

OHIO E.P.A.

AUG 23 2011

ENTERED DIRECTOR'S JOURNAL

Effective Date AUG 23 2011

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: :  
The City of Fremont :  
1113 Tiffin Street :  
Fremont, OH 43420 :

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

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: Don Kossiter Date: 8-23-11

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to City of Fremont, (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), which is also a "community water system" (CWS) as defined by ORC Section 6109.01.
2. Respondent's PWS (PWS ID# 7200311) is located at 1113 Tiffin Street, Fremont, Sandusky County, Ohio, 43420.
3. Respondent's PWS obtains its drinking water from the Sandusky River, a "surface water" source as defined by Ohio Administrative Code (OAC) Rule 3745-81-01, and serves a population of 18,000 persons.
4. On November 13, 2003, the Director approved detail plans for expansion and rehabilitation of the existing water treatment plant, subject to the condition that Respondent construct an additional raw water reservoir no later than December 31, 2013 to address seasonal nitrate fluctuations as well as source water capacity issues.
5. On February 14, 2008, the Director issued Final Findings and Orders (2008 Orders) to Respondent.
6. In accordance with Order No. 5 of the 2008 Orders, to address fluctuating nitrate levels in the Sandusky River and prevent future maximum contaminant level (MCL) violations for nitrate, Respondent was required to prepare plans for and construct an off-stream reservoir that will hold approximately 750 million gallons of raw water in accordance with the following schedule:
  - Submit approvable detail plans to Ohio EPA for the final design of the reservoir only by May 1, 2008, and final design for the intake, pumping station and raw water main by December 31, 2008.
  - Begin construction of the reservoir in accordance with approved plans by November 31, 2008.
  - Complete construction of the off-stream reservoir by March 15, 2011.
  - Begin using the off-stream reservoir as the secondary source of raw water by May 1, 2011.
7. Respondent has met the requirements of the 2008 Orders to submit detail plans and begin construction of the reservoir.
8. In violation of the 2008 Orders and ORC § 6109.31, Respondent has failed to comply with the deadlines to complete construction by March 15, 2011 and begin using the off-stream reservoir as the secondary source of raw water by May 1, 2011.

9. On March 30, 2011, Ohio EPA received an updated plan and schedule for the off-stream reservoir which indicated construction would be completed by March 15, 2012 and the reservoir would be utilized as the secondary source of raw water by May 1, 2012.
10. In accordance with OAC Rule 3745-81-11(A), the MCL for nitrate for all PWSs is 10 milligrams per liter (mg/L).
11. Since issuance of the 2008 Orders, in violation of OAC Rule 3745-81-11(A), Respondent's PWS exceeded the MCL for nitrate during the following monitoring periods: June 2009, January 2010, February 2010 and May 2010.
12. Each of the violations cited above represents a separate violation of ORC § 6109.31.

#### **V. ORDERS**

1. Respondent's 2008 Orders shall be terminated; these Orders, as outlined below, shall incorporate the outstanding requirements of the 2008 Orders.
2. To address fluctuating nitrate levels in the Sandusky River and prevent future MCL violations for nitrate, as well as ensure adequate source water capacity to meet current and future water demands, Respondent shall complete construction of the off-stream reservoir that will hold approximately 750 million gallons of raw water on or before March 15, 2012, and begin utilizing the reservoir as the secondary source of raw water by May 1, 2012.
3. Within six months of the effective date of these Orders, and every six months thereafter until the termination of these Orders, Respondent shall submit a status report describing progress made during the previous six month period toward meeting the milestones in Order No. 2. The report should describe activities conducted, milestones accomplished, significant problems encountered and provide an overall progress summary including any anticipated delays in meeting future milestone due dates.
4. Should Respondent fail to complete construction of the reservoir and begin utilizing the reservoir as the secondary source of raw water by May 1, 2012, as required by Order No. 2, Respondent shall pay a civil penalty of \$6,400.00 to Ohio EPA to be deposited into the Drinking Water Protection Fund established pursuant to ORC § 6109.30. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent.

## **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 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(E).

## **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  
Northwest District Office  
Division of Drinking and Ground Waters  
347 N. Dunbridge Road  
Bowling Green, Ohio 43402  
Attn: Musa Khaleq

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**

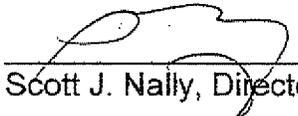
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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:**

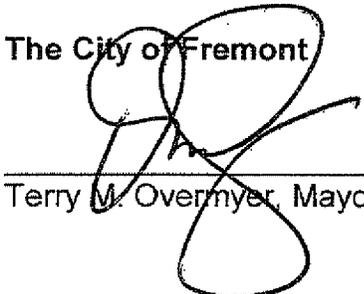
**Ohio Environmental Protection Agency**

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

**AUG 23 2011**  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**The City of Fremont**

  
\_\_\_\_\_  
Terry M. Overmyer, Mayor

**8-9-2011**  
\_\_\_\_\_  
Date