

OHIO E.P.A.

JAN 30 2008

ENTERED DIRECTOR'S JOURNAL

Effective Date JAN 30 2008

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

West Geauga Plaza, LLC :  
18355 Bent Tree Lane :  
Bainbridge Twp., Ohio 44023 :

Respondent,

I certify this to be a true and accurate copy of the  
official documents as filed in the records of the Ohio  
Environmental Protection Agency.

PREAMBLE

By:  Date: 1-30-08

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to the West Geauga Plaza, LLC (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.

#### IV. FINDINGS

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

1. Respondent owns and operates a "public water system" (PWS) at West Geauga Plaza – Main as defined by ORC § 6109.01, which is also a "nontransient noncommunity water system" as defined by Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID# OH2860212) is located at the Northwest corner of Chillicothe and Mayfield Road, Chesterland, Ohio, 44026.
3. Respondent's PWS obtains its drinking water from a "ground water" source as defined by OAC Rule 3745-81-01 and serves a population of one hundred thirty (130) persons.
4. On October 23, 2002, Respondent's PWS was designated by the Director as a Class A PWS in accordance with OAC Rule 3745-7-03.
5. In accordance with OAC Rule 3745-81-14(B), a PWS which monitors fewer than forty samples per month is in compliance with the maximum contaminant level (MCL) for total coliforms when no more than one sample during a month is total coliform-positive.
6. In violation of OAC Rule 3745-81-14(B), Respondent exceeded the MCL for total coliforms during the October 2003 monitoring period when more than one sample was total coliform positive.
7. On December 20, 2004, the Director issued Respondent a Chemical Monitoring Schedule for the compliance period that began January 1, 2005 and ended December 31, 2005.
8. In accordance with OAC Rule 3745-81-24(B), nontransient noncommunity PWSs shall monitor for synthetic organic chemicals (SOCs) with MCLs listed in OAC Rule 3745-81-12(E). PWSs shall monitor SOC's according to a schedule provided by the Director.
9. In violation of OAC Rule 3745-81-24(B), Respondent failed to monitor for the SOC's consisting of benzo(a)pyrene, di(2-ethylhexyl)adipate, di(2-ethylhexyl)phthalate, and endo-thall during the monitoring period of April 1 through June 30, 2005. A SOC sample was collected on June 27, 2005, however, the sampling bottle was broken during shipment between testing laboratories which necessitated a sample to be collected outside the monitoring period on August 22, 2005.

10. In accordance with OAC Rule 3745-81-12(D), nontransient noncommunity PWSs are in compliance with the MCL for tetrachloroethene if the running annual average (RAA) is not greater than 0.005 mg/L. In accordance with OAC Rule 3745-81-24(A)(8)(a), compliance with the MCL, for PWSs monitoring quarterly, shall be based on a running annual arithmetic average computed quarterly, of quarterly arithmetic averages of all samples taken at each sample point. If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the PWS is in violation of the MCL.
11. In violation of OAC Rule 3745-81-12(D), Respondent exceeded the MCL for tetrachloroethene calculated as a RAA for the monitoring periods July 1 through September 30, 2005, October 1 through December 31, 2005, January 1 through March 31, 2006, April 1 through June 30, 2006, July 1 through September 30, 2006, October 1 through December 31, 2006, January 1 through March 31, 2007, and April 1 through June 30, 2007, with RAAs of 0.009, 0.008, 0.010, 0.015, 0.017, 0.016, 0.013 and 0.006 mg/L respectively.
12. In accordance with OAC Rule 3745-81-80(K), failure to comply with the applicable requirements of OAC Rules 3745-81-80 to 3745-81-90, including requirements established by the Director pursuant to these provisions, shall constitute a violation of the OAC primary drinking water regulations for lead and/or copper.
13. In violation of OAC Rule 3745-81-80(K), Respondent failed to comply with the applicable requirements of OAC Rules 3745-81-80 to 3745-81-90, including requirements established by the Director pursuant to these provisions after exceeding the action level for lead, constituting a violation of the OAC primary drinking water regulations for lead and/or copper.
14. In accordance with OAC Rule 3745-91-02(A), no person shall make a substantial change in a PWS, until plans therefor have been approved by the Director. An application for approval of plans for such construction, installation, or substantial change in a PWS, as required by ORC § 6109.07, shall be submitted to the district office.
15. In violation of OAC Rule 3745-91-02(A), Respondent made substantial changes to the PWS prior to 1994 and again prior to 1997 without first obtaining approval by the Director. On October 5, 1999 and March 13, 2003, Respondent was issued letters by Ohio EPA, Northeast District Office (NEDO), requiring that detail plans be submitted addressing the unapproved changes made to the PWS.
16. On or about March 1, 2005, Respondent submitted detail plans for a proposed system to address the plan approval violation (Finding 15), the tetrachloroethene MCL violation (Finding 11), and lead and copper violation (Finding 13).

17. On July 16, 2007, the Director approved Respondent's detail plans for two (2) new wells, to be completed in a deeper aquifer believed to be uncontaminated.
18. Each violation cited above represents a separate violation of ORC § 6109.31.

#### **V. ORDERS**

1. Respondent shall comply with all current and subsequent chemical monitoring schedules issued by the Director.
2. Respondent shall comply with total coliform bacteria MCL requirements and resolve any total coliform bacteria MCL violations, in accordance with OAC Rules 3745-81-14 and 3745-81-21.
3. Within one hundred twenty (120) days of the effective date of these Orders, Respondent shall complete construction in accordance with the detail plans (Finding 17) approved by the Director.
4. Within three hundred sixty (360) days of construction completion (Order 3), Respondent shall be in compliance with the RAA MCL for tetrachloroethene, in accordance with OAC Rule 3745-81-12(D).
5. Within thirty (30) days of construction completion (Order 3), Respondent shall begin lead and copper tap sample monitoring in accordance with OAC Rule 3745-81-86, which initially requires two (2) consecutive six-month monitoring periods due to the connection of Respondent's PWS to a new water source.
6. Within thirty (30) days of the effective date of these Orders, Respondent shall deliver public education materials for lead in accordance with OAC Rule 3745-81-85 and submit verification of deliverance to Ohio EPA. Should Respondent complete construction and obtain lead and copper tap samples from the new source water prior to thirty (30) days after the effective date of these Orders, Respondent shall not be required to deliver public education materials for lead.
7. Within thirty (30) days of the effective date of these Orders, Respondent shall pay the amount of six hundred dollars (\$600.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6109. Payment to Ohio EPA shall be made by official check made payable to "Treasure, State of Ohio" for six hundred dollars (\$600.00). 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.

## **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 in writing 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 municipal facility.

## **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 shall be addressed to:

Ohio Environmental Protection Agency  
Division of Drinking and Ground Waters  
Lazarus Government Building  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Kenneth Baughman

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**



Chris Korleski, Director

JAN 30 2008

Date

**IT IS SO AGREED:**

**West Geauga Plaza - LLC**

Thomas M. Basista, MANAGER      11/29/07

Signature

Date

THOMAS M. BASISTA, MANAGER  
Printed or Typed Name and Title