

OHIO E.P.A.

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Effective Date APR 12 2006

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

The Village of Somerset :  
100 Public Square :  
Somerset, Ohio 43783 :

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 Somerset (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

Judy Sparks Date 4-12-06

#### 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# 6401111) is located at 1672 Big Inch NE, County Road 45, Perry County, Somerset, Ohio, 43783.
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 1,500 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, January through March 2005, April through June 2005, July through September 2005, and October through December 2005 monitoring periods when the TTHM running annual average was greater than 0.080 mg/L. The current running annual average is 0.094 mg/L.
7. In accordance with OAC Rule 3745-81-78(A)(1) and (C)(2), version effective from January 1, 2002 through December 31, 2003, all surface water community PWSs that treated their water with any combination of chlorine, chloramines, chlorine dioxide, and/or ozone and served less than one thousand persons shall monitor for TTHM and haloacetic acids five (HAA5) with one sample per quarter.
8. In violation of OAC Rule 3745-81-78(A)(1) and (C)(2), Respondent failed to monitor for TTHM and HAA5 during the July through September 2002 and April through June 2003 monitoring periods. Respondent untimely sampled on November 11, 2002 and October 8, 2003, respectively.
9. In accordance with OAC Rule 3745-81-23(B)(2), all PWSs which are surface water systems shall monitor for nitrate monthly.

10. In violation of OAC Rule 3745-81-23(B)(2), Respondent failed to monitor for nitrate during the month of June 2001. Respondent untimely sampled on July 5, 2001.
11. On December 12, 2001, the Director issued a chemical contaminant monitoring schedule to Respondent (2002 monitoring schedule) for the compliance period that began on January 1, 2002 and ended on December 31, 2002.
12. In accordance with OAC Rule 3745-81-24 and Respondent's 2002 monitoring schedule, Respondent was required to monitor for synthetic organic chemicals (SOCs) during the May through July 2000 monitoring period.
13. In violation of OAC Rule 3745-81-24 and Respondent's 2002 monitoring schedule, Respondent failed to monitor for SOCs during the February through April 2002 and May through July 2002 monitoring periods.
14. In accordance with OAC Rule 3745-81-77(B)(1), all PWSs using surface water as a source which use conventional filtration shall monitor for total organic carbon (TOC) monthly.
15. In violation of OAC Rule 3745-81-77(B)(1), Respondent failed to monitor for TOC during the month of June 2004.
16. In accordance with OAC Rule 3745-81-72(B)(1), version effective January 1, 2002 through December 31, 2004, each PWS that uses a surface water source, in whole or in part, shall provide disinfection treatment as follows: the total treatment processes of the PWS shall reliably achieve at least 99.9 per cent (3 log) inactivation and/or removal of *Giardia lamblia* cysts and at least a 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.
17. In violation of OAC Rule 3745-81-72(B)(1), version effective January 1, 2002 through December 31, 2004, Respondent failed to provide disinfection treatment of drinking water when the actual CT 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 month of December 2002.
18. In accordance with OAC Rule 3745-81-73(A)(1), all PWSs that use conventional filtration or direct filtration treatment to treat surface water shall meet the following requirement: turbidity levels of representative samples of filtered water shall be less than or equal to 0.3 nephelometric turbidity units (NTU) in at least ninety-five per cent (95%) of the samples analyzed each month.

19. In violation of OAC Rule 3745-81-73(A)(1), the turbidity levels of the representative samples of the filtered water from Respondent's PWS were not less than or equal to 0.3 NTU in at least ninety-five per cent (95%) of the samples analyzed during the months of January 2005 and February 2005.
20. In accordance with OAC Rule 3745-81-73(A)(2), all PWSs that use conventional filtration or direct filtration treatment to treat surface water shall meet the following requirement: the turbidity level of representative samples of the PWS's filtered water shall not exceed 1 NTU.
21. In violation of OAC Rule 3745-81-73(A)(2), the turbidity levels of representative samples of the filtered water from Respondent's PWS exceeded 1 NTU on January 6, 2005.
22. In accordance with OAC Rule 3745-81-75(E), if at any time the turbidity in representative samples of filtered water exceeds 1 NTU for surface water systems, PWS shall notify the Director as soon as practical, but no longer than twenty-four hours after the exceedance is known.
23. In violation of OAC Rule 3745-81-75(E), Respondent failed to notify the Director within twenty-four hours of the January 6, 2005 turbidity exceedance.
24. 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 a 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.
25. In accordance with OAC Rule 3745-95-04(A), version effective November 16, 1980 through 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 health, pollutional, or system hazard to the PWS exists.
26. In accordance with OAC Rule 3745-95-04(A), 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.
27. In accordance with OAC Rule 3745-95-06(C), version effective November 16, 1980 through April 30, 2003, it shall be the duty of the consumer to have thorough inspections and operational tests made of the backflow prevention 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.
28. In accordance with OAC Rule 3745-95-06(C), it shall be the duty of the water consumer to maintain any backflow prevention device in proper working order and in continuous operation, and it shall be the duty of the supplier of water to see that the tests and inspections required under this paragraph are made. The consumer shall have thorough inspections and operational tests made of the backflow prevention devices at the time of installation or repair, and as reasonably may be 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.
  29. In accordance with OAC Rule 3745-95-06(D), 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.
  30. In violation of OAC Rules 3745-95-03(A), 3745-95-04(A), and 3745-95-06(C) and (D), all versions effective since November 16, 1980 through the effective date of these Orders, Respondent has failed to implement an effective backflow prevention/cross-connection control program, since at least January 24, 2000 to the effective date of these Orders, including 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 the maintenance and inventorying of installation and inspection records.
  31. In accordance with OAC Rule 3745-96-01(E), version effective May 1, 2001 through June 30, 2004, each community water system shall deliver a consumer confidence report (CCR) to its customers and meet the requirements of OAC Rule 3745-96-04(B) by July first annually. Each CCR shall contain data collected during, or prior to, the previous calendar year as prescribed in OAC Rule 3745-96-02(D)(3).
  32. In violation of OAC Rule 3745-96-01(E), Respondent failed to provide a CCR that met the requirements of this rule for the 2002 reporting year.
  33. 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.

34. In accordance with OAC Rule 3745-7-02(C), the certified operator required by paragraph (A) of this rule shall be a full-time employee of the person owning or operating the PWS.
35. Respondent's PWS is classified as a Class II PWS and a Class I Water Distribution System, as stated in the certificate of classification issued by the Director on March 8, 1989.
36. In violation of OAC Rule 3745-7-02(A)(1) and (C), Respondent's Class II PWS has failed to be placed under the responsible charge of a full-time certified operator with at least a Class II certification from December 2000 to May 2004.
37. Each violation cited above represents a separate violation of ORC § 6109.31.

#### **V. ORDERS**

1. On or before January 31, 2007, Respondent shall achieve compliance with the MCL for TTHM.
2. Within fifteen (15) months of the effective date of these Orders, should Respondent fail to achieve compliance with the MCL for TTHM by January 31, 2007, Respondent shall submit detail plans for alternative treatment to reduce TTHM levels to meet the MCL, or for connection to an alternative water source.
3. Upon 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. Upon the effective date of these Orders, Respondent shall comply with TOC monitoring and reporting requirements, in accordance with OAC Rule 3745-81-77.
5. Within ninety (90) days of the effective date of these Orders, Respondent shall submit to Ohio EPA an acceptable effective backflow prevention/ cross-connection program in accordance with OAC Chapter 3745-95, specifically addressing annual inspections, and maintenance and inventorying of installation and inspection records. Within ninety (90) days of Ohio EPA's acceptance of the backflow prevention/ cross-connection program, Respondent shall implement the program.
6. Upon the effective date of these Orders, Respondent shall comply with the Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rules in accordance with OAC Rules 3745-81-70 through 3745-81-75.
7. On or before July 1, 2006, in addition to submitting the required CCR with 2005 reporting data in accordance with OAC Rule 3745-96-01, Respondent shall incorporate CCR for the 2002 reporting year with the deficient information corrected.

8. Within seven (7) business days after the deadlines given in Orders No. 1 and 2, Respondent shall send written notification of compliance with the requirements of each of the Orders to Ohio EPA.
9. Respondent shall comply with its chemical contaminant monitoring schedule for the calendar year 2006 and all subsequent monitoring schedules issued by Ohio EPA.
10. Respondent shall pay the amount of twenty three thousand two hundred dollars (\$23,200.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6109. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for five thousand five hundred and nine dollars (\$5,509.00) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

11. In lieu of paying the remaining four thousand six hundred and forty dollars of civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of \$4,640.00 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for four six hundred and forty dollars. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

A copy of each check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, OH 43216-1049

12. Should Respondent fail to fund the SEP within the required timeframe set forth in Order No. 11, Respondent shall pay to Ohio EPA \$4,640.00 of the civil penalty in accordance with the procedures in Order No. 10.

13. In lieu of paying six thousand dollars (\$6,000.00) of civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, initiate installation of chlorine analyzer equipment with an additional chlorine pump at the total cost of not less than twelve thousand dollars (\$12,000.00).
14. In lieu of paying nine hundred dollars (\$900.00) of civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, initiate the process to install a burglar alarm system at the total cost of not less than one thousand eight hundred dollars (\$1,800.00).
15. In lieu of paying five thousand one hundred and fifty one dollars (\$5,151.00) of civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, initiate installation of water plant camera surveillance at the total cost of not less than ten thousand three hundred and two dollars (\$10,302.00).
16. In lieu of paying one thousand dollars (\$1,000.00) of civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, initiate installation of an auto dialer call box system at the water plant control panel at the total cost of not less than two thousand dollars (\$2,000.00).
17. Within ninety (90) days of the effective date of these Orders, Respondent shall provide documentation, including but not limited to receipts of payment, evidencing completion of the SEPs outlined in Order Nos. 13 through 16 at a sum total cost expended of not less than \$26,102.00.
18. Should Respondent fail to fund or complete the SEPs outlined in Order Nos. 13 through 16 within the required timeframes set forth in such Orders, Respondent shall pay to Ohio EPA thirteen thousand fifty one dollars (\$13,051.00) of the civil penalty in accordance with the procedures in Order No. 10.

## **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. 10) 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**

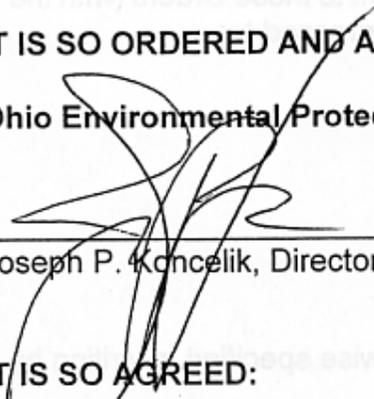
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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

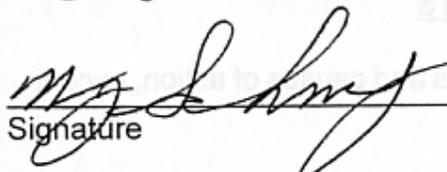
  
\_\_\_\_\_  
Joseph P. Koncek, Director

Date

9-11-06

**IT IS SO AGREED:**

The Village of Somerset

  
\_\_\_\_\_  
Signature

Date

3-21-06

WILLIAM J. SCHMELTZER

Printed or Typed Name and Title

MAYOR