

OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Lake Erie Utilities Company :
c/o Burgundy Bay Association :
345 Burgundy Boulevard :
Middle Bass, Ohio 43446 :

Respondent,

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to the Lake Erie Utilities Company (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 there under.

IV. FINDINGS

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

1. Respondent owns and operates a "public water system" (PWS) as defined by ORC § 6109.01, which is also a transient non-community water system as defined by Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID# OH6201911) is located at 345 Burgundy Boulevard, (Ottawa County), Middle Bass, Ohio, 43446.

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 approximately 400 persons.
4. On February 7, 2011, the Director issued Unilateral Final Findings and Orders (2011 Orders) to Respondent, for violations of OAC Chapter 3745-81, which conditioned Respondent's 2011 license to operate (LTO).
5. In accordance with OAC Rule 3745-7-02(A)(1), each person owning or operating a PWS shall designate one or more operator of record to oversee the technical operation of the PWS or each water treatment plant and distribution system within the PWS. Each operator of record shall have a valid certification of a class equal to or greater than the classification of the PWS, distribution system or water treatment plant.
6. In accordance with OAC Rule 3745-7-03(B)(4), any PWS treating surface water, excluding slow sand filtration, with a design flow of 5.0 million gallons per day or less shall be classified as a Class III PWS.
7. In accordance with OAC Rule 3745-7-03(B)(1)(c), when the Director changes the classification of a PWS, the owner of a PWS has up to twelve months to meet the staffing requirements in OAC Rule 3745-7-03(C) for the new classification.
8. In accordance with OAC Rule 3745-7-03(C), an operator of record shall, at a minimum, be physically present at a Class III PWS five days per week for a minimum of forty hours per week.
9. On March 23, 2009, Respondent received Director's approval of detail plans for a new water plant which stated, "on the issuance date of this plan approval, the classification for the public water system is Class III, the classification of the distribution system is Class I."
10. In violation of OAC Rules 3745-7-02(A)(1), 3745-7-03(B)(1)(c), 3745-7-03(B)(4), the March 23, 2009 Director's plan approval and the 2011 Orders, Respondent failed to designate an operator of record with a valid Class III water supply certification or above to oversee the technical operation of Respondent's PWS from approximately July 7, 2011 to September 17, 2011.
11. In violation of OAC Rule 3745-7-03(C), Respondent failed to meet the operator of record minimum staffing requirements in 2011.
12. The Director issued the 2011 chemical contaminant monitoring schedules for Respondent's PWS on or about December 30, 2010 for the compliance period that began January 1, 2011 and ended on December 31, 2011.

13. In accordance with OAC Rule 3745-81-23(B), all PWSs which are surface water systems shall monitor monthly to determine compliance with the MCL for nitrate.
14. In violation of OAC Rule 3745-81-23(B) and the 2011 monitoring schedule, Respondent failed to monitor for nitrate during the monitoring periods of October 2011 and November 2011. Respondent returned to compliance on December 21, 2011 after a nitrate sample was taken at the PWS.
15. In accordance with OAC Rule 3745-81-21(A)(2)(c), a non-community water system using surface water and serving a population less than four thousand one hundred one persons shall monitor for total coliforms at a minimum monitoring frequency of four samples per month that water is served to the public.
16. In violation of OAC Rule 3745-81-21(A)(2)(c), Respondent failed to routinely monitor with the required four total coliform bacteria samples during the month of October 2011.
17. In accordance with OAC Rule 3745-81-73, a PWS that uses a surface water source must provide filtration which meets the requirements of conventional or direct filtration treatment, or slow sand filtration; filtration treatment shall consistently and reliably achieve at least ninety-nine per cent (2 log) removal of *Cryptosporidium*.
18. In accordance with OAC Rule 3745-81-01(MMMM), slow sand filtration is "a process of passing raw water through a porous granular medium at a rate of less than one hundred fifty gallons per day per square foot of sand area, with substantial removal of particles by physical and biological mechanisms."
19. In violation of OAC Rule 3745-81-73 and the 2011 Orders, Respondent's slow sand filtration continues to fail to consistently and reliably achieve at least ninety-nine per cent (2 log) removal of *Cryptosporidium*.
20. As referenced in the 2011 Orders, on May 21, 2010, Ohio EPA documented that the Respondent's PWS continued to feed calcium hypochlorite prior to slow sand filtration; thereafter, Respondent was required to meet turbidity requirements for conventional filtration treatment or direct filtration treatment due to failure to provide slow sand filtration as defined by OAC Rule 3745-81-01.
21. In accordance with OAC Rule 3745-81-73(A)(1), for PWSs using conventional filtration or direct filtration treatment to treat surface water, turbidity levels of representative samples of filtered water shall be less than or equal to 0.3 NTU at least 95% of the samples analyzed each month.
22. In violation of OAC Rule 3745-81-73(A)(1) and the 2011 Orders, Respondent failed to provide sufficient filtration of its drinking water when the turbidity levels

- of representative samples of its filtered water were not less than or equal to 0.3 NTU in at least 95% of the samples analyzed during the April 2011 through December 2011 monitoring period.
23. In accordance with OAC Rule 3745-81-73(A)(2), for PWSs using conventional filtration or direct filtration treatment to treat surface water, turbidity levels of representative samples of a PWS's filtered water shall not exceed one NTU.
 24. In violation of OAC Rule 3745-81-73(A)(2) and the 2011 Orders, Respondent failed to provide sufficient filtration of its drinking water when the turbidity levels of representative samples of its filtered water exceeded one NTU on the following dates: July 16, 2011; August 4, 9, 13-18, 21, 24, 25, 27-31, 2011; September 3-14, 19-24, 2011; December 9, 2011; and, January 17, 2012.
 25. In accordance with OAC Rule 3745-81-74(F), parameters necessary to determine the sufficiency of disinfection prior to the first customer as required by OAC Rule 3745-81-72 shall be measured and recorded at the peak hourly flow rate each day the PWS is in operation. Temperature, pH and residual disinfection concentration shall be analyzed in accordance with the methods specified in OAC Rule 3745-81-27.
 26. In violation of OAC Rule 3745-81-74(F), Respondent failed to monitor for temperature and pH levels in its disinfected water at its residual disinfectant concentration sampling points on May 3, 2011.
 27. In accordance with ORC § 6109.12, 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 Ohio EPA. Records of the results of such analyses shall be maintained and reported as required by Ohio EPA.
 28. In accordance with OAC Rule 3745-83-01(I)(1), the owner or operator of a PWS shall prepare an operation report for each month (MOR) of operation on forms acceptable to the Director.
 29. In accordance with OAC Rule 3745-83-01(I)(2), the MOR shall be signed by the operator of record, designated in accordance with OAC Rule 3745-7-02, and submitted to the district office no later than the tenth of the month following the month for which the report was prepared.
 30. In violation of OAC Rule 3745-83-01(I)(2) and the 2011 Orders, Respondent failed to submit signed MORs by the tenth day of the month for the months of August 2011, September 2011, October 2011, November 2011 and December 2011.
 31. In violation of OAC Rule 3745-83-01(I)(2) and the 2011 Orders, Respondent

- submitted MORs for January 2011, February 2011, July 2011, August 2011, September 2011 and October 2011 which were not signed by the operator of record.
32. In accordance with OAC Rule 3745-81-75, a PWS that uses a surface water source shall report monthly to the Director the information specified in this rule.
 33. In accordance with OAC Rule 3745-81-75(A)(1), when filtered water turbidity is recorded continuously, the reported number shall be the number of hours in which turbidity values were recorded during the month.
 34. In violation of OAC Rule 3745-81-75(A)(1), Respondent failed to correctly report the number of hours filtering on the August 2011, September 2011, October 2011 and November 2011 MORs.
 35. In accordance with OAC Rule 3745-81-75(A)(2), when continuously monitoring turbidity, the duration and percent of filtered water turbidity readings during the month which are less than or equal to the turbidity limits in OAC Rule 3745-81-73 (A)(1) and (B)(1) shall be reported.
 36. In violation of OAC Rule 3745-81-75(A)(2), Respondent failed to correctly report the percentage of time the filtered water exceeded the 0.3 NTU standard on their August 2011, September 2011, October 2011, November 2011 and December 2011 MORs.
 37. In accordance with OAC Rule 3745-81-75(A)(3), when continuously monitoring turbidity, the date and duration of each period during the month that the turbidity exceeds the turbidity limit specified in OAC Rule 3745-81-73(B)(1) shall be reported.
 38. In violation of OAC Rule 3745-81-75(A)(3), Respondent failed to report the date and duration of each period during the months of August 2011, September 2011, October 2011, November 2011 and December 2011 that the turbidity exceeded 0.3 NTU.
 39. In accordance with OAC Rule 3745-81-75(C)(4), disinfection information as specified in OAC Rule 3745-81-74 shall be reported to the Director within ten days after the end of each month that the PWS serves water to the public. The information reported shall include the CT parameters during peak hourly flow rate for each day, including the temperature, pH, disinfectant, residual disinfectant concentration(s), disinfectant contact time(s), actual CT value, required CT value and the number of days, if any, for which the required CT value is larger than the actual CT value.
 40. In violation of OAC Rule 3745-81-75(C)(4), Respondent reported incorrect

minimum actual CT values on the August 2011, September 2011, October 2011, November 2011 and December 2011 MORs.

41. In violation of OAC Rule 3745-81-75(C)(4), Respondent reported incorrect effective disinfectant contact time values on the August 2011, September 2011, October 2011, November 2011 and December 2011 MORs.
42. In violation of OAC Rule 3745-81-75(C)(4), Respondent reported incorrect required contact time values on the September 2011 and October 2011 MORs.
43. In violation of OAC Rule 3745-81-75(C)(4), Respondent failed to report the highest pH, which occurred during peak hourly flow on August 31, 2011.
44. In accordance with OAC Rule 3745-83-01(G)(1), a PWS that provides water treated with chlorine shall monitor for free chlorine at least once every day that water is available to the public at each entry point to the distribution system and a representative point in the distribution system.
45. In accordance with OAC Rule 3745-83-01(G)(2), a PWS that provides water treated with chlorine shall monitor for combined chlorine at least once every day that water is available to the public at each entry point to the distribution system and a representative point in the distribution system.
46. In violation of OAC Rule 3745-83-01(G)(1) and (G)(2), Respondent failed to monitor for free and combined chlorine from a representative point in the distribution system on May 3, 2011.
47. In accordance with OAC Rule 3745-83-01(H), the Director may require additional monitoring as needed to assess operational performance than otherwise specified in this rule.
48. In accordance with OAC Rule 3745-83-01(I)(1)(a), in addition to any other reporting requirement of OAC Chapter 3745-81, the Director may require that the MOR include general operation data, including but not limited to, identification of the operating source at a given time, number of hours of operation, filter run times, backwash duration, filter backwash recycle percentages, head loss, interruptions in treatment, equipment inspection/maintenance dates, minimum system pressure, pre and intermediate tap sampling results, and deviations from normal day-to-day operations.
49. In violation of OAC Rule 3745-83-01(H) and (I)(1)(a), Respondent failed to report the average turbidity for August 16 through August 31, 2011, and failed to correctly report the maximum, minimum and average turbidity results for September 25 through September 29, 2011, October 14 through 16, 2011, and October 18 and 19, 2011. In addition, Respondent failed to report the minimum

and average turbidity values for October 1 and 2, 2011.

50. On October 6, 2011, representatives from Ohio EPA performed a limited scope site visit (LSSV) at Respondent's PWS to compare constructed facilities to the March 23, 2009 Director's plan approval. During the LSSV, several items were documented as not being constructed in accordance with the March 23, 2009 Director's plan approval.
51. In accordance with ORC § 6109.07(B) and OAC Rule 3745-91-08(G)(1), no person shall construct or install a PWS, or make any substantial change in a PWS, as defined in OAC Rule 3745-81-01, that is not in accordance with plans approved by the Director.
52. In violation of ORC § 6109.07(B), OAC Rule 3745-91-08(G)(1) and the March 23, 2009 Director's plan approval, Respondent installed items that were not in accordance with plan approval as identified in the violation letter dated October 24, 2011.
53. In accordance with OAC Rule 3745-95-03, 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 (backflow prevention program).
54. In violation of OAC Rule 3745-95-03 and the 2011 Orders, Respondent continues to fail to maintain a backflow prevention program.
55. Each violation cited above represents a separate violation of ORC § 6109.31.
56. In accordance with OAC Rule 3745-84-02(A), no person shall operate or maintain a PWS in the state of Ohio without a PWS license issued by the Director.
57. In accordance with OAC Rule 3745-84-03, Respondent submitted an application and fee for a 2011 LTO renewal on January 9, 2012.
58. In accordance with OAC Rule 3745-84-06(A), the Director may condition an LTO at any time to require corrections of violations of ORC Chapter 6109 and the administrative rules adopted there under.

V. ORDERS

1. From the effective date of these Orders through January 30, 2013, the LTO for Respondent's PWS is issued with the conditions listed in Orders No. 2 through No. 9, in accordance with OAC Rule 3745-84-06.
2. From the effective date of these Orders, Respondent shall prominently display the conditioned LTO so as to be clearly visible to the general public and any person entering the facility, in accordance with OAC Rule 3745-84-04(D).
3. From the effective date of these Orders, Respondent shall comply with all current and subsequent chemical monitoring schedules issued by the Director, in accordance with OAC Chapter 3745-81.
4. From the effective date of these Orders, Respondent shall comply with total coliform bacteria monitoring requirements, including both routine and repeat samples, and respond to any positive total coliform sample appropriately, in accordance with OAC Rule 3745-81-21.
5. From the effective date of these Orders, Respondent shall monitor for free and combined chlorine at least once every day that water is available to the public at each entry point to the distribution system and a representative point in the distribution system.
6. From the effective date of the Orders, Respondent shall, in accordance with OAC Rule 3745-83-01(I)(2), submit MORs, signed by the operator of record, designated in accordance with OAC Rule 3745-7-02, to Ohio EPA, NWDO, DDAGW, no later than the tenth of the month following the end of the period for which the report was prepared. MORs shall contain all required monitoring and reporting requirements for the PWS.
7. Respondent shall immediately comply with requirements of the March 23, 2009 Director's plan approval and the associated surface water treatment rule requirements for turbidity and CT, in accordance with OAC Rules 3745-81-71 through 75.
8. From the effective date of these Orders, Respondent shall maintain an Operator of Record with at least a Class III Water Supply license for at least the minimum staffing time required by OAC Rule 3745-7-03.
9. Respondent shall immediately maintain a backflow prevention program, in accordance with OAC Rule 3745-95-03.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon renewal of the LTO for Respondent's PWS or upon any subsequent LTO action by the Director.

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

Except as specifically required by an individual Order, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Division of Drinking and Ground Waters
Northwest District Office
347 North Dunbridge Rd.
Bowling Green, Ohio 43402
Attn: Justin Bowerman

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 action 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 ORC § 3745.04. 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, made payable to "Treasurer, State of Ohio," 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:

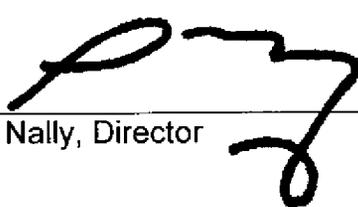
Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, OH 43215

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



Scott J. Nally, Director

FEB 08 2012

Date