

Effective Date ~~OCT 18 2010~~ OHOE-PA8 2010

BEFORE THE ENTERED DIRECTOR'S JOURNAL  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL FINDINGS AND ORDERS

Village of Malinta :  
103-1/2 Turkeyfoot Street :  
P.O. Box 69 :  
Malinta, Ohio 43535 :  
Attn: Mayor Terry Wulff :

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,

PREAMBLE

*[Signature]* Date: 10/18/2010

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to the Village of Malinta (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" as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.

2. Respondent's PWS (PWS ID# OH3501403) is located at 103-1/2 Turkeyfoot Street (Henry County), Ohio, 43535.
3. Respondent's PWS is a "consecutive PWS" as defined by OAC Rule 3745-81-01, which obtains/purchases drinking water from the City of Napoleon Water Treatment Plant (PWS ID#3500811), which is a "surface water" source as defined by OAC Rule 3745-81-01. Respondent's PWS serves a population of 398 persons.
4. On April 23, 2007, Respondent signed a Bilateral Compliance Agreement (BCA) with Ohio EPA and agreed to submit a Distribution System Optimization Plan (DSOP) and implement the DSOP upon approval by Ohio EPA. Respondent completed the DSOP requirements and the BCA was closed on July 1, 2009.
5. In accordance with OAC Rule 3745-81-12, Respondent's PWS is in compliance with the maximum contaminant level (MCL) for total trihalomethanes (TTHM) if the running annual average (RAA) is not greater than 0.080 milligrams per liter (mg/L).
6. In accordance with OAC Rule 3745-81-24(C)(14), for PWSs monitoring quarterly for TTHM, compliance is determined by a running annual arithmetic average of all samples taken by the PWS. If the running annual arithmetic average of quarterly averages covering any consecutive four quarter period exceeds the MCL, then the PWS is in violation of the MCL.
7. In violation of OAC Rule 3745-81-12, as determined by OAC Rule 3745-81-24(C)(14), Respondent exceeded the MCL for TTHM during all four quarters of 2005, 2006, 2007 and 2008; during the first, second and fourth quarters of 2009; and, during the first and second quarters of 2010.
8. Respondent's current RAA for TTHM is 0.081 mg/L.
9. 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.
10. 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.
11. 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.

12. In violation of OAC Rule 3745-83-01(l)(2), Respondent failed to submit a MOR signed by the operator in responsible charge by the tenth day of the month for September 2008.
13. In accordance with OAC Rule 3745-81-60(D), a PWS shall respond to the Director in writing, within forty-five (45) days following receipt of a sanitary survey letter, indicating how and on what schedule the PWS will address any significant deficiencies noted in the survey.
14. On December 10, 2009, Ohio EPA mailed Respondent a letter identifying significant regulatory deficiencies observed at Respondent's PWS during the November 18, 2009 sanitary survey. These deficiencies included, but were not limited to, the following:
  - a) An updated contingency plan could not be provided. Community PWSs are required to update and revise this plan as necessary, but at least annually, and ensure it is available for inspection at three additional secure locations in the service area, as required by OAC Rule 3745-85-01(C);
  - b) Periodic surveys and investigations 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 have not been conducted, as required by OAC Rule 3745-95-03(A);
  - c) Respondent failed to ensure that approved backflow prevention devices are installed on each service line where a pollutional, system, health or severe health hazard to the PWS exists, as required by OAC Rule 3745-95-04(A);
  - d) The Total Coliform Bacteria Sample Siting Plan was not updated as required by OAC Rule 3745-81-21(A); and,
  - e) Yard hydrants have not been replaced with sanitary yard hydrants that do not have weep holes, as required by OAC Rule 3745-95-09(A).
15. In violation of OAC Rule 3745-81-60(D), Respondent failed to respond to the Director, in writing, within forty-five (45) days following receipt of the December 10, 2009 sanitary survey letter, indicating how and on what schedule the significant deficiencies noted would be addressed by Respondent. On February 10, 2010, Respondent submitted a written response to the sanitary survey indicating that (as noted in Finding No. 14) items a, b, and c had been completed and that items d and e would be completed. As of the effective date of these Orders, Respondent has failed to document that the remaining significant deficiencies have been addressed.

16. Each violation cited above represents a separate violation of ORC § 6109.31.

#### **V. ORDERS**

1. From the effective date of these Orders, Respondent shall comply with all current and future contaminant monitoring schedules issued by the Director.
2. From the effective date of these Orders, Respondent shall, in accordance with OAC Rule 3745-83-01, submit monthly operating reports and quarterly operating reports to Ohio EPA, NWDO, DDAGW, at the address in Section X, no later than the tenth of the month following the end of the period for which the report was prepared.
3. Within thirty (30) days of the effective date of these Orders, Respondent shall respond to the Director, at the address in Section X, regarding the outstanding items in Finding No. 14.
4. Within one hundred twenty (120) days of the effective date of these Orders, Respondent shall submit a General Plan (three copies), in accordance with OAC Chapter 3745-91, to the address in Section X for review and approval. The General Plan shall describe at least three (3) different options for complying with the TTHM MCL; shall include a cost estimate of each option; and, shall include a detailed compliance schedule with applicable milestone dates of significant events that are necessary to attain compliance. Additionally, the General Plan shall include:
  - a. A description of the options considered for TTHM reduction and the rationale for the approach selected;
  - b. An engineering description of the existing facilities;
  - c. A description of the option selected, including construction phases, an estimate of all the costs of any required construction, and operation and/or maintenance;
  - d. If treatment for TTHM is chosen, then a description of any treatment waste disposal and/or wastewater discharge issues; and,
  - e. Anticipated sources of funding to cover these estimated costs.
5. If Ohio EPA approval of the General Plan indicates that a pilot study is not necessary, Order Nos. 6-10 will not be required.
6. Within sixty (60) days of Ohio EPA approval of the General Plan, Respondent shall submit a pilot study protocol to Ohio EPA, Central Office DDAGW, Engineering, 50

West Town Street, Suite 700, Columbus, Ohio 43215, for review and approval. The pilot study protocol shall describe the procedures necessary to evaluate the water treatment system identified as the preferred option in the General Plan.

7. If Ohio EPA should require any revisions to the pilot study protocol, Respondent shall make any such changes or modifications and/or submit any additional information to Ohio EPA within thirty (30) days of receiving a written comment letter from Ohio EPA.
8. Within thirty (30) days of Ohio EPA approval of the pilot study protocol, Respondent shall commence the pilot study.
9. Within sixty (60) days of completion of the pilot study, Respondent shall submit a report, presented in an agreed-upon electronic format acceptable for review and approval, to: Ohio EPA, DDAGW, Central Office Engineering, 50 West Town Street, Suite 700, Columbus, Ohio 43215. This report shall contain the data collected, results of the data analysis, and the conclusions and recommendations from the pilot study. The report shall also include all other data collected during start-up prior to each test period. For each operation mode performed during the pilot study, the pertinent parameters (raw water source, chemical type and dose, pH, etc.) shall be clearly defined and presented in the report.
10. If Ohio EPA should require any revisions to the pilot study report, Respondent shall make any changes or modifications and submit any additional information to Ohio EPA within thirty (30) days of receiving a comment letter from Ohio EPA. If the pilot study is not acceptable because the treatment failed to demonstrate sufficient consistent and reliable treatment, a revised pilot study protocol is required to be submitted to Ohio EPA within ninety (90) days of receiving a written comment letter from Ohio EPA.
11. Within one hundred twenty (120) days after pilot study report approval (if required), Respondent shall submit detail plans to Ohio EPA for modifications to the existing plant in accordance with OAC Chapter 3745-91. If it is determined that a pilot is not necessary, detail plans shall be submitted within one hundred twenty (120) days of approval of General Plan.
12. Within ninety (90) days of detail plan approval, Respondent shall begin construction in accordance with detail plans approved by Ohio EPA and OAC Chapter 3745-91.
13. Within six (6) months of detail plan approval by Ohio EPA, in accordance with detail plans approved by Ohio EPA and OAC Chapter 3745-91, Respondent shall complete installation and commence operation of the selected treatment for TTHM reduction.

14. Within seven (7) days after meeting the deadlines given in Order Nos. 12 and 13, Respondent shall send written notification of compliance with the requirements of each of the Orders to Ohio EPA at the address in Section X.
15. Within twelve (12) months of completion of the installation and commencement of operation of the TTHM reduction system, Respondent shall maintain continuous compliance with the TTHM MCL.

#### **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 North Dunbridge Road  
Bowling Green, Ohio 43402  
Attn: JoAnn Sabo

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 other 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, 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 cite 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**



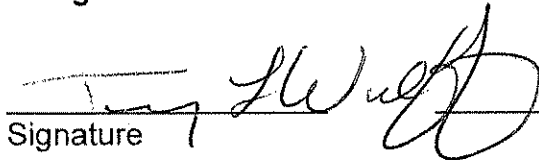
Chris Korleski, Director

09/18/2010

Date

**IT IS SO AGREED:**

**Village of Malinta**



Signature

Sept 7, 2010

Date

Terry L. Wulff, Mayor

Printed or Typed Name and Title