OHIO E.P.A.

SEP 15 2006

ENTERED DIRECTOR'S JOURNAL

Effective Date SEP 15 2006

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

The Ohio State University :
Office of Environmental Health :
& Safety :
1314 Kinnear Road :
Columbus, Ohio 43212-1168 :

Respondent,

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to The Ohio State University (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, heirs, and/or successors in interest liable under Ohio law. No change in ownership of the public water system (PWS) 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 PWS at Stone Lab as defined by ORC § 6109.01 and a "transient non-community water system" as defined by 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

By: Date 9/15/06

2. Respondent's PWS (PWS ID:6249612) at Stone Lab serves a population of at least 25 people and is located on Gibraltar Island, Put-In-Bay (Ottawa County), Ohio.

3. ORC § 6109.31 states "[n]o person shall violate this chapter, any rule adopted under it, or any order or term or condition of a license, license renewal, variance, or exemption granted by the director of environmental protection under it. Each day of noncompliance is a separate violation."

4. Pursuant to ORC § 6109.04(C)(7), the Director may issue, modify, and revoke orders as necessary to carry out the Director's powers and duties under ORC Chapter 6109 and primary enforcement responsibility for PWSs under the "Safe Drinking Water Act."

5. Pursuant to ORC § 6109.06, whenever the Director determines that use of water from a PWS presents a threat to the health of persons using such water, he may issue a "water use advisory" alerting the owner, operator, or users of such system of the threat and advising that the use of the water be discontinued or that the water be boiled or otherwise treated to render it safe for use. The Director may order the owner or operator of such system to notify its users, or potential users, of the water use advisory by newspaper or other means and to provide notification to radio and television stations.

6. Pursuant to ORC § 6109.07(A) and 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 of Ohio EPA.

7. ORC § 6109.12 states that every owner or operator of a PWS shall have analyses of the water made at such intervals and in such manner as may be ordered by the Ohio EPA. Records of the results of such analyses shall be maintained and reported as required by the Ohio EPA.

8. On February 2, 2005, the Director issued a Surface Water Designation of Water Sources (Surface Water Designation) with an effective date of March 16, 2005 which designated Respondent's PWS as "ground water under the direct influence of surface water." The Surface Water Designation required Respondent to comply with the surface water treatment rules in OAC Rules 3745-81-71 through 3745-81-76 by September 16, 2006.

9. OAC Rule 3745-81-72 requires that a PWS that uses a surface water source and does not provide filtration treatment to comply with any interim disinfection requirements established by the Director before filtration is installed. In the Surface Water Designation issued February 2, 2005, the Director required Respondent to comply with certain interim disinfection requirements.

10. Pursuant to ORC § 6109.07(A) and OAC Rule 3745-91-02(A), Respondent submitted to the Director plans for installation of additional treatment necessary to comply with the interim disinfection requirements of the surface water treatment rules.

11. On May 4, 2005, Director's Plan Approval was issued to Respondent with an expiration date of September 16, 2006.

12. Respondent will fail to achieve compliance with the surface water treatment rules by September 16, 2006, as required by the Director's Surface Water Designation and Plan Approval and be in violation of OAC Rules 3745-81-71 through 3745-81-75 until such time as the Respondent connects to the Village of Put-in-Bay.

13. The Director and the Ottawa County Commissioners (County) have entered into a Memorandum of Understanding (MOU) providing that the County will provide a certified operator, holding at least a Class I Water Supply Certification (Certified Operator), to oversee the operation and maintenance of the certain PWSs, including Respondent's PWS, for as long as Respondent uses the current source of water and water treatment alternative.

14. From May 2005 through September 11, 2006, the PWS has been inspected by Ohio EPA. At these inspections a number of ongoing violations have been noted, including violations of ORC §§ 6109.06, 6109.07, 6109.12, and/or 6109.31, and OAC Chapters 3745-9, 3745-81, 3745-83, and/or 3745-91, on at least the following days: May 16, 2005, June 15, 2005, June 26, 2005, August 26, 2005, September 9, 2005, June 27, 2005, and September 11, 2006.

15. In accordance with OAC Rule 3745-81-32, the owner or operator of a PWS shall provide public notification for violations and, within ten (10) days of completing such public notice, submit to the Director a completed verification form.

16. In violation of OAC Rule 3745-81-32, Respondent failed to submit the public notice verification form to the Director as required in June 2005, April 2006, and May 2006.

17. In accordance with OAC Rule 3745-81-21(A)(2)(c) and the February 2, 2005 Source Water Designation, Respondent is required to monitor for total coliform at least four times per month, specifically one per week from the distribution system, for any month the system serves water to the public.

18. In violation of OAC Rule 3745-81-21(A)(2)(c) and the February 2, 2005 Source Water Designation, Respondent failed to monitor for total coliform at least weekly from the distribution system in the months of July 2005 and August 2005.

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

V. ORDERS

1. The Director's Plan Approval issued on May 24, 2005 is hereby extended for as long as Respondent uses the current source of water and water treatment alternative or connection with the Village of Put-in-Bay's (Village) water line extension is completed whichever is sooner, but no later than October 30, 2007 as long as the MOU between the Director and the County remains in effect. Respondent shall continue to comply with all conditions and requirements of the Director's Plan Approval and all monitoring, operational, and notification requirements outlined in the February 5, 2005 Source Water Designation.

2. Respondent shall allow its PWS to be operated and maintained by the Certified Operator provided by the County for as long as Respondent uses the current source of water and water treatment alternative, as provided in the MOU between the Director and the County outlined above.

3. Respondent shall continue to issue a no use advisory attached hereto. Respondent shall post the advisory in conspicuous places and submit verification to Ohio EPA on a monthly basis.

4. Respondent shall immediately cease use of its PWS and notify Ohio EPA should any of the following occur:

   a. failure to post public notice
   b. failure to meet required chlorine residuals in accordance with OAC Rule 3745-83-01(B)(6)
   c. failure to operate in accordance with Ohio EPA plan approval; or
   d. detection of *e. coli* or *fecal coliform* in a sample of water.

5. Respondent shall not resume operations of the PWS for the 2007 summer season until completion of an Ohio EPA evaluation of the PWS is completed and Ohio EPA notifies Respondent that the PWS operations may commence.

6. Respondent shall monitor and report in accordance with the requirements of OAC Chapters 3745-81 and 3745-83.

7. Within thirty (30) days of connection to the Village or within one year of the effective date of these Orders, whichever date is sooner, Respondent shall abandon its well(s) in accordance with OAC Chapter 3745-9.

8. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of $3,000.00 in administrative penalties pursuant to ORC Chapter 6109. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $3,000.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the Stone Lab.

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).

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. NOTICE

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

Ohio Environmental Protection Agency
Northwest District Office, DDAGW
347 North Dunbridge Road
Bowling Green, OH 43402
Attn: JoAnn Sabo

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

X. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 6109 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

XI. APPEAL RIGHTS

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of $70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement

Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

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

XII. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Joseph P. Koncelik, Director

Date 9/15/06