

**BEFORE THE OHIO
ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.

FEB 14 2013

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Village of Byesville	:	<u>Director's Final Findings</u>
Wetzler/Haynes Water Filtration Plant	:	<u>and Orders</u>
59870 Vocational Road	:	
Byesville, Ohio 43723	:	

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 Byesville, Wetzler/Haynes Water Filtration 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 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 Ohio EPA makes the following findings:

1. Respondent is a publicly owned and operated water treatment works facility located at 59870 Vocational Road in Byesville, Ohio. Chlorine is used in the chlorination process. Chlorine is stored in one-ton cylinders with up to four cylinders on site at any one time (8,000 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 began storing chlorine in an amount that exceeds the threshold established in OAC Rule 3745-104-04 in September 2008; and, as a result, Respondent is subject to the RMP requirements detailed in OAC Rule 3745-104-06.
4. An initial RMP compliance audit was conducted by Ohio EPA on November 4, 2009. The following eight deficiencies were discovered during the audit:
 - (a) Respondent failed to develop a management system to oversee the implementation of the RMP program elements, in violation of OAC Rule 3745-104-07.
 - (b) Respondent failed to maintain hazard assessment supporting documentation, in violation of OAC Rule 3745-104-15.
 - (c) Respondent failed to include in the process safety information the safe upper and lower limits, consequences of deviations, ventilation system design, and documentation for the process safety systems, in violation of OAC Rule 3745-104-24.
 - (d) Respondent failed to conduct an initial process hazard analysis (PHA), in violation of OAC Rule 3745-104-25.
 - (e) Respondent failed to develop and implement written operating procedures for each operating phase, in violation of OAC Rule 3745-104-26.
 - (f) Respondent failed to develop written mechanical integrity procedures and ensure that documentation is maintained for all inspections and tests on process equipment, in violation of OAC Rule 3745-104-28.
 - (g) Respondent failed to establish and implement written procedures to manage changes to process chemicals, technology, equipment, and procedures, in violation of OAC Rule 3745-104-29.
 - (h) 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.
5. During the audit, guidance documents were provided and Respondent was required to begin implementing a compliant RMP program.
6. A follow-up audit was conducted on July 20, 2011 to ensure the facility was

implementing the RMP program. At this time it was determined that the RMP prevention program had not been implemented and the facility remained out of compliance with all of Finding 4. Guidance was provided during the audit and a deadline of September 28, 2011 was agreed upon for Respondent to be in compliance.

7. Respondent requested an extension until October 21, 2011, which was granted by Ohio EPA. Minimal documentation has been submitted via e-mail but none of this information has resolved any of the deficiencies in Finding 4.
8. Finding 4 was resolved with the documentation submitted in August 2012.
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 4.
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 a compliant RMP program.
2. Pursuant to ORC § 3753.09, Respondent shall pay the amount of four thousand five hundred twenty-six dollars (\$4,526) in settlement of Ohio EPA's claim 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 four thousand five hundred twenty-six dollars (\$4,526) 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 Carol Butler, 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

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

3. A copy of the above check shall be sent 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

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 to 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

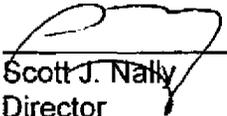
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



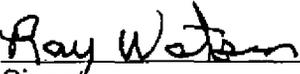
Scott J. Nally
Director

2/12/13

Date

AGREED:

**Village of Byesville
Wetzler-Haynes Water Filtration Plant**



Signature

01/30/13

Date

Ray Watson

Printed or Typed Name

Mayor

Title