FILED
COMMON PLEAS COURT
OCT 23 2009
GUERNSEY COUNTY, OHIO
Teresa A. Dankovic, Clerk of Court

IN THE COURT OF COMMON PLEAS
GUERNSEY COUNTY, OHIO

| | | |
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| STATE OF OHIO, ex rel.<br>RICHARD CORDRAY<br>OHIO ATTORNEY GENERAL | : | CASE NO. 07-CV-02 |
| Plaintiff, | : | |
| v. | : | JUDGE DAVID A. ELLWOOD |
| VILLAGE OF CUMBERLAND | : | FINAL APPEALABLE ORDER |
| Defendant. | : | NO JUST CAUSE FOR DELAY |

## CONSENT ORDER

The Amended Complaint in the above-captioned matter having been filed herein, the Plaintiff State of Ohio, by its Attorney General, Richard Cordray (hereinafter "Plaintiff"), and Defendant Village of Cumberland (hereinafter "Defendant") hereby consent to the entry of this Consent Order.

NOW THEREFORE, without trial or admission of any issue of law or fact, and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this case pursuant to R.C. Chapter 6109. The Amended Complaint states a claim upon which relief can be granted against Defendant under R.C. Chapter 6109 and the rules promulgated thereunder. Venue is proper in this Court.

### II. PERSONS BOUND

2. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their officers, agents, servants, employees, successors, and assigns, and those

persons in active concert or participation with them. Defendant shall provide a copy of this Consent Order to each general contractor and consultant that Defendant employs to perform the work itemized herein. Defendant shall require each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work.

3. Defendant shall inform the Ohio EPA of any change in business address or telephone number within sixty (60) days of the change.

## III. SATISFACTION OF LAWSUIT AND RESERVATIONS OF RIGHTS

4. Plaintiff alleges in its Amended Complaint that the Defendant owns and operates the public water system ("PWS") in the Village of Cumberland in such a manner as to result in numerous violations of the State of Ohio's Safe Drinking Water Laws, R.C. Chapter 6109, by failing to comply with the requirements set forth in Ohio Administrative Code ("OAC") 3745-81-12, 3745-81-22, 3745-81-32, 3745-81-72, 3745-81-77, and 3745-95-01 through 3745-95-08. Defendant has committed violations related to: exceedances of the maximum total trihalomethane contaminant levels ("TTHMs"), turbidity, failure to monitor, failure to issue public notices, disinfection treatment, failure to adequately reduce organic compounds from the raw water, failure to ensure tests and inspections are conducted on backflow prevention, and failure to provide certain documents to Ohio EPA.

5. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendant for all claims or violations alleged in the Amended Complaint which occurred prior to the entry of this Consent Order, including the claims for injunctive relief and civil penalties.

6. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against Defendant for claims or conditions not alleged in the Amended

Complaint, including violations which occur after the entry of this Consent Order. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against other appropriate persons for claims or conditions whether or not alleged in the Amended Complaint. Similarly, nothing in this Consent Order shall be construed so as to limit the authority of the State of Ohio to undertake any action against any person, including Defendant, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

## IV. PERMANENT INJUNCTION

7. The Defendant is hereby permanently enjoined and immediately ordered to comply with the requirements of Ohio's Safe Drinking Water Laws, R.C. Chapter 6109 and the rules and regulations adopted thereunder, and the terms and conditions of any license or plan approval that may be issued to the Defendant.

## V. COMPLIANCE SCHEDULE

8. Beginning on the date of the signing of this Consent Order by the parties and continuing up to the date the Defendant's PWS is no longer owned by the Village of Cumberland, and its ownership and responsibility for operation of the system as the supplier of water has been transferred to the Village of Byesville or another entity with the approval of the Director, the Defendant is enjoined and ordered to do the following:

(a) Within ninety (90) days of the signing of this Consent Order, implement an approvable backflow prevention program, which includes but is not limited to customers with auxiliary water sources.

(b) Fully comply with all applicable provisions of R.C. Chapter 6109 and any rules adopted thereunder until ownership of the PWS is transferred to the Village of

Byesville or another entity consistent with an approval by the Director.

9. Defendant is enjoined and ordered to complete a waterline connecting the Village of Cumberland to the Village of Byesville and eliminate the current water treatment plant operated by Defendant in accordance with the following schedule, or to comply with paragraph 10 below:

| Task | | Compliance Date |
|---|---|---|
| A. | Submit project revisions to Ohio EPA for approval | June 30, 2009 |
| B. | Begin construction of the waterline | November 1, 2009 |
| C. | Achieve full operation of the project | October 31, 2010 |
| D. | Physically disconnect the Cumberland water treatment plant from the system and cease all use of the plant | December 15, 2010 |

10. If the Operating Agreement and Water Contract ("the agreements") between Defendant and the Village of Byesville signed on April 23, 2008 fail to achieve and maintain compliance with R.C. Chapter 6109 and the rules adopted thereunder, and/or if the waterline between Defendant and the Village of Byesville is not fully operational by October 31, 2010, Defendant shall by December 15, 2010 submit alternative plans for connection to an alternative water source capable of providing adequate quantity of water that fully meets all primary drinking water rules under R.C. Chapter 6109. Defendant shall connect to an alternative water source by June 15, 2011 and attain and demonstrate full compliance with all drinking water rules by December 15, 2011. Defendant, or its successors, shall maintain full compliance with all drinking water rules thereafter. The existing Cumberland water treatment facility must be physically disconnected from the system and no longer used no later than June 15, 2011.

## VI. REPORTING REQUIREMENT

11. Documents or reports that are required to be submitted to Ohio EPA's Southeast District Office pursuant to this Consent Order shall be sent to: State of Ohio Environmental Protection Agency, Southeast District Office, Division of Drinking and Ground Water, ATTN: Sarah Wallace, at 2195 Front Street, Logan, Ohio, 43138. Documents that are required to be submitted to Ohio EPA's Central Office shall be sent to: State of Ohio Environmental Protection Agency, Division of Drinking and Ground Water, ATTN: Tanushree Courlas, at P.O. Box 1049, Columbus, Ohio 43216.

## VII. CIVIL PENALTY

12. Defendant shall pay to the State of Ohio a civil penalty of Two Thousand, Five Hundred Dollars ($2,500.00) pursuant to R.C. 6109.32 for violations of R.C. Chapter 6109. The civil penalty shall be paid by delivering a certified check payable to the order of "Treasurer, State of Ohio," to Karen Pierson, Paralegal, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400, within sixty (60) days of the entry of this Order.

## VIII. STIPULATED PENALTIES

13. In the event that Defendant fails to comply with any deadline or requirement of this Consent Order, the Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty for each failure according to the following payment schedule:

(a) For each day of each failure to comply with a deadline or requirement, up to thirty (30) days – Two Hundred Dollars ($200.00) per day for each requirement or deadline not met

(b) For each day of each failure to comply with a deadline or requirement, from

thirty-one (31) days to ninety (90) days – Four Hundred Dollars ($400.00) per day for each requirement or deadline not met.

(c) For each day of each failure to comply with a deadline or requirement, over ninety-one (91) days – Six Hundred Dollars ($600.00) per day for each requirement or deadline not met.

14. Any payment required to be made under the provisions of Section VIII of this Consent Order shall be made within thirty (30) days of the violation, by certified check or checks, made payable to "Treasurer, State of Ohio," and shall be delivered to Karen Pierson, or her successor, at the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215-3400. The Defendant shall also include a written statement of the specific provision(s) of the Consent Order that was not complied with, and the date(s) of non-compliance. The payment of stipulated penalties by Defendant and the acceptance of such stipulated penalties by Plaintiff for specific violations of this Consent Order shall not be construed to limit the Plaintiff's authority to seek additional relief, civil, criminal or administrative, for violations of applicable laws.

## IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

15. Performance of the terms of this Consent Order by Defendant is not conditioned on the receipt of any federal, state or any other grant, loan or funds. In addition, Defendant's performance is not excused by the failure to obtain, or shortfall of, any such grant, loan or funds, or by the processing of any applications for the same.

## X. MISCELLANEOUS

16. Nothing in this Consent Order shall affect Defendant's obligation to comply with all applicable federal, state and local laws, regulations, rules and ordinances. Defendant shall obtain any and all federal, state or local permits necessary to comply with this Consent Order.

## XI. POTENTIAL FORCE MAJEURE

17. If any event occurs which causes or may cause a delay of any requirements of this Consent Order, Defendant shall notify the Ohio EPA in writing within fourteen (14) days of the event, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendant to prevent or minimize the delay, and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

18. In any action by Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an enforcement action, if any, is commenced by the Plaintiff. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this

Consent Order. Failure by Defendant to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved. It shall be at the option of Plaintiff to construe the failure as a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order with a Potential Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law

## XII. RETENTION OF JURISDICTION

19. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order.

## XIII. COSTS

20. Defendant is hereby ordered to pay the court costs of this action.

## XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

21. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

**IT IS SO ORDERED.**

**JUDGE DAVID A. ELLWOOD,**
**COURT OF COMMON PLEAS**
**GUERNSEY COUNTY, OHIO**

10/23/09
**DATE**

**APPROVED:**

**RICHARD CORDRAY**
**OHIO ATTORNEY GENERAL**

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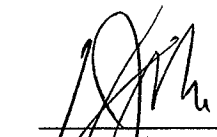

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