

OHIO E.P.A.

SEP 27 2006

ALTERED DIRECTOR'S JOURNAL

Effective Date SEP 27 2006

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

Village of Middlefield :  
14860 North State Avenue :  
Middlefield, Ohio 44062 :

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 Middlefield (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:

1. Respondent owns and operates a "public water system" (PWS) at the Village of Middlefield which is a "community water system" as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.

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



9-27-06

2. Respondent's PWS (PWSID: 2802012), is located at 14680 Tare Creek Parkway, Middlefield (Geauga County), Ohio.
3. Respondent's PWS obtains its drinking water from a "ground water" source as defined by OAC Rule 3745-81-01 and serves a population of two thousand two hundred fifty (2,250) persons.
4. In accordance with OAC Rule 3745-81-21(A), PWSs shall collect total coliform routine samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. Such plans are subject to review and revision by the Director.
5. In violation of OAC Rule 3745-81-21(A), Respondent failed to have a written sample siting plan from at least November 18, 1999 to October 27, 2003. On October 27, 2003, Respondent submitted a sample siting plan to the Ohio EPA, Northeast District Office (NEDO), Division of Drinking and Ground Waters (DDAGW) and returned to compliance with OAC Rule 3745-81-21(A).
6. In accordance with OAC Rule 3745-85-01(B), each community water system shall prepare and maintain a written contingency plan for providing safe drinking water to its service area under emergency conditions.
7. In violation of OAC Rule 3745-85-01(B), Respondent failed to have a written contingency plan from at least June 30, 2003 to October 27, 2003. On October 27, 2003, Respondent submitted a written contingency plan to the Ohio EPA, NEDO, DDAGW and returned to compliance with OAC Rule 3745-85-01(B).
8. In accordance with OAC Rule 3745-96-02(A), each community water system shall provide to its customers an annual consumer confidence report (CCR) that contains the information specified in OAC Rules 3745-96-02(A) and 3745-96-03.
9. In violation of OAC Rule 3745-96-02(A), Respondent failed to provide in an annual CCR information concerning detected contaminants, information for the volatile organic compounds, information about the maximum contaminant level (MCL) goal for the contaminants detected, and the definition for "action level" as required by this rule for the years of 2002, 2003, and 2004. On July 11, 2006, Respondent submitted the corrected information with the 2005 CCR and returned to compliance with OAC Rule 3745-96-02(A).
10. In accordance with OAC Rule 3745-81-11(B), all community and nontransient noncommunity PWSs are required to provide water that does not exceed the MCL for the inorganic contaminant arsenic, which is 10 µg/L.

11. In accordance with OAC Rule 3745-81-23(H)(2), for PWSs which are conducting monitoring for an inorganic chemical at a frequency greater than annual, compliance with the MCL for arsenic is determined by a running annual average at each sampling point. If any one sample result would cause the running annual average to exceed the MCL, then the PWS is out of compliance immediately.
12. Respondent collected arsenic samples on August 9, 2005 resulting in 16 µg/L, January 24, 2006 resulting in 11 µg/L, April 18, 2006 resulting in 11 µg/L, June 28, 2006 resulting in 17 µg/L, and July 25, 2006 resulting in 9 µg/L. Though Respondent is currently not in violation of OAC Rule 3745-81-23(H)(2), these results indicate that Respondent is likely to exceed the arsenic MCL within a year.
13. In accordance with OAC Rule 3745-91-02(A), no person shall begin construction or installation of a PWS, or make a substantial change in a PWS, until plans therefor have been approved by the Director.
14. In accordance with OAC Rule 3745-91-01(G)(1)(a), substantial change means any change that affects isolation, capacity, flows, water quality, source distribution or treatment. For distribution systems substantial change includes, but is not limited to: new waterlines; replacement waterlines that change in size, alignment or material; new tanks; modification in storage; new booster stations; changes in pump capacity and auxiliary power.
15. During a May 7, 1998 public meeting, Respondent passed a directive requiring Middlefield Parkway to construct a water booster station in the Woodsong Subdivision (Woodsong Pump Station).
16. On April 7, 1999, Middlefield Parkway submitted to Ohio EPA, NEDO, DDAGW detail plans for the Woodsong Pump Station with the representation that it would be utilized temporarily until Respondent constructed an elevated storage tank, which Respondent indicates was contrary to the May 7, 1998 directive.
17. The detail plans submitted by Middlefield Parkway for the Woodsong Pump Station have neither been approved nor denied by the Director.
18. By May 1999, Middlefield Parkway had begun construction of the Woodsong Pump Station without Director's Plan Approval.
19. Middlefield Parkway constructed the Woodsong Pump Station on private property within the territorial jurisdiction of Respondent.
20. On September 7, 2000, Respondent adopted Ordinance Number 00-115, accepting from Middlefield Parkway dedication for public use of the Woodsong Pump Station.

21. On March 7, 2006, Ohio EPA, NEDO, DDAGW, notified Respondent that the detail plans submitted by Middlefield Parkway for the Woodsong Pump Station on April 7, 1999 were not approvable.
22. In violation of OAC Rule 3745-91-02(A), Respondent allowed the construction of Woodsong Pump Station, which constituted a "substantial change" as defined by OAC Rule 3745-91-01(G), without the Director's Plan Approval.
23. On May 11, 2006, Respondent proposed a schedule for modification of the Woodsong Pump Station that will meet standards required by Ohio EPA.
24. Each of the violations cited above represents a separate violation of ORC § 6109.31.

#### **V. ORDERS**

1. By October 31, 2006, Respondent shall submit approvable detail plans to the Ohio EPA for the Woodsong Pump Station to the NEDO, DDAGW, 2110 East Aurora Road, Twinsburg, OH 44087.
2. Within one hundred eighty (180) days of Director's Plan Approval, Respondent shall complete required changes to the Woodsong Pump Station in accordance with Director's Plan Approval.
3. From the effective date of these Orders, Respondent shall comply with arsenic monitoring requirements, in accordance with OAC Rule 3745-81-23.
4. By December 1, 2006, Respondent shall submit approvable detail plans for the effective removal of arsenic to comply with the arsenic MCL specified in OAC Rule 3745-81-11(B). Detailed plans should be sent to Ohio EPA, Central Office, DDAGW, Engineering, P.O. Box 1049, Columbus, Ohio, 43216.
5. Within one hundred twenty (120) days of receipt of Ohio EPA plan approval, Respondent shall initiate construction of treatment to effectively remove arsenic pursuant to Ohio EPA Plan Approval.
6. Within six hundred (600) days of receipt of Ohio EPA plan approval, Respondent shall complete construction of treatment to effectively remove arsenic pursuant to Ohio EPA Plan Approval.
7. Within twelve (12) months of the initiation of treatment operations to effectively remove arsenic, Respondent shall be in compliance with the arsenic MCL in accordance with OAC Rule 3745-81-11(B) as determined by OAC Rule 3745-81-23(H)(2).

8. In the event Respondent exceeds the arsenic MCL, Respondent shall issue public notification in accordance with OAC Rule 3745-81-32 and forward the public notice and verification form to Ohio EPA, NEDO, DDAGW, Attn: Enforcement Supervisor, 2110 East Aurora Road, Twinsburg, OH 44087.
9. 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 other documentation submitted by Respondent.

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

#### **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 Middlefield.

#### **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, unless otherwise specified, shall be addressed to:

Ohio Environmental Protection Agency  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, OH 44087-1924  
Att: Enforcement Supervisor

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

All documents required to be submitted to Respondent pursuant to these Orders, unless otherwise specified, shall be addressed to:

Village of Middlefield, Ohio  
Attention: Village Administrator  
P.O. Box 1019  
14860 North State Avenue  
Middlefield, Ohio 44062

With a copy to:

Thomas J. Lee, Law Director  
Taft, Stettinius & Hollister LLP  
3500 BP Tower  
200 Public Square  
Cleveland, Ohio 44114

Or to such other persons and addresses may hereafter be otherwise specified in writing by Respondent.

## **XI. RESERVATION OF RIGHTS**

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. Ohio EPA and Respondent each reserve all other 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 right 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. UNAVOIDABLE DELAYS**

The Respondent shall cause all work to be performed in accordance with applicable schedules and time frames unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of these Orders, an "unavoidable delay" shall mean an event beyond the control of the Respondent which prevents or delays performance of any obligation required by these Orders and which could not be overcome by due diligence on the part of the Respondent. Increased cost of compliance shall not be considered an event beyond the control of the Respondent.

The Respondent shall notify Ohio EPA in writing within ten (10) days after the occurrence of an event which the Respondent contends is an unavoidable delay. Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by the Respondent to minimize the delay, and the timetable under which these measures will be implemented. The Respondent shall have the burden of demonstrating that the event constitutes an unavoidable delay.

If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the Respondent in writing. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify the Respondent in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.

## **XIV. EFFECTIVE DATE**

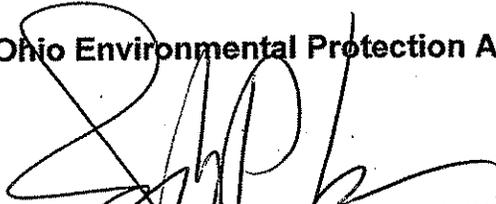
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**XV. 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. Koncek, Director

SEP 27 2006

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

The Village of Middlefield

  
\_\_\_\_\_  
Signature

9-07-06

\_\_\_\_\_  
Date

DANIEL A. WEIR, VILLAGE ADMINISTRATOR  
Printed or Typed Name and Title