



**Environmental
Protection Agency**

John R. Kasich, **Governor**
Mary Taylor, **Lt. Governor**
Scott J. Nally, **Director**

May 3, 2012

James J. Miller, Jr.
36621 Kinzel Rd
Avon, OH 44011

RE: Director's Findings and Orders

CERTIFIED MAIL
9171082133393715016682

Dear Mr. Miller:

The Final Findings and Orders which were recently sent to you were not journalized prior to being sent to you. I have enclosed a certified copy of the journalized, agreed upon Final Findings and Orders. This document is a final action of the Director and will be public noticed as required by Rule 3745-47-07(A) of the Ohio Administrative Code.

If you have any questions concerning compliance with these Findings and Orders, please feel free to contact me at (614) 728-1216.

Sincerely,

Andrew Barienbrock
Environmental Supervisor
Operator Certification Unit

Enclosure

cc: Kim Rhoads, Office of Legal Services (w/enclosure)
File

OHIO E.P.A.

MAY -3 2012

Effective Date MAY 03 2012

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:
James J. Miller, Jr.
36621 Kinzel Rd
Avon, OH 44011

DIRECTOR'S 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: Dan Bessier Date: 5-3-12

I. JURISDICTION

These Director's Findings and Orders (Orders) are issued to James J. Miller, Jr. (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.

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 holds a Class III Water Supply certificate, number WS3-1010955-00.
2. Respondent was the Superintendent and was acting as the operator of record for the City of Lorain Public Water System (PWS) which is a Class III surface water treatment facility.

3. In accordance with OAC Rule 3745-81-73(A)(2) the turbidity level of representative samples of a PWS's filtered water shall not exceed 1 NTU.
4. In violation of OAC Rule 3745-81-73(A)(2), the City of Lorain experienced elevated combined filter effluent turbidity levels which exceed the maximum permissible turbidity of one NTU on April 9 and 10, 2011. The maximum turbidity levels were 2.75 and 3.8 NTUs, respectively. High turbidity levels were subsequently determined to be due to inadequate chemical feed and lack of maintenance of the sedimentation basins.
5. In accordance with OAC Rule 3745-81-75(E), if at any time the turbidity in representative samples of filtered water in accordance with OAC Rule 3745-81-74(A) exceeds 1 NTU, for conventional or direct filtration or alternative filtration surface water systems, the PWS shall notify the Director as soon as practical, but no later than twenty-four hours after the exceedance is known.
6. In violation of OAC Rule 3745-81-75(E), the City of Lorain and the Respondent failed to notify Ohio EPA until 30 hours after the first turbidity result of 1 NTU was noted.
7. In accordance with OAC Rule 3745-7-09(C), the operator of record shall immediately notify the permittee or owner of a PWS, sewerage system, or treatment works, and ensure the agency and, if applicable, the local regulatory agency, is notified of items that require notification in accordance with ORC Chapters 6109. or 6111. of the Revised Code, the rules adopted thereunder, or the facility's NPDES permit
8. In violation of OAC Rule 3745-7-09(C), Respondent failed to ensure Ohio EPA was immediately notified. Ohio EPA was not notified until 30 hours after the first turbidity result of 1 NTU was noted.
9. In accordance with OAC Rule 3745-81-75(B)(2)(a), a PWS which has a measured turbidity of greater than 1 NTU in two consecutive measurements taken 15 minutes apart shall either produce a filter profile for the filter within seven days of the exceedance and report that the filter profile has been produced or report the obvious reason for the exceedance.
10. In violation of OAC Rule 3745-81-75(B)(2)(a), Respondent did not conduct a filter profile or provide an obvious reason for the exceedance. Respondent was previously made aware of this requirement by Ohio EPA after a similar incident in 2008.
11. A review of data from a turbidity exceedance in October of 2008 indicates the Respondent submitted inconsistent information on the Surface Water Monthly Operation Report (MOR) for October 9, 2008. A review of individual filter turbidity charts indicated on October 9, 2008 turbidity exceeded 0.5 NTU and appeared to exceed 1.0 NTU. Turbidity charts flatlined at a level slightly below 1.0 NTU and at the time of the incident Respondent indicated that this was due to

a scaling issue with the chart and actual values were higher than 1.0 NTU. Respondent reported a maximum turbidity of 0.08 NTUs, a minimum turbidity of 0.12 NTUs and an average turbidity of 0.27 NTUs on the MOR. The information Respondent provided on the October 2008 MOR was not consistent with chart recordings. The maximum value reported is less than the minimum and average values which is indicative of inconsistent information.

12. In accordance with OAC Rule 3745-7-09(B)(1), certified operators shall perform their duties in a responsible and professional manner consistent with standard operating procedures (SOPs) and best management practices(BMPs).
13. In violation of OAC Rule 3745-7-09(B)(1), Respondent failed to perform his duties consistent with SOPs when he failed to notify Ohio EPA of turbidity exceedances in accordance with SOPs.
14. In accordance with OAC Rule 3745-7-09(B)(2), certified operators shall operate and maintain PWSs, sewerage systems, treatment works, and appurtenances so as not to endanger the health or safety of persons working in or around the facility, the public at large, or the environment due to negligence or incompetence.
15. In violation of OAC Rule 3745-7-09(B)(2), due to his position as acting operator of record, Respondent failed to ensure the PWS was in proper working order. An investigation by the City of Lorain into the turbidity violations and the LSSV conducted by Ohio EPA indicated a sludge accumulation in the sedimentation basins which allowed short circuiting and poor floc formation which contributed to the turbidity violations. Information from the investigation indicates the sedimentation basins had not been cleaned since October 2010. During the May 18, 2011 LSSV, Ohio EPA personnel documented an overall lack of maintenance at the PWS including several broken or inoperable valves and leaking valve packings. The LSSV also noted a lack of working equipment necessary to ensure the proper treatment.
16. In accordance with OAC Rule 3745-7-09(A)(3)(b), operation and maintenance records shall at a minimum contain: "date and times of arrival and departure for the operator of record and any other operator required by this chapter."
17. In violation of OAC Rule 3745-7-09(A)(3)(b), Respondent failed to document his date and time of arrival and departure at the City of Lorain PWS as evidenced by records obtained by Ohio EPA during the investigation of the turbidity incident.
18. In accordance with OAC Rule 3745-7-09(A)(3)(c), operation and maintenance records shall at a minimum contain "specific operation and maintenance activities that affect or have the potential to affect the quality or quantity of sewage or water conveyed, effluent or water produced."

19. In violation of OAC Rule 3745-7-09(A)(3)(c), Ohio EPA was unable to locate records which document specific operation and maintenance activities that affect or have the potential to affect the quality or quantity of water produced at the City of Lorain PWS.
20. In accordance with OAC Rule 3745-7-09(A)(3)(d), the owner and operator of record of a PWS shall maintain and record the results of tests performed and samples taken, unless documented on a laboratory sheet.
21. In violation of OAC Rule 3745-7-09(A)(3)(d), Ohio EPA was unable to locate records which document calibration records for the individual filter effluent turbidity meters.
22. In accordance with OAC Rule 3745-7-09(A)(3)(e), operation and maintenance records shall at a minimum contain "performance of preventative maintenance and repairs or requests for repair of the equipment that affect or have the potential to affect the quality or quantity of sewage or water conveyed, effluent or water produced."
23. In violation of OAC Rule 3745-7-09(A)(3)(e), Ohio EPA was unable to locate records which document the performance of preventative maintenance and repairs or requests for repair of the equipment that affect or have the potential to affect the quality or quantity of water conveyed or water produced at the City of Lorain PWS as evidenced by a review of the operation and maintenance records obtained during or subsequent to the LSSV.
24. In accordance with OAC Rule 3745-7-12(A)(2), the Director may suspend or revoke the certification of an operator upon finding that the operator has performed the duties of an operator in a negligent or incompetent manner.
25. Respondent's actions documented in Finding numbers 4, 6, 8, 10, 13, 15 and 17 of these Orders constitute the performance of the duties of an operator in a negligent manner.
26. In accordance with OAC Rule 3745-7-12(A)(3), the Director may suspend or revoke the certification of an operator upon finding the operator knowingly or negligently submitted misleading, inaccurate or false reports.
27. Respondent's actions documented in Finding number 11 of these Orders constitute the knowing or negligent submission of misleading, inaccurate, or false reports.
28. In accordance with OAC Rule 3745-7-12(A)(4), the Director may suspend or revoke the certification of an operator upon finding that the operator has operated in a manner endangering the public health or welfare.

29. Respondent's actions documented in these Findings demonstrate a pattern of operation which constitutes operation in a manner endangering the public health or welfare.
30. In accordance with OAC Rule 3745-7-12(A)(5), the Director may suspend or revoke the certification of an operator upon finding that the operator has operated in such a manner to have violated or caused to be violated any provisions of ORC Chapter 6109.
31. Respondent's actions documented in Finding numbers 4, 6, 8, 10, 13, 15 and 17 of these Orders constitute violations of ORC Chapter 6109.
32. Respondent disputes the Director's Findings but agrees to settle this matter via these Orders to avoid the time and costs associated with litigation.
33. Respondent agrees to surrender his Class 3 Water license to Ohio EPA and to never renew or reapply for operator certification in Ohio.

V. ORDERS

1. Within ten (10) days of the effective date of these Orders, Respondent shall return his Class 3 Water Supply Certificate, number WS3-1010955-00, in accordance with the provisions in Paragraph IX below.
2. Respondent shall never renew or reapply for operator certification in Ohio.

VI. 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 Respondent's PWS operations.

VII. 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.

VIII. MODIFICATIONS

These Orders may be modified by agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

IX. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Operator Certification Unit
Division of Drinking and Ground Waters
PO Box 1049
Columbus, Ohio 43216-1049
Attn: Andrew Barienbrock, Environmental Supervisor, DDAGW

X. 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.

XI. 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 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.

XII. EFFECTIVE DATE

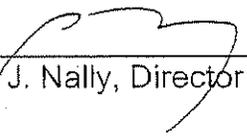
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIII. 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



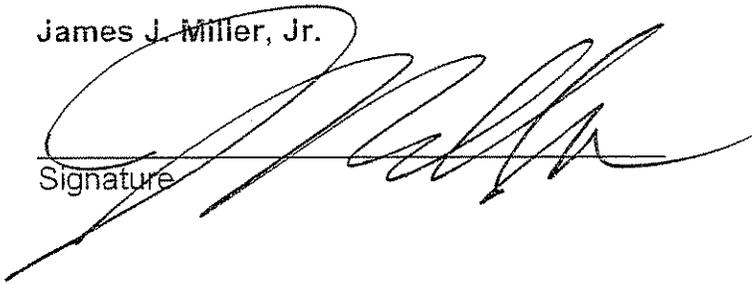
Scott J. Nally, Director

7/30/12

Date

IT IS SO AGREED:

James J. Miller, Jr.



Signature

7/13/2012

Date