BEFORE THE OHIO

ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAR 10 2010

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

City of Youngstown Wastewater Treatment Plant 725 Poland Avenue Youngstown, Ohio 44502-2026	: :	Directors Final Findings and Orders

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.

By: [signature] Date: 3-10-10

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Youngstown, Wastewater Treatment Plant ("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 Respondent or 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 makes the following findings:

1. Respondent is a municipal corporation that owns the Wastewater Treatment Plant located at 725 Poland Avenue in Youngstown, Ohio. Chlorine and sulfur dioxide are used in the chlorination process. Chlorine is stored in one-ton cylinders with up to twelve cylinders on site at any one time (24,000 pounds). Sulfur dioxide is stored in one-ton cylinders with up three cylinders on site at any one time (6,000 pounds). Respondent has more than a threshold quantity of a "regulated substance," namely chlorine and sulfur dioxide, as defined in OAC Rule 3745-104-01. The Risk Management Plan ("RMP") threshold amount for chlorine and sulfur dioxide, respectively, is 2,500 pounds and 5,000 pounds.

2. Chlorine and sulfur dioxide are regulated substances listed in Ohio Administrative Code ("OAC") Rule 3745-104-04. 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 OAC Rules 3745-104-06 through 49, where applicable, by submitting a Risk Management Plan ("RMP") and implementing a prevention program no later than June 21, 1999 or no later than when the threshold limit is exceeded in a process. On January 3, 2000, Ohio EPA, DAPC received delegation for the RMP program from U.S. EPA.

3. Chlorine has a threshold of 2,500 pounds and sulfur dioxide has a threshold of 5,000 pounds. Respondent stores both chlorine and sulfur dioxide in the amounts that exceed the thresholds established in OAC Rule 3745-104-04; and, as a result, Respondent is subject to the RMP requirements detailed in OAC Rule 3745-104-06.

4. An initial RMP audit was conducted on April 30, 2004. Eleven deficiencies were discovered during the audit. In response to the May 13, 2004 deficiency letter, the facility corrected six of the eleven deficiencies. A warning letter was sent on July 28, 2004 to correct the remaining deficiencies. A completion letter indicating that the remaining deficiencies were corrected was mailed on August 23, 2004.

5. On July 23, 2009, the Ohio EPA conducted the second five-year RMP audit at Respondent's facility and discovered eight violations of the rules. The violations were as follows:

   (a) Respondent failed to update the management system to oversee the implementation of the RMP elements, in violation of OAC Rule 3745-104-07.

   (b) Respondent failed to include in the process safety information, the safe upper and lower limits as well as consequences of deviations from these limits for the sulfur dioxide process, in violation of OAC Rules 3745-104-24(C)(1)(d) and (e). (This is a repeat violation.)

   (c) Respondent failed to include in the process safety information, documentation on the safety systems (i.e., gas monitors), in violation of OAC Rule 3745-104-24(D)(1)(h).

   (d) Respondent failed to document that the operating procedures were annually certified, in violation of OAC Rule 3745-104-26(C). (This is a repeat violation.)

   (e) Respondent failed to conduct training on the operating procedures, operating limits, and safety systems at least every three years, in violation of OAC Rules 3745-104-27(A) and (B). (This is a repeat violation.)

(f) Respondent failed to establish and implement written procedures to maintain the on-going integrity of the process, in violation of OAC Rule 3745-104-28(A).

(g) Respondent failed to perform inspections and tests on process equipment and document each inspection and test performed, in violation of OAC Rule 3745-104-28(D).

(h) Respondent failed to update the written plan of action regarding the implementation of employee participation, in violation of OAC Rule 3745-104-33.

6. Respondent failed to resubmit their RMP to U.S. EPA and Ohio EPA by June 21, 2009, in violation of OAC Rule 3745-104-49(B)(1).

7. A deficiency letter was mailed to Respondent on August 6, 2009. No documentation was submitted, and a warning letter was sent on October 15, 2009. Ohio EPA, DAPC phoned the responsible official to inquire about the documentation on November 19, 2009 and he stated that he would return the call. A phone call was not received. To date, no documentation to resolve the deficiencies in Findings 5(a) through (g) has been received.

8. ORC § 3753.06 prohibits violations of provisions ORC Chapter 3753 or any rule adopted or issued under it. Respondent violated rules adopted under ORC Chapter 3753, specifically, the rules cited in Findings 5 and 6.

9. The Director has given consideration to, and based 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. Within thirty (30) days after the effective date of these Orders, Respondent shall submit adequate documentation to the Ohio EPA, that verifies all deficiencies in Findings 5(a) through 5(h) have been corrected and the second five-year process hazard analysis has been conducted (due August 2009), as required by OAC Rules 3745-104-25(C), (D), and (E). The Respondent shall resubmit their RMP to U.S. EPA and Ohio EPA, as required by OAC Rule 3745-104-(B)(1).

2. Pursuant to ORC § 3753.09, Respondent shall pay the amount of twelve thousand four hundred five dollars ($12,405) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for nine thousand nine hundred twenty four dollars ($9,924) of the total amount which will be deposited into the Risk Management Plan fund established pursuant to ORC § 3753.05. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

3. In lieu of paying the remaining two thousand four hundred eighty one dollars ($2,481) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $2,481 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for $2,481 within fourteen (14) days after the effective date of these Orders. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, the facility, and fund 5CD0 to:

Ohio EPA
Office of Fiscal Administration
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049

4. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049

5. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 3, Respondent shall immediately pay to Ohio EPA $2,481 of the civil penalty in accordance with the procedures in Order 2.

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 a "facility official" who is in charge of a principal business function of Respondent.

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 facility.

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
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Sherri Swihart

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

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 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. 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

3/8/10
Date

IT IS SO AGREED:

City of Youngstown, Wastewater Treatment Plant

Signature

2/22/10
Date

Thomas S. Mirante III
Printed or Typed Name

2/22/10
Date

Superintendent
Title