

**BEFORE THE OHIO
ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.
AUG - 8 2012
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

City of Cleveland	:	<u>Director's Final Findings</u>
Department of Public Utilities	:	<u>and Orders</u>
Division of Water	:	
Crown Water Treatment Plant	:	
1201 Lakeside Avenue	:	
Cleveland, Ohio 44114	:	

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 Cleveland, Department of Public Utilities, Division of Water, Crown 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 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 the facility owned by the Respondent 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 3753 and the rules promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA makes the following findings:

1. Respondent is a publicly owned and operated treatment works located at 955 Clague Avenue in Westlake, Ohio. Chlorine is used in the chlorination process. Chlorine is stored in one-ton cylinders with up to thirty cylinders on site at any one time (60,000 pounds). Respondent has more than a threshold quantity of a "regulated substance," namely chlorine, as defined in Ohio Administrative Code ("OAC") Rule 3745-104-01. The Risk Management Plan ("RMP") threshold amount for chlorine is 2,500 pounds.

2. Chlorine is a regulated substance listed in OAC Rule 3745-104-04. An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined by OAC Rule 3745-104-02, shall comply with the requirements of OAC Rules 3745-104-06 through 49, where applicable, by submitting a Risk Management Plan ("RMP") and implementing a prevention program no later than June 21, 1999 or no later than when the threshold limit is exceeded in a process. On January 3, 2000, Ohio EPA, DAPC received delegation for the RMP program from U.S. EPA.
3. Chlorine has a threshold of 2,500 pounds. Respondent stores chlorine in an amount that exceeds the threshold established in OAC Rule 3745-104-04; and, as a result, Respondent is subject to the RMP requirements detailed in OAC Rule 3745-104-06.
4. An initial RMP audit was conducted by Ohio EPA on May 25, 2006. The following six deficiencies were discovered during the audit:
 - (a) Respondent failed to maintain population data as part of the hazard assessment supporting documentation, in violation of OAC Rule 3745-104-15(E).
 - (b) Respondent failed to update and revalidate the process hazard analysis (PHA), in violation of OAC Rule 3745-104-25(F).
 - (c) Respondent failed to annually certify that operating procedures are current and accurate, in violation of OAC Rule 3745-104-26(C).
 - (d) Respondent failed to provide refresher training on the operating procedures, in violation of OAC Rule 3745-104-27(B).
 - (e) Respondent failed to conduct an RMP compliance audit every three years, in violation of OAC Rule 3745-104-31(A).
 - (f) Respondent failed to obtain and evaluate information regarding the contractor's safety performance and programs prior to selecting a contractor, in violation of OAC Rule 3745-104-35(B).
5. Respondent submitted documentation dated July 24, 2006, in response to the June 1, 2006 deficiency letter sent by Ohio EPA. Respondent corrected the deficiencies. A completion letter was sent to the facility on August 18, 2006 indicating that all deficiencies have been resolved and to maintain compliance with the RMP regulations.
6. On September 13, 2011, Ohio EPA conducted the second five-year RMP audit at Respondent's facility and discovered ten violations of the rules. Six were repeat violations from the initial RMP audit in 2006. The violations were as follows:
 - (a) Respondent failed to develop a management system to oversee the implementation of the RMP elements, in violation of OAC Rule 3745-104-07.
 - (b) Respondent failed to maintain on site supporting documentation for the worst case and alternative release scenarios, in violation of OAC Rule 3745-104-15.

This is a repeat violation.

- (c) Respondent failed to include for the equipment in the process, a description of the chlorine detectors and alarm system, in violation of OAC Rule 3745-104-24(D)(1)(h).
 - (d) Respondent failed to update and revalidate the process hazard analysis (PHA) every five years, in violation of OAC Rule 3745-104-25(F). This is a repeat violation.
 - (e) Respondent failed to annually certify that operating procedures are current and accurate, in violation of OAC Rule 3745-104-26(C). This is a repeat violation.
 - (f) Respondent failed to provide refresher training at least every three years to each employee involved in operating the process, in violation of OAC Rule 3745-104-27(B). This is a repeat violation.
 - (g) Respondent failed to include the chlorine detectors as part of the mechanical integrity program, in violation of OAC Rule 3745-104-28(A).
 - (h) Respondent failed to conduct an RMP compliance audit at least every three years, in violation of OAC Rule 3745-104-31. This is a repeat violation.
 - (i) Respondent failed to obtain and evaluate information regarding contractor's safety performance and programs, prior to selecting a contractor, in violation of OAC Rule 3745-104-35. This is a repeat violation.
 - (j) Respondent failed to review, update and resubmit the RMP every five years and to update the emergency contact information, in violation of OAC Rule 3745-104-49.
7. A deficiency letter was mailed to Respondent on September 27, 2011. Respondent submitted documentation on September 28, 2011 via e-mail. The deficiencies in Findings 6(a), (b), (d), and (f) have been resolved. No documentation was required for Finding 6(e). Although there have been multiple phone calls from Respondent, no further documentation has been submitted. An e-mail was sent to Respondent on November 9, 2011 as a reminder that the documentation is past due.
8. Documentation was submitted via e-mail dated November 10, 2011 that resolved Findings 6(c), (g), and (h). Finding 6(i) was resolved with documentation received in February 2012. Respondent resubmitted their RMP via the RMP*eSubmit and has resolved Finding 6(j).
9. ORC § 3753.06 prohibits violations of the provisions of ORC Chapter 3753 or any rule adopted under it. Respondent violated rules adopted under ORC Chapter 3753, specifically, the rules cited in Finding 6; therefore, Respondent violated ORC § 3753.06 when it violated the rules cited in Finding 6.
10. The Director has given consideration to, and based his determination on, evidence related 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. Respondent shall continue to implement the compliant RMP program.
2. Pursuant to ORC § 3753.09, Respondent shall pay the amount of fifteen thousand four hundred and fifty dollars (\$15,450) in settlement of Ohio EPA's claims for civil penalties. Within thirty (30) 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 three thousand eight hundred sixty three dollars (\$3,863) of the total amount which will be deposited into the Risk Management Plan fund established pursuant to ORC § 3753.05. The official check shall be submitted to Akia Smith, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
Lazarus Government Center
P.O. Box 1049
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049

3. In lieu of paying the remaining eleven thousand five hundred eighty seven dollars (\$11,587) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by retrofitting some of its fleet of vehicles with diesel oxidation catalysts to reduce diesel particulate emissions. Respondent shall submit documentation that the SEP has been completed within one hundred twenty (120) days after the effective date of these Orders to Bruce Weinberg, Manager, Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049

4. A copy of the check shall be sent to Bruce Weinberg, Manager, Enforcement Section, or his successor, at the following address:

City of Cleveland
Department of Public Utilities
Division of Water
Crown Water Treatment Plant
Director's Final Findings and Orders
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Ohio EPA
Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order 3, Respondent shall immediately pay to Ohio EPA \$11,587 of the civil penalty in accordance with the procedures in Order 2.

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 Division of Air Pollution Control 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 a "facility official" who is in charge of a principal business function of Respondent.

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 of these Orders, for any liability arising from, or related to the operation of Respondent's facility.

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 shall be addressed to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Sherri Swihart

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

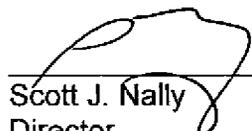
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



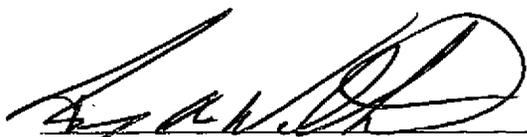
Scott J. Nally
Director

8/7/12

Date

AGREED:

**City of Cleveland
Department of Public Utilities
Division of Water
Crown Water Treatment Plant**



Signature

7/14/12

Date

Barry A. WITHERS
Printed or Typed Name

DIRECTOR, DEPT. of
Title Public Utilities