

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

NOV 30 2009

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

City of Nelsonville  
211 Lake Hope Drive  
Nelsonville, OH 45764

Respondent

Director's Final Findings  
and Orders

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

It is agreed by the parties hereto as follows:

By: W. J. Shapiro Date: 11/30/09

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Nelsonville ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 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 the composition of Respondent or the ownership or operation of the water treatment plant ("WTP"), 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 6111. and the rules adopted thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is a city in northwestern Athens County, and owns and operates a WTP (lime-soda softening plant) at 749 Lake Hope Drive, Nelsonville.
2. The WTP consist of the follow operations which contribute to flow:

<i>Operation</i>	<i>Average Flow</i>
Upflow Clarifier	17,825 gpd
Sedimentation	1,000 gpd

<i>Operation</i>	<i>Average Flow</i>
Recarbonation	20,805 gpy
Backwash Reclaim	590 gpd

3. The WTP has two sludge lagoons in series, with a total approximate capacity of 900,000 gallons at 13.7 gpm. The resulting solids are land applied.
4. Respondent had an Ohio National Pollution Discharge Elimination System Permit No. OI\W00082\*DD, ("NPDES permit"), which authorized the discharge of pollutants to the Hocking River, a water of the state.
5. The NPDES permit expired on June 30, 2008, with a renewal application submitted on June 11, 2008.
6. ORC § 6111.04 prohibits any person from causing pollution or causing any sewage, industrial waste or other waste to be placed in any location where they cause pollution to waters of the state, except if such discharges occur in accordance with an NPDES permit issued by the Director.
7. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any order, rule, or term or condition of a permit issued by the Director pursuant to those sections. Each day of violation represents a separate violation.
8. Ohio Administrative Code ("OAC") Rule 3745-33-04(C)(1) provides that an NPDES permit holder who wishes to continue to discharge after the expiration date of its permit must file for permit reissuance at least one hundred eighty days prior to the permit's expiration.
9. Respondent did not make a timely application for a renewal of the NPDES permit and is discharging pollutants to waters of the state without a valid, unexpired permit, which is a violation of ORC §§ 6111.04 and 6111.07.
10. The NPDES permit required that the following parameters be sampled and analyzed, and the results reported to Ohio EPA via Monthly Operating Reports ("MORs"):
  - a. pH;
  - b. Total suspended solids;
  - c. Flow rate;
  - d. Chlorine total residual; and
  - e. Trihalomethane, total.

11. From May, 2000 to April, 2008, Respondent did not submitted MORs, with the exception of the following months: (April 2003 to June 2003 and January 2006 to March 2006), nor did Respondent performed the required sampling and analyses.
12. Respondent's failure to sample, analyze and report the parameters set forth in the NPDES permit is a violation of the NPDES permit and ORC §§ 6111.04 and 6111.07.
13. Respondent has sampled, analyzed and reported the required parameter for April and May, 2008, which report shows no effluent limit violations.
14. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purpose of ORC Chapter 6111.

#### **V. ORDERS**

1. Respondent shall achieve and maintain compliance with its NPDES permit and any modifications and/or renewals thereto.
2. Respondent shall pay the amount of twelve thousand five hundred eighty-two dollars (\$12,582.00), in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. 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 ten thousand sixty-six dollars (\$10,066.00) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and the WTP, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to the Ohio EPA, Southeast District Office, in accordance with Section X of these Orders.

3. In lieu of paying the remaining two thousand five hundred sixteen dollars (\$2,516.00) of the civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of two thousand five hundred sixteen dollars (\$2,516.00) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD).

Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and the WTP, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

A copy of each check shall be sent to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio EPA  
Division of Surface Water  
P.O. Box 1049  
Columbus, OH 43216-1049

4. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 3, Respondent shall immediately pay to Ohio EPA the remaining two thousand five hundred sixteen dollars (\$2,516.00) of the civil penalty in accordance with the procedures in Order No.2.
5. A check for the full amount of the civil penalty settlement amount, twelve thousand five hundred eighty-two dollars (\$12,582.00), was received by Ohio EPA on September 8, 2009.

#### **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 Surface Water 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 the Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03 for a municipal, state, or other public 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 activities occurring on or at the 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**

Unless otherwise specified herein, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138  
(ATTN: Enforcement Supervisor)

**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.

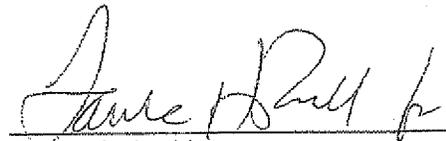
**XIII. EFFECTIVE DATE**

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

**XIV. SIGNATORY AUTHORITY**

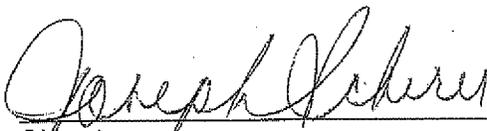
Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:**  
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Chris Korleski  
Director

11-25-09  
Date

**IT IS SO AGREED:**  
**City of Nelsonville**

  
\_\_\_\_\_  
Signature

5/20/2009  
Date

Joseph Scherer  
Printed or Typed Name

City Manager  
Title