



State of Ohio Environmental Protection Agency

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Columbus, OH 43216-1049

February 15, 2008

Honorable Terry M. Overmyer  
Mayor, City of Fremont  
323 South Front Street  
Fremont, Ohio 43420

CERTIFIED MAIL  
9171082133393109730668

RE: City of Fremont  
Public Water System  
Director's Administrative Orders

Dear Mayor Overmyer:

Please find enclosed journalized Director's Findings and Orders with regard to the above-referenced matter for your records. Thank you for your assistance and cooperation in resolving the case.

Please contact me at (614) 644-2752 if you have any additional questions.

Sincerely,

Mark Sheahan  
Environmental Supervisor

Enclosures

cc: Justin Bowerman, Environmental Specialist, DDAGW-NWDO  
Ellen Gerber, Manager, DDAGW-NWDO  
Carol Hester, Chief, PIC  
Beth Messer, Manager, DDAGW-CO  
Kim Rhoads, Office of Legal Services  
JoAnn Sabo, DOCC, DDAGW-NWDO

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director

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OHIO E.P.A.

FEB 14 2008

ENTERED DIRECTOR'S JOURNAL

Effective Date FEB 14 2008

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

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

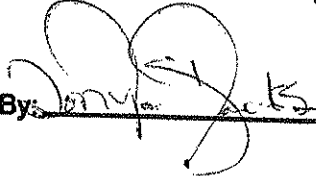
DIRECTOR'S FINAL  
FINDINGS AND ORDERS

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

It is agreed by the parties hereto as follows:

By:  Date: 2-14-08

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 Section 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. In accordance with OAC Rule 3745-81-01(TT), a maximum contaminant level (MCL) is the maximum permissible level of a contaminant in water that is delivered to any user of a PWS.
5. In accordance with OAC Rule 3745-81-11(A), the MCL for nitrate for all PWSs is 10 milligrams per liter (mg/L).
6. In accordance with OAC Rule 3745-81-23(B)(2), all PWSs which are surface water systems shall monitor for nitrate monthly.
7. In accordance with OAC Rule 3745-81-23(F)(1), when nitrate or nitrite monitoring indicates an exceedance of the MCL, the Director may require the PWS to monitor with a confirmation sample within twenty-four hours of the PWS's receipt of notification of the analytical results of the first sample. PWSs unable to comply with the twenty-four hour sampling requirement shall immediately notify the consumers in the area served by the PWS in accordance with OAC Rule 3745-81-32. PWSs giving immediate notification shall monitor with a confirmation sample within two weeks of notification of the analytical results of the first sample.
8. In accordance with OAC Rule 3745-81-23(H)(1), when an initial sample for nitrate indicates an exceedance of the MCL, then compliance with the MCL is based on an average of the levels in the initial sample and a repeat sample taken to comply with OAC Rule 3745-81-23(F)(1). If a PWS fails to take a required repeat sample, compliance with the MCL is based on the results of the initial sample.
9. Based on the results of initial and repeat monitoring conducted on the dates below, Respondent's PWS exceeded the MCL for nitrate during the following monitoring periods: June 1999, May 2000, May 2001, June 2001, December 2002, January 2003, March 2003, April 2003, June 2003, May 2006, June 2006, and June 2007.

<u>Monitoring Period</u>	<u>Monitoring Dates</u>	<u>Average Nitrate Level</u>
June 1999	6/1/99, 6/2/99	15.6 mg/L
May 2000	5/23/00, 5/24/00	14.6 mg/L
May 2001	5/21/00, 5/22/00	17 mg/L
June 2001	6/1/01, 6/44/01	15 mg/L
December 2002	12/12/02, 12/13/02	16.9 mg/L
January 2003	1/1/03, 1/2/03	13.7 mg/L
March 2003	3/25/03, 3/26/03	12.1 mg/L
April 2003	4/2/03, 4/3/03	10.8 mg/L
June 2003	6/18/03, 6/19/03	12.7 mg/L
May 2006	5/16/06, 5/17/06	12.7 mg/L
June 2006	6/1/06, 6/2/06	10.7 mg/L
June 2007	6/13/07, 6/14/07	13.2 mg/L

10. In accordance with OAC Rule 3745-7-03, Respondent's PWS was classified as a Class IV PWS on January 1, 1989.
11. In accordance with OAC Rule 3745-7-02 (version effective from February 12, 2001 to December 21, 2006), Respondent was required to place the direct supervision of the technical operation and maintenance of its PWS under the responsible charge of a person holding a valid Class IV water supply operator certification.
12. On August 23, 2001, Ohio EPA provided Respondent with a written notification of violation of OAC Rule 3745-7-02 as its PWS was not under the responsible charge of a certified operator holding a Class IV certification. This notification established a compliance deadline of August 20, 2002 for Respondent to place the PWS under the responsible charge of a certified operator holding a Class IV certification.
13. In accordance with OAC Rule 3745-7-02(G), on February 27, 2006 the Director of Ohio EPA approved the designation of Mr. Joseph Flahiff, who held a Class III water supply operator certification at that time, to temporarily serve as the operator in responsible charge of the Respondent's PWS. The approval was based on the acceptance of Mr. Flahiff's application to take the Class IV water supply operator exam and was effective until March 31, 2007.
14. On September 18, 2006 the Director of Ohio EPA issued a Class IV water supply operator certification to Mr. Joseph Flahiff.
15. In violation of OAC Rule 3745-7-02 (version effective from February 12, 2001 to December 21, 2006) Respondent failed to place the direct supervision of the technical operation and maintenance of its PWS under the responsible charge of a Class IV certified operator from at least August 23, 2001 to February 27, 2006.

16. In accordance with OAC Rule 3745-81-72(B)(1) (version effective from December 31, 1990 to January 1, 2002), Respondent was required to provide disinfection treatment sufficient to reliably achieve at least 99.9 per cent (3 log) inactivation and/or removal of *Giardia lamblia* cysts and at least 99.99 per cent (4 log) inactivation and/or removal of viruses, as determined according to the Appendix to that Rule.
17. The Appendix to OAC Rule 3745-81-72 (version effective from December 31, 1990 to January 1, 2002) required the effectiveness of disinfection treatment to be measured each day at the peak hourly flow rate by multiplying the residual disinfectant concentration (C) by the disinfectant contact time (T) and comparing the product (CT) for each day of operation with the minimum required values in the tables of the Appendix.
18. In violation of OAC Rule 3745-81-72(B)(1) (version effective from December 31, 1990 to January 1, 2002); Respondent failed to provide sufficient and reliable disinfection treatment during the months of January 1995, February 1995 and March 1995 when the actual CT value was less than the minimum required value for 31 days during the month of January 1995, 24 days during the month of February 1995 and four days during the month of March 1995.
19. In accordance with OAC Rule 3745-81-73 (version effective from September 13, 1993 to January 1, 2002), Respondent was required to provide filtration treatment to achieve turbidity levels in representative samples of filtered water that are less than or equal to 0.5 nephelometric turbidity units in at least ninety-five per cent of the samples analyzed each month.
20. In violation of OAC Rule 3745-81-73 (version effective from September 13, 1993 to January 1, 2002), Respondent failed to provide adequate filtration treatment when the turbidity levels of representative samples of filtered water exceeded 0.5 nephelometric turbidity units in more than five per cent of the samples analyzed during the months of March 1995 and April 1995.
21. In accordance with OAC Rule 3745-81-96-02(A), each community water system shall provide to its customers an annual report (consumer confidence report) that contains the information specified in OAC Rule 3745-81-96-02 and OAC Rule 3745-96-03.
22. In violation of OAC Rule 3745-96-02(A), the Respondent failed to include all the required information in the consumer confidence report for its PWS that was issued for the 2000 calendar year.

23. On November 13, 2003 detail plans were approved by the Director for a major expansion and rehabilitation of Respondent's existing water treatment plant to increase the plant capacity to 14 million gallons per day. Construction was completed by Respondent between approximately April 2004 and June 2006. The plant improvements will also help the Respondent's PWS comply with surface water treatment requirements, including disinfection and turbidity standards.
24. As a condition of the November 13, 2003 plan approval, Respondent was required to construct an additional raw water reservoir by December 2013. Subsequent to the plan approval, through correspondence and meetings, Ohio EPA emphasized the need for Respondent to construct an off-stream reservoir as soon as possible due to continuing concerns with water quality in the Sandusky River and additional nitrate MCL violations.
25. Respondent provided Ohio EPA a revised schedule on March 5, 2007 indicating construction completion of the off-stream reservoir by December 31, 2011.
26. Each of the violations cited above represents a separate violation of ORC Section 6109.31.

#### **V. ORDERS**

1. Within fourteen (14) days of the effective date of these Orders, Respondent shall submit an Operator of Record Status Report form identifying at least one person having a valid Class IV public water system operator certification as the operator of record to oversee the technical operation of the Respondent's PWS, in accordance with OAC Chapter 3745-7.
2. From the effective date of these Orders, and for as long as Respondent owns or operates the PWS, Respondent shall comply with the turbidity and disinfection monitoring requirements of OAC Rule 3745-81-74 paragraphs (A) through (E).
3. From the effective date of these Orders, and for as long as Respondent owns or operates the PWS, Respondent shall provide disinfection treatment at all times in accordance with the requirements of OAC Rule 3745-81-72(B) and (C).
4. From the effective date of these Orders, and for as long as Respondent owns or operates the PWS, Respondent shall provide filtration treatment at all times in accordance with the requirements of OAC Rule 3745-81-73.
5. To address fluctuating nitrate levels in the Sandusky River and prevent future MCL violations for nitrate, Respondent shall prepare plans for and construct an off-stream reservoir that will hold approximately 750 million gallons of raw water in

violations for nitrate, Respondent shall 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.

6. Within thirty (30) days of notification, Respondent shall respond in writing to address any comments or deficiencies noted by Ohio EPA on any plan or report submitted by Respondent.
7. 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 Number 5. 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.

## **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(D)(4) for a municipal facility.

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: Justin Bowerman

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. 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. Except for the right to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders, which right Ohio EPA does not waive, 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**

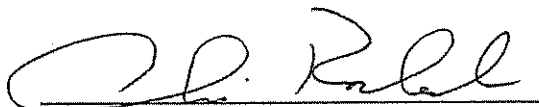
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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**



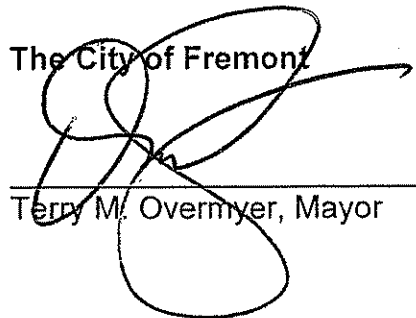
Chris Korleski, Director

FEB 14 2008

Date

**IT IS SO AGREED:**

**The City of Fremont**



Terry M. Overmyer, Mayor

1-17-08

Date

