

**BEFORE THE OHIO
ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:
Mahoning Valley Sanitary District
1181 Ohltown-McDonald Road
Mineral Ridge, OH 44440-0124

Directors Final Findings
and Orders

OHIO E.P.A.
MAR 16 2004
RECEIVED DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Mahoning Valley Sanitary District ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") 3753.08 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 the facility owned by the Respondent 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 3753 and the rules promulgated thereunder.

IV. FINDINGS

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

- 1 Respondent operates a water treatment plant located at 1181 Ohltown-McDonald Road in Mineral Ridge, Ohio. This facility provides water to its member cities of Youngstown and Niles, and to the Village of McDonald by contract. These entities in turn sell the water to approximately 300,000 end users. Chlorine and anhydrous ammonia are regulated substances listed in Ohio Administrative Code (OAC) rule 3745-104-04 and have a threshold of 2,500 and 10,000 pounds, respectively. The chlorine supply for this facility has a potential maximum quantity of 48,000 pounds stored in one-ton cylinders and anhydrous ammonia has a maximum storage capacity of 10,000 pounds.

I certify this to be a true and accurate copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency.

Donna Jackson 3-16-04

2. An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined by OAC rule 3745-104-02, shall comply with the requirements of this rule by submitting a Risk Management Plan (RMP) and implementing a prevention program no later than June 21, 1999. Respondent submitted an RMP by June 21, 1999 as a Program Level 2 process.
3. Correspondence dated November 9, 2000 was mailed questioning the submission for a Program Level 2 process, since most water and wastewater treatment plants have Program Level 3 processes due to the fact that they are subject to the Occupational Safety and Health Administration's (OSHA) Process Safety Management (PSM) program. A response dated November 14, 2000 stated that the facility met the definition of a "normally unoccupied remote facility" in accordance with OSHA's PSM program. A second letter, along with OSHA guidance on the definition of a "normally unoccupied remote facility" was sent on November 29, 2000 questioning their decision, since 44 full time employees were listed in the RMP. January 9, 2001 correspondence from the facility indicated again that the process was a Program Level 2. On August 20, 2002, another letter was sent by Ohio EPA, DAPC requesting a corrected RMP. A Warning Letter dated May 27, 2003 was sent by DAPC requesting a corrected RMP within fifteen (15) days. The consultant for the facility, MS Consultants, Inc., called on June 9, 2003 requesting an extension until mid-July 2003. A letter was received by MS Consultants, Inc. dated July 11, 2003 indicating that the revised RMP would not be corrected until August 29, 2003. The corrected RMP was received by Ohio EPA on September 2, 2003. The prevention program for a Program Level 3 is more stringent than Program Level 2. Therefore, an audit was conducted on December 18, 2003 to determine the level of compliance with a Program Level 3 prevention program. The following are the findings from the inspection:
 - a. Respondent failed to have a Management System for a Program Level 3 process prior to August 2003, as required by OAC rule 3745-104-07.
 - b. Respondent failed to maintain records on site for the hazard assessment documentation, as required by OAC rule 3745-104-15.
 - c. Respondent failed to certify that operating procedures are certified annually, as required by OAC rule 3745-104-26.
 - d. Respondent failed to document refresher training on the operating procedures, as required by OAC rule 3745-104-27.
 - e. Respondent failed to develop a written employee participation plan prior to August 2003, as required by OAC rule 3745-104-33.

- f. Respondent failed to implement a contractor safety program, as required by OAC rule 3745-104-35.
4. The Director has given consideration to, and based on his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

- 1 Respondent shall comply with the prevention program for a Program Level 3 process within thirty (30) days of the effective date of these Orders.
2. Pursuant to ORC section 3753.09, Respondent is assessed a civil penalty in the amount of eight thousand nine hundred fifty six dollars (\$8,956) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight thousand nine hundred fifty six dollars (\$8,956) in settlement of Ohio EPA's claims for civil penalties, which will be deposited into the Risk Management Plan fund established pursuant to ORC 3753.05.

Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for eight thousand nine hundred fifty six dollars (\$8,956). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, attention Brenda Case, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.

A copy of the check shall be sent to:

Jim Orlemann
Manager, Engineering Section
Ohio Environmental Protection Agency
Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

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 Air

Pollution Control 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 either the principal executive officer, the ranking elected official or other duly authorized employee.

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 Respondent.

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

The 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 the Ohio EPA.

X. NOTICE

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

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049

Columbus, Ohio 43216-1049
Attention: Sherri Swihart

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 resolved 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 services 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.

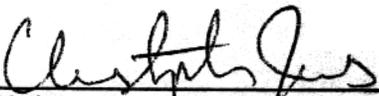
XIII. EFFECTIVE DATE

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

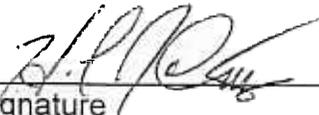


Christopher Jones
Director

3-10-04
Date

IT IS AGREED:

Mahoning Valley Sanitary District



Signature

Feb 18, 2004
Date

HARRY JOHNSON

Printed or Typed Name

Feb 18, 2004
Date

PRESIDENT

Title



CHARLES L. RICHARDS
MVSD Legal Counsel