in the judgment of the supplier of water or the Director, a pollutional, system, health or severe health hazard to the PWS exists.
34. In accordance with OAC Rule 3745-95-06(D), version effective from May 1, 2003 to present, the supplier of water shall inspect or cause to be inspected all installations where an approved connection exists between an auxiliary water system and the PWS or a consumer's water system at least once every twelve months and shall maintain an inventory of all such installations and inspection records. Such inventories and inspection records shall be made available during sanitary surveys and at other reasonable times.
35. In violation of OAC Chapter 3745-95, all versions effective since November 16, 1980 to present, Respondent has failed to implement an effective backflow prevention/cross connection control program, since at least April 1995 to the effective date of these Orders, including the conduction of surveys and inspections of water use practices within a consumer's premises to determine whether there are actual or potential cross-connections to the consumer's water system and maintaining appropriate records.
36. In accordance with OAC Rule 3745-96-02(A), version effective from May 1, 2001 through June 30, 2004, each community water system shall provide to its customers an annual report that contains the information specified in this Rule and OAC Rule 3745-96-03.
37. In violation of OAC Rule 3745-96-02(A), version effective from May 1, 2001 through June 30, 2004, Respondent's 2003 Consumer Confidence Report did not include the required health information regarding the nitrate MCL exceedance.

38. In accordance with OAC Rule 3745-81-12(B), as of January 1, 2004, the MCL for haloacetic acids five (HAA5) is 0.060 mg/L for community surface water systems serving fewer than ten thousand persons (10,000).
39. In violation of OAC Rule 3745-81-12(B), Respondent exceeded the MCL for HAA5 in the April through June 2005 monitoring period (0.064 mg/L).
40. In accordance with OAC Rule 3745-81-12(B), as of January 1, 2004, the MCL for total trihalomethanes (TTHM) is 0.080 mg/L for community surface water systems serving fewer than ten thousand persons (10,000). Compliance with the MCL for TTHM is calculated according to OAC Rule 3745-81-24(D).
41. In violation of OAC Rule 3745-81-12(B), Respondent exceeded the MCL for TTHM with a running annual average in October through December 2004 of 0.095 mg/L, January through March 2005 of 0.103 mg/L, and April through June 2005 of 0.117 mg/L.
42. In accordance with OAC Rule 3745-81-74(B)(1), a PWS that provides conventional filtration treatment or direct filtration treatment shall conduct continuous monitoring of turbidity for each individual filter effluent. The PWS shall validate the continuous measurement for accuracy on a regular basis using a protocol acceptable to the director. The PWS shall record the results of individual filter monitoring every fifteen minutes.
43. In violation of OAC Rule 3745-81-74(B)(1), Respondent has failed to monitor and record the individual filter results from January 2005 to the effective date of these Orders.
44. In accordance with OAC Rule 3745-81-32, the owner or operator of a PWS shall provide public notification for violations.
45. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failing to monitor for nitrate during the months of August 1999 and October 1999.
46. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for exceeding the nitrate MCL for the months of June 1999 and May 2001.
47. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failing to monitor for SOCs during the May through July 2001 monitoring period.
48. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failure to monitor and record the individual filter results for April 2005.

49. Each of the violations cited above represents a separate violation of ORC § 6109.31.

#### **V. ORDERS**

1. From the effective date of these Orders, Respondent shall comply with nitrate monitoring requirements, in accordance with OAC Rule 3745-81-23.
2. From the effective date of these Orders, Respondent shall comply with all chemical contaminant monitoring schedules issued by Ohio EPA.
3. From the effective date of these Orders, Respondent shall maintain the required minimum CT value as set forth in the appendix of OAC Rule 3745-81-72.
4. From the effective date of these Orders, Respondent shall comply with total coliform bacteria monitoring and MCL requirements, in accordance with OAC Rules 3745-81-21 and 3745-81-14, respectively.
5. From the effective date of these Orders, Respondent shall maintain the minimum chlorine residual of at least two-tenths mg/L free chlorine throughout the distribution system, in accordance with OAC Rule 3745-83-01.
6. From the effective date of these Orders, Respondent shall comply with TOC monitoring requirements, in accordance with OAC Rule 3745-81-77.
7. 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 Finding Nos. 45, 46, 47, and 48. Respondent shall provide Ohio EPA with copies of all public notices and verification forms.
8. Within thirty (30) days of the effective date of these Orders, in accordance with OAC Rule 3745-91-02, Respondent shall submit detailed plans for review and approval to Ohio EPA for the new, larger, raw water pump.
9. Within twenty (20) months of the effective date of these Orders, Respondent shall submit detailed plans for review and approval in accordance with OAC Chapter 3745-91 to Ohio EPA for the construction of a reservoir with a total raw water storage volume appropriately sized for the PWS.
10. Within three (3) months of approval of the detailed plans for the construction of the reservoir, Respondent shall begin construction of the reservoir in accordance with the detailed plans approved by the Director.

11. Within six (6) months of approval of the detailed plans for the construction of the reservoir, Respondent shall complete construction of and begin operation of the reservoir in accordance with the detailed plans approved by the Director.
12. Within seven (7) days after the deadlines in Orders Nos. 10 and 11, Respondent shall send written notification of compliance with the requirements of these Orders to the Division of Drinking and Ground Waters, Northwest District Office, Ohio EPA.
13. Within nine (9) months of the Director's approval of the detailed plans for the construction of the reservoir, Respondent shall comply with the nitrate MCL in accordance with OAC Rule 3745-81-11.
14. Within ninety (90) days of the effective date of these Orders, Respondent shall implement an effective backflow prevention/cross-connection program in accordance with OAC Chapter 3745-95.
15. Within ninety (90) days of the effective date of these Orders, Respondent shall complete construction according to Director's March 24, 2005 plan approval, and comply with the Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rules in accordance with OAC Chapter 3745-81.
16. Within ninety (90) days of the effective date of these Orders, Respondent shall have an engineer perform a PWS assessment and provide a recommendation for installation of treatment to achieve compliance with the MCLs for TTHM and HAA5.
17. Within one hundred and twenty (120) days of the effective date of these Orders, Respondent shall submit to Ohio EPA detailed plans in accordance with OAC Chapter 3745-9, for installation of treatment necessary for the PWS to achieve compliance with the MCLs for TTHM and HAA5.
18. Within three (3) months of the Director's approval of the detailed plans for installation of treatment necessary for the PWS to achieve compliance with the MCLs for TTHM and HAA5, Respondent shall complete the installation of treatment necessary to achieve compliance with the MCLs for TTHM and HAA5.
19. Within twelve (12) months of Director's plan approval of the detailed plans for the installation of treatment necessary for the PWS to achieve compliance with the MCLs for TTHM and HAA5, Respondent shall achieve compliance with the MCLs for TTHM and HAA5.
20. Respondent shall pay Ohio EPA the amount of fifteen thousand dollars (\$15,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6109, and which will be deposited into the Drinking Water Protection Fund established pursuant to ORC § 6109.30. Within

thirty (30) and one hundred and eighty (180) days of the effective date of these Orders, payment shall be made by official check(s) totaling twelve thousand seven hundred and sixty eight dollars and twenty eight cents (\$12,768.28) made payable to "Treasurer, State of Ohio." Payment shall be made in two equal installment checks of six thousand three hundred eighty four dollars and fourteen cents (\$6,384.14) each. The official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049 together with a letter identifying Respondent.

21. In lieu of paying the remaining two thousand two hundred and thirty one dollars and seventy two cents (\$2,231.72) of civil penalty, Respondent shall within ninety (90) days of the effective date of these Orders, complete a Supplemental Environmental Project (SEP) consisting of the installation and commencement of operation of the Human Machine Interface (HMI) Software system at the water treatment plant.
22. Within one hundred and twenty (120) days of the effective date of these Orders, Respondent shall provide documentation, including but not limited to receipts of payment, evidencing completion of the SEP outlined in Order No. 21.
23. Should Respondent fail to complete the SEP outlined in Order No. 21, Respondent shall pay to Ohio EPA two thousand two hundred and thirty one, dollars and seventy two cents (\$2,231.72) of the civil penalty in accordance with the procedures in Order No. 20.

## **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 Drinking and Ground Waters 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 defined in OAC Rule 3745-33-03(D)(3).

## **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 operations or the PWS at the Village of McClure.

### **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 the Ohio EPA.

### **X. NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, OH 43402-9398  
Att: DDAGW Enforcement Supervisor

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:**

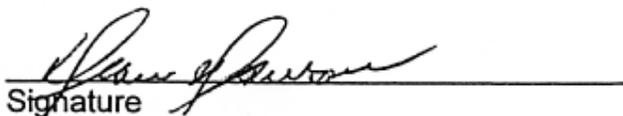
Ohio Environmental Protection Agency

  
\_\_\_\_\_  
Joseph Koncelik, Director

12/29/05  
Date

**IT IS SO AGREED:**

Village of McClure

  
\_\_\_\_\_  
Signature

Dec. 20, 2005  
Date

DEAN DAWSON, MAYOR  
Printed or Typed Name and Title