

OHIO E.P.A.

FEB -7 2011

Effective Date FEB 07 2011

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

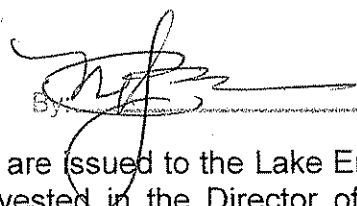
DIRECTOR'S FINAL  
FINDINGS AND ORDERS

Lake Erie Utilities Company :  
c/o Burgundy Bay Association :  
345 Burgundy Boulevard :  
Middle Bass, Ohio 43446 :

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.

Respondent,

I. JURISDICTION

By:  Date: 2.7.2011

These Director's Final Findings and Orders (Orders) are issued to the Lake Erie Utilities Company (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 there under.

IV. FINDINGS

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

1. Respondent owns and operates a "public water system" (PWS) as defined by ORC § 6109.01, which is also a transient non-community water system as defined by Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID# OH6201911) is located at 345 Burgundy Boulevard, (Ottawa County), Middle Bass, Ohio, 43446.

3. Respondent's PWS obtains its drinking water from a "surface water" source as defined by OAC Rule 3745-81-01 and serves a population of approximately 400 persons.
4. In accordance with OAC Rule 3745-81-73, a PWS that uses a surface water source must provide filtration which meets the requirements of conventional or direct filtration treatment, or slow sand filtration; filtration treatment shall consistently and reliably achieve at least ninety-nine per cent (2 log) removal of Cryptosporidium.
5. In accordance with OAC Rule 3745-81-01(QQQ), slow sand filtration is "a process of passing raw water through a porous granular medium at a rate of less than one hundred fifty gallons per day per square foot of sand area, with substantial removal of particles by physical and biological mechanisms."
5. In violation of OAC Rule 3745-81-73, Respondent's slow sand filtration has failed to consistently and reliably achieve at least ninety-nine per cent (2 log) removal of Cryptosporidium.
6. In accordance with OAC Rule 3745-81-73(B)(1), for a PWS filtering surface water by slow sand filtration, the turbidity level of representative samples of filtered water shall be less than or equal to one nephelometric turbidity unit (NTU) in at least 95% of the samples each month .
7. In violation of OAC Rule 3745-81-73(B)(1), Respondent failed to provide sufficient filtration of drinking water when the turbidity levels of representative samples of the filtered water were not less than or equal to one NTU in at least 95% of the samples analyzed during the April 2008, May 2008 and April 2009 monitoring periods.
8. On May 21, 2010, Ohio EPA documented that the Respondent's PWS continued to feed calcium hypochlorite prior to slow sand filtration; thereafter, Respondent was required to meet turbidity requirements for conventional filtration treatment or direct filtration treatment due to failure to provide slow sand filtration as defined by OAC Rule 3745-81-01.
9. In accordance with OAC Rule 3745-81-73(A)(1), for PWSs using conventional filtration or direct filtration treatment to treat surface water, turbidity levels of representative samples of filtered water shall be less than or equal to 0.3 NTU at least 95% of the samples analyzed each month.
10. In violation of OAC Rule 3745-81-73(A)(1), Respondent failed to provide sufficient filtration of its drinking water when the turbidity levels of representative samples of its filtered water were not less than or equal to 0.3 NTU in at least

95% of the samples analyzed during the May 2010 and October 2010 monitoring periods.

11. In accordance with OAC Rule 3745-81-73(A)(2), for PWSs using conventional filtration or direct filtration treatment to treat surface water, turbidity levels of representative samples of a PWS's filtered water shall not exceed one NTU.
12. In violation of OAC Rule 3745-81-73(A)(2), Respondent failed to provide sufficient filtration of its drinking water when the turbidity levels of representative samples of its filtered water exceeded one NTU during the May 2010 monitoring period.
13. In accordance with OAC Rule 3745-91-02(A), no person shall begin construction or installation of a PWS, or make a substantial change in a PWS, until plans therefore have been approved by the Director.
14. In violation of OAC Rule 3745-91-02(A), Respondent modified one of the PWS's high service pumps and installed a temporary service connection without obtaining Director's plan approval. This violation began on May 21, 2010 and continued until Director's temporary plan approval, effective June 28, 2010; the Director's temporary plan approval expired December 31, 2010.
15. In accordance with OAC Rule 3745-7-02(A)(1), each person owning or operating a PWS shall designate one or more operator of record to oversee the technical operation of the PWS or each water treatment plant and distribution system within the PWS. Each operator of record shall have a valid certification of a class equal to or greater than the classification of the PWS, distribution system or water treatment plant.
16. In accordance with OAC Rule 3745-07-03(B)(4), any PWS treating surface water, excluding slow sand filtration, with a design flow of 5.0 million gallons per day or less shall be classified as a minimum Class 3 PWS.
17. In accordance with OAC Rule 3745-07-03(B)(1)(c), when the Director changes the classification of a PWS, the owner of a PWS has up to twelve months to meet the staffing requirements in OAC Rule 3745-07-03(C) for the new classification.
18. On March 23, 2009, Respondent received Director's approval of detail plans for a new water plant which stated, "on the issuance date of this plan approval, the classification for the public water system is Class III, the classification of the distribution system is Class I."
19. In violation of OAC Rules 3745-07-02(A)(1), 3745-07-03(B)(1)(c), 3745-07-03(B)(4) and the March 23, 2009 Director's plan approval, Respondent failed to designate an operator of record with a valid Class 3 water supply certification or

above to oversee the technical operation of Respondent's PWS from approximately March 23, 2010 to the effective date of these Orders.

20. In accordance with OAC Rule 3745-95-03, the supplier of water shall conduct or cause to be conducted periodic surveys and investigations, of a frequency acceptable to the Director, of water use practices within a consumer's premises to determine whether there are actual or potential cross-connections to the consumer's water system through which contaminants or pollutants could backflow into the PWS (backflow prevention program).
21. In violation of OAC Rule 3745-95-03, Respondent has failed to maintain a backflow prevention program.
22. In accordance with *Recommended Standards for Water Works*, Section 5.1.9(d)(2), as adapted by reference in OAC Rule 3745-91-08(A), liquid chemical storage tanks shall have an overflow and a receiving basin capable of receiving accidental spills or overflows without uncontrolled discharge; a common receiving basin may be provided for each group of compatible chemicals, that provides sufficient containment volume to prevent accidental discharge in the event of failure of the largest tank.
23. Respondent does not provide spill containment for the calcium hypochlorite solution pursuant to the *Recommended Standards for Water Works*, Section 5.1.9(d)(2) and OAC Rule 3745-91-08(A).
24. In accordance with OAC Rule 3745-83-01(G)(1), a PWS that provides water treated with chlorine shall monitor for free chlorine at least once every day that water is available to the public at each entry point to the distribution system and a representative point in the distribution system.
25. In accordance with OAC Rule 3745-83-01(G)(2), a PWS that provides water treated with chlorine shall monitor for combined chlorine at least once every day that water is available to the public at each entry point to the distribution system and a representative point in the distribution system.
26. In violation of OAC Rules 3745-83-01(G)(1) and (G)(2), Respondent failed to monitor for free and combined chlorine from a representative point in the distribution system on May 31, 2010.
27. In accordance with ORC § 6109.12, every owner or operator of a PWS shall have analyses of the water made at such intervals and in such manner as may be ordered by Ohio EPA. Records of the results of such analyses shall be maintained and reported as required by Ohio EPA.

28. In accordance with OAC Rule 3745-83-01(I)(1), the owner or operator of a PWS shall prepare an operation report for each month (MOR) of operation on forms acceptable to the Director.
29. In accordance with OAC Rule 3745-83-01(I)(2), the MOR shall be signed by the operator in responsible charge, designated in accordance with OAC Rule 3745-7-02, and submitted to the district office no later than the tenth of the month following the month for which the report was prepared.
30. In violation of OAC Rule 3745-83-01(I)(2), Respondents failed to submit signed MORs by the tenth day of the month for the months of July 2007, January 2009 and June 2010.
31. Each violation cited above represents a separate violation of ORC § 6109.31.
32. In accordance with OAC Rule 3745-84-02(A), except as provided in ORC Section 6109.21, no person shall operate or maintain a PWS in the state of Ohio without a PWS license issued by the Director.
33. In accordance with OAC Rule 3745-84-03, Respondent submitted an application and fee for a 2011 license to operate (LTO) renewal on January 6, 2011.
34. In accordance with OAC Rule 3745-84-06(A), the Director may condition an LTO at any time to require corrections of violations of ORC Chapter 6109 and the administrative rules adopted there under.

#### **V. ORDERS**

1. From the effective date of these Orders, the 2011 LTO renewal for Respondent's PWS is issued with the conditions listed in Orders No. 2 through 9, for the period of February 7, 2011 to January 30, 2012, in accordance with OAC Rule 3745-84-06.
2. From the effective date of these Orders, Respondent shall prominently display the conditioned LTO so as to be clearly visible to the general public and any person entering the facility, in accordance with OAC Rule 3745-84-04(D).
3. From the effective date of these Orders, Respondent shall comply with all current and subsequent chemical monitoring schedules issued by the Director, in accordance with OAC Chapter 3745-81.
4. From the effective date of these Orders, Respondent shall comply with total coliform bacteria monitoring requirements, including both routine and repeat

samples, and respond to any positive total coliform sample appropriately, in accordance with OAC Rule 3745-81-21.

5. From the effective date of these Orders, Respondent shall monitor for free and combined chlorine at least once every day that water is available to the public at each entry point to the distribution system and a representative point in the distribution system.
6. From the effective date of the Orders, Respondent shall, in accordance with OAC Rule 3745-83-01(l)(2), submit MORs, signed by the operator in responsible charge, designated in accordance with OAC Rule 3745-7-02, to Ohio EPA, NWDO, DDAGW, no later than the tenth of the month following the end of the period for which the report was prepared.
7. Within thirty (30) days of the effective date of these Orders, Respondent shall hire and retain an Operator of Record with a certification equal to or greater than a Class 3 Water Supply in accordance with OAC Rule 3745-7-02 and shall provide Ohio EPA documentation by submitting a completed *Ohio EPA Operator of Record (ORC) Notification Form* (attached) to the address listed in Section X of these Orders.
8. Within thirty (30) days of the effective date of these Orders, Respondent shall submit a written response to Ohio EPA indicating how and on what schedule the significant deficiencies listed in Findings No. 21 and 23 will be addressed.
9. On or before May 15, 2011, Respondent shall come into compliance with requirements of the March 23, 2009 plan approval and the associated surface water treatment rule requirements, in accordance with OAC Rule 3745-81-73.

## **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.

## **X. NOTICE**

Except as specifically required by an individual Order, 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: Julie Gillenwater

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

## **XI. RESERVATION OF RIGHTS**

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 6109 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further action which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

**XII. APPEAL RIGHTS**

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC § 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Treasurer, State of Ohio," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

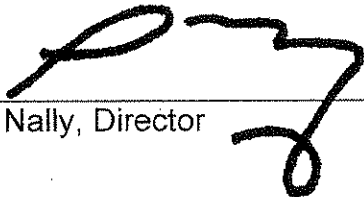
Environmental Review Appeals Commission  
309 South Fourth Street, Room 222  
Columbus, OH 43215

**XIII. EFFECTIVE DATE**

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

**IT IS SO ORDERED:**

**Ohio Environmental Protection Agency**



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

FEB 07 2011

\_\_\_\_\_  
Date



State of Ohio Environmental Protection Agency

## CONDITIONAL LICENSE TO OPERATE OR MAINTAIN A PUBLIC WATER SYSTEM

THE OHIO EPA, PURSUANT TO SECTION 6109.21 OF THE OHIO REVISED CODE, HEREBY ISSUES THIS  
LICENSE TO OPERATE OR MAINTAIN A PUBLIC WATER SYSTEM TO

### LAKE ERIE UTILITIES COMP

**PWS ID: OH6201911**

THE LICENSEE IS OBLIGATED TO ENSURE THAT THE PUBLIC WATER SYSTEM IS OPERATED AND  
MAINTAINED IN ACCORDANCE WITH THE REQUIREMENTS OF CHAPTER 6109 OF THE OHIO REVISED  
CODE, ALL OTHER APPLICABLE STATUTES AND THE ADMINISTRATIVE RULES ADOPTED THEREUNDER.

**THIS LICENSE WILL EXPIRE ON JANUARY 30, 2012**

APPLICATION FOR RENEWAL IS REQUIRED TO BE SUBMITTED TO THE OHIO EPA AT LEAST THIRTY  
DAYS PRIOR TO THIS DATE.

EFFECTIVE DATE: **FEBRUARY 7, 2011**

EXPIRATION DATE: **JANUARY 30, 2012**

LICENSE NUMBER: **6201911-784797-2011**

Scott J. Nally, Director

## LAKE ERIE UTILITIES COMPANY--ORDERS

Effective Date: February 7, 2011

1. From the effective date of these Orders, the 2011 LTO renewal for Respondent's PWS is issued with the conditions listed in Orders No. 2 through 9, for the period of February 7, 2011 to January 30, 2012, in accordance with OAC Rule 3745-84-06.
2. From the effective date of these Orders, Respondent shall prominently display the conditioned LTO so as to be clearly visible to the general public and any person entering the facility, in accordance with OAC Rule 3745-84-04(D).
3. From the effective date of these Orders, Respondent shall comply with all current and subsequent chemical monitoring schedules issued by the Director in accordance with OAC Chapter 3745-81.
4. From the effective date of these Orders, Respondent shall comply with total coliform bacteria monitoring requirements, including both routine and repeat samples, and respond to any positive total coliform sample appropriately, in accordance with OAC Rule 3745-81-21.
5. From the effective date of these Orders, Respondent shall monitor for free and combined chlorine at least once every day that water is available to the public at each entry point to the distribution system and a representative point in the distribution system.
6. From the effective date of the Orders, Respondent shall, in accordance with OAC Rule 3745-83-01(I)(2), submit MORs, signed by the operator in responsible charge, designated in accordance with OAC Rule 3745-7-02, to Ohio EPA, NWDO, DDAGW, no later than the tenth of the month following the end of the period for which the report was prepared.
7. Within thirty (30) days of the effective date of these Orders, Respondent shall hire and retain an Operator of Record with a certification equal to or greater than a Class 3 Water Supply in accordance with OAC Rule 3745-7-02 and shall provide Ohio EPA documentation by submitting a completed *Ohio EPA Operator of Record (ORC) Notification Form* (attached) to the address listed in Section X of these Orders.
8. Within thirty (30) days of the effective date of these Orders, Respondent shall submit a written response to Ohio EPA indicating how and on what schedule the significant deficiencies listed in Findings No. 21 and 23 will be addressed.
9. By May 15, 2011, Respondent shall come into compliance with requirements of the March 23, 2009 plan approval and the associated Surface Water Treatment Rule requirements.