

BEFORE THE OHIO

ENTERED DIRECTOR'S JOURNAL

ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The City of Lorain, Ohio	:	<u>Director's Final Findings</u>
Utilities Department	:	<u>and Orders</u>
Water Treatment Plant	:	
1106 First Street	:	
Lorain, Ohio 44052	:	

**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 Lorain, Ohio, Utilities Department, Water Treatment Plant ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") § 3753.08.

**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 the Respondent or of the facility (as hereinafter defined) 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 identified in ORC Chapter 3753 and rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA makes the following findings:

1. Respondent operates a water treatment plant located at 1106 First Street in Lorain, Ohio. This facility is operated as a water treatment process and chlorine is used in the water treatment process for disinfection. Chlorine is a regulated substance listed in Ohio Administrative Code ("OAC") Rule 3745-104-04 and has a threshold limit of 2,500 pounds. The amount of chlorine at this facility is 22,000 pounds.
2. Pursuant to OAC Rule 3745-104-02, an owner or operator of a stationary source, which has more than a threshold quantity of a regulated substance in a process,

shall comply with the requirements of this rule by submitting a Risk Management Plan ("RMP") to Ohio EPA no later than June 21, 1999. Respondent submitted RMPs to Ohio EPA every five years except from October 2010 to September 2011, according to OAC Rule 3745-104-49(B)(1) that requires the RMPs to be updated every five years.

3. On September 21, 2005, an inspector with Ohio EPA, Division of Air Pollution Control ("DAPC") conducted the initial five-year inspection at Respondent's facility, and discovered ten rule violations. No penalty was assessed, but the Respondent was required to correct the violations and remain in compliance. All of the violations were corrected and the facility was in compliance at that time.
4. On June 21, 2011, Ohio EPA conducted a second five-year inspection at Respondent's facility and discovered ten violations of the rules, which included two violations that were cited from the first inspection. The violations are as follows:
  - (a) Respondent failed to correct the worst case scenario, in violation of OAC Rule 3745-104-15. This is a repeat violation from the 2005 inspection.
  - (b) Respondent failed to maintain all of the process safety information, in violation of OAC Rule 3745-104-24. This is a repeat violation from the 2005 inspection.
  - (c) Respondent failed to conduct a process hazard analysis every five years, in violation of OAC Rule 3745-104-25.
  - (d) Respondent failed to annually certify the operating procedures, in violation of OAC Rule 3745-104-26(C).
  - (e) Respondent failed to provide training to the employees at least every three years, in violation of OAC Rule 3745-104-27.
  - (f) Respondent failed to create and implement a mechanical integrity program, in violation of OAC Rule 3745-104-28.
  - (g) Respondent failed to conduct a compliance audit every three years, in violation of OAC Rule 3745-104-31.
  - (h) Respondent failed to create and implement an employee participation plan, in violation of OAC Rule 3745-104-33.
  - (i) Respondent failed to implement a contractor program, in violation of OAC Rule 3745-104-35.

- (j) Respondent failed to revise, update, and submit the RMP within five years of its most recent update from October 2010, to September 2011, in violation of OAC Rule 3745-104-49(B)(1).
- 5. A letter dated June 30, 2011, was sent to Respondent requiring the above deficiencies to be corrected within thirty days of receipt of the letter.
- 6. On July 19, 2011, Respondent submitted documentation to correct Finding 4(a).
- 7. On July 30, 2011, Respondent called Ohio EPA and requested an extension of time to respond. The extension was granted for ninety days, and the documentation was required to be submitted by September 30, 2011.
- 8. On September 29, 2011, Respondent sent an e-mail stating that the documentation would not be submitted until October 5, 2011.
- 9. On October 6, 2011, Ohio EPA received the remaining documentation that resolved all of the Findings except for a portion of Finding 4(b).
- 10. On April 20, 2012, Respondent resolved Finding 4(b) after numerous attempts.
- 11. ORC § 3753.06 prohibits violations of the provisions of ORC Chapter 3753 or any rule adopted or issued under it. Respondent violated rules adopted under ORC Chapter 3753, specifically, the rules cited in Finding 4(a), from 2006 (the year after the first inspection), to July 19, 2011 (when correct documentation was submitted); Findings 4(c) to 4(j), from 2005 (the year after the first inspection), to October 6, 2011; and Finding 4(b) from 2005 to April 20, 2012.
- 12. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and benefits to the people of the State to be derived from such compliance.

#### V. ORDERS

The Director hereby issues the following Orders:

- 1. Pursuant to ORC § 3753.09, Respondent is assessed a civil penalty in the amount of nine thousand four hundred and twenty-five dollars (\$9,425) in settlement of Ohio EPA's claims for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of nine thousand four hundred and twenty-five dollars (\$9,425) in settlement of Ohio EPA's claims for civil penalties, which will be deposited into the Risk Management Plan fund established pursuant to ORC § 3753.05. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$9,425. The official check shall be submitted to Ohio EPA, Office of

Fiscal Administration, attention Akia Smith, 50 West Town Street, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.

2. A copy of each of the above check shall be sent to Thomas Kalman, Acting Assistant Chief, SIP Development and Enforcement, or his successor at the following address:

Ohio EPA  
Division of Air Pollution Control  
50 West Town St., Suite 700  
P. O. Box 1049  
Columbus, Ohio 43216

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official check required by Section V of these Orders.

#### **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 the Respondent's facility.

#### **VIII. OTHER APPLICABLE LAWS**

All actions 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 statute or regulation 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 shall be addressed to:

Kimberly Joseph  
Ohio Environmental Protection Agency  
Division of Air Pollution Control  
50 West Town St., Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049

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**

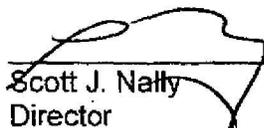
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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.

**ORDERED AND AGREED:**

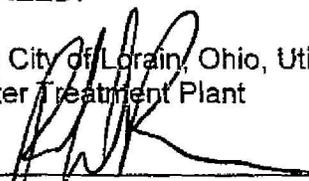
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Scott J. Nally  
Director

6/15/12  
Date

**AGREED:**

The City of Lorain, Ohio, Utilities Department,  
Water Treatment Plant

  
\_\_\_\_\_  
Signature

6/7/12  
Date

Robert Fowler  
\_\_\_\_\_  
Printed or Typed Name

Safety-Service Director  
\_\_\_\_\_  
Title

## **Compliance and Enforcement Plan**

Division of Air Pollution Control

**Last updated:** June 14, 2012

**Company Name:** The City of Lorain, Ohio, Utilities Department, Water Treatment Plant

**Address:** 1106 First Street  
Lorain, Ohio 44052

**County:** Lorain

**Facility I.D. Number:** None

**DAPC Central Office contact:** Tom Kalman

Telephone: (614)644-3598      e-mail: [tom.kalman@epa.state.oh.us](mailto:tom.kalman@epa.state.oh.us)

**Legal Office Contact:** Stephen Feldmann

Telephone: (614)644-3037      e-mail: [stephen.feldmann@epa.state.oh.us](mailto:stephen.feldmann@epa.state.oh.us)

- A. Description of the most recent violation, or series of violations:** On September 21, 2005, an inspector with Ohio EPA, Division of Air Pollution Control ("DAPC") conducted the initial five-year inspection at Respondent's facility, and discovered ten rule violations. The violations are: failure to maintain the records for the worst case and alternative scenarios, failure to compile information concerning the technology of the process, failure to annually certify standard operating procedures, failure to conduct a process hazard analysis every five years and to complete the recommendations derived from it, failure to provide training every three years, failure to create and implement a mechanical integrity program, failure to conduct a compliance audit every three years, failure to develop an employee participation plan, failure to implement a contractor program and failure to submit a RMP within five years of its most recent update.
- B. Regulated entity's compliance history:** See above.
- C. Enforcement tools utilized:** Direct contact with the company and inspections, in addition to the recommended proposed Director's Final Findings and Orders. Also, a deficiency, (Notice of Violation ("NOV")) letter dated June 8, 2011. The deficiency (NOV) letter included the following violations:  
OAC Rule 3745-104-15, failure to maintain records for the worst case and alternative scenarios;

OAC Rule 3745-104-24, failure to maintain process safety information;  
OAC Rule 3745-104-25, failure to conduct a process hazard analysis;  
OAC Rule 3745-104-26, failure to annually certify operating procedures;  
OAC Rule 3745-104-27, failure to provide training every three years;  
OAC Rule 3745-104-28, failure to create and implement mechanical integrity;  
OAC Rule 3745-104-31, failure to conduct a compliance audit every three years;  
OAC Rule 3745-104-33, failure to implement an employee participation plan;  
OAC Rule 3745-104-34, failure to create a procedure for hot work;  
OAC Rule 3745-104-35, failure to create and implement a contractor program.

**D. Assessment of the cooperativeness of the regulated entity:**

The facility has resolved all of the deficiencies (violations).

**E. Environmental harm resulting from the regulated entity's noncompliance:**

The goal of the RMP program is to prevent releases of regulated substances and to inform the Lorain Fire Department and Lorain County Local Emergency Planning Committee, of the hazards and potential evacuation of the surrounding residences and businesses. The facility's worst case release scenario includes a population of 5,000 potentially affected residents, as well as schools, hospitals, and major commercial industrial areas.

**Abatement options required to resolve the noncompliance:**

N/A

**G. Additional monitoring and/or testing required to demonstrate compliance:**

N/A

**H. Recommended enforcement action to be taken:**

The proposed DFFOs were sent on May 17, 2012, for a penalty amount of \$9,425 that was agreed upon by the EPA and City of Lorain after settlement negotiations.

**I. Monitoring and/or testing required by enforcement action:**

N/A

**J. Technical assistance to be provided:** Further assistance will be provided; however, guidance was provided to the company with the deficiency (NOV) letters.