

OHIO E.P.A.

AUG 15 2005

ENTERED DIRECTOR'S JOURNAL

Effective Date AUG 15 2005

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:
The City of New Lexington
125 South Main Street
New Lexington, Ohio 43764

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 New Lexington (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.

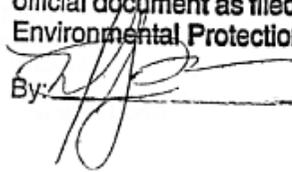
II. PARTIES BOUND

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.**

By: 

Date

8-15-2005

IV. FINDINGS

The Director of Ohio EPA (Director) 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 and Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID# 6400411) is located at 125 S. Main Street, New Lexington, Perry County, Ohio, 43764.
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 5,126 persons.
4. In accordance with OAC Rules 3745-81-12(B) and 3745-81-24(D), a surface water system serving fewer than ten thousand 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 milligrams per liter (mg/L).
5. In accordance with OAC Rule 3745-81-24(C)(9)(a), if a PWS monitors for TTHM with a frequency greater than annually, compliance is determined by a running annual average of all samples taken at each sampling point. If the running annual average of quarterly averages covering any consecutive four quarter period of any sampling point is greater than the MCL, then the PWS is out of compliance.
6. In violation of OAC Rules 3745-81-12(B) and 3745-81-24(C)(9)(a) and (D), Respondent exceeded the MCL for TTHM in the October through December 2004 monitoring period when the TTHM running annual average was 0.111 mg/L.
7. In accordance with ORC § 6109.07(A) and OAC Rule 3745-91-02(A)(1), no person shall begin construction or installation of a PWS, or make a substantial change in a PWS, until plans therefore have been approved by the Director. An application for approval of plans for such construction, installation, or substantial change in a PWS, as required by ORC § 6109.07, shall be submitted to the district office. The plans and application shall meet all of the requirements of OAC Chapter 3745-91.
8. In violation of ORC § 6109.07(A) and OAC Rule 3745-91-02(A), on or before November 17, 2004, Respondent completed the "2003 Water Line Replacement Project" (Plan #276676-ws) without receipt of Director's plan approval.
9. Respondent initially submitted plans for the "2003 Water Line Replacement Project" on July 8, 2003, but failed to respond to the July 23, 2003 letter from Ohio EPA requesting revisions to these plans. On November 22, 2004, after discovery of the completed installation of the project, Ohio EPA sent Respondent a letter requesting

approvable "as-built" plans. Respondent submitted "as-built" plans on December 7, 2004. On December 15, 2005, Ohio EPA sent correspondence to Respondent requesting plan revisions; Respondent provided Ohio EPA with these revisions on April 21, 2005. On May 11, 2005, the Director issued plan approval to Respondent.

10. In accordance with OAC Rule 3745-7-02(A)(1), each person owning or operating a PWS shall place the direct supervision of the technical operation and maintenance of such a PWS under the responsible charge of a certified operator having valid certification of a class of at least equal to that required by that PWS classification.
11. Respondent's PWS is classified as a Class III PWS and a Class I Water Distribution System, as stated in the certificate of classification issued by the Director on November 21, 1989.
12. In violation of OAC Rule 3745-7-02(A)(1), Respondent's Class I Water Distribution System failed to be placed under the responsible charge of a certified operator with at least a Class I certification from July 29, 2004 to April 11, 2005.
13. Each violation cited above represents a separate violation of ORC § 6109.31.

V. ORDERS

1. By November 1, 2005, in accordance with ORC § 6109.07(A) and OAC Chapter 3745-91, Respondent shall submit approvable detail plans to Ohio EPA, Southeast District Office (SEDO), Division of Drinking and Ground Waters (DDAGW) for either a treatment to reduce TTHM or an alternative water source.
2. By March 15, 2007, in accordance with Director's plan approval, Respondent shall commence construction of either the treatment to reduce TTHM or an alternative water source.
3. By March 15, 2008, in accordance with Director's plan approval, Respondent shall complete construction and installation of either the treatment to reduce TTHM or an alternative water source and commence with operations of such.
4. By September 15, 2008, Respondent shall achieve compliance with the MCL for TTHM.
5. Within seven (7) business days after the deadlines given in Orders No. 2 and 3, Respondent shall send written notification of compliance with the requirements of each of the Orders to Ohio EPA, SEDO, DDAGW.
6. 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.

7. Respondent shall pay Ohio EPA twenty two thousand eight hundred dollars (\$22,800.00) in settlement of Ohio EPA's claim for civil penalties which may be assessed pursuant to ORC Chapter 6109, for the violations cited herein.
8. Within thirty (30) days of the effective date of these Orders, Respondent shall pay to the Ohio EPA the amount of four thousand five hundred sixty dollars (\$4,560.00) in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6109. This payment shall be made by tendering a certified check for said amount 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 § 6109.30.
9. In lieu of payment of the remaining eighteen thousand two hundred forty dollars (\$18,240.00) of the civil penalty, Respondent shall implement a Supplemental Environmental Project (SEP) consisting of the replacement of gaseous chlorine with sodium hypochlorite at the PWS. Respondent shall complete this SEP in accordance with the following schedule:
 - A. On or before November 1, 2005, Respondent shall submit plans outlining the SEP. If Ohio EPA identifies any deficiencies in Respondent's plans, Ohio EPA will notify Respondent in writing and Respondent shall, within fourteen (14) days of receiving Ohio EPA's comments, respond in writing to address these deficiencies;
 - B. On or before March 15, 2007, Respondent shall initiate the SEP in accordance with the approved plans;
 - C. On or before March 14, 2008, Respondent shall complete the SEP in accordance with the approved plans; and
 - D. Within seven (7) days after the deadlines given in Orders No. 9B and 9C, Respondent shall send written notification of compliance with the requirements of each Order to Ohio EPA, SEDO, DDAGW.
10. Should Respondent fail to complete the SEP within the required timeframes in Order No. 9, Respondent shall pay to Ohio EPA eighteen thousand two hundred and forty dollars (\$18,240.00) of the civil penalty in accordance with the procedures in Order No. 8. Payment shall be due within thirty (30) days of the deadline set forth in Order No. 9C.

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 municipality.

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 in Order No. 8) shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Drinking and Ground Waters
2195 Front Street
Logan, Ohio 43138
Att: Enforcement Manager

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

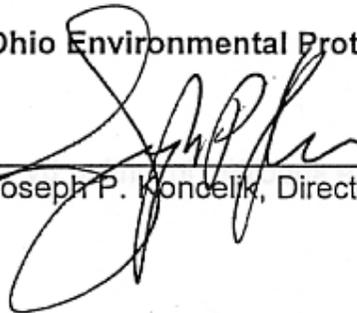
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



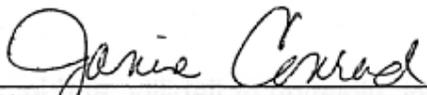
Joseph P. Koncelik, Director

AUG 15 2005

Date

IT IS SO AGREED:

The City of New Lexington



Signature

2/7/2005

Date

Janine Conrad, Mayor
Printed or Typed Name and Title

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.