

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JAN 16 2008

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Copley CVS, Inc.  
1920 Enterprise Parkway  
Twinsburg, OH 44087

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Director's Final 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:  Date: 1-16-08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Copley CVS, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 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 the composition of Respondent or the ownership or operation of site 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 6111. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent, (also known as "CVS, Inc." and "CVS Pharmacy No. 3092"), is a corporation for profit in good standing with the Ohio Secretary of State's Office, and owns and operates a retail pharmacy that was served by a WWTP, located at 1410 South Cleveland-Massillon Road, Copley Township, Summit County, Ohio, ("site"). The WWTP had an average flow of 260 gallons per day and consisted of a 500 gallon trash trap, 1,500 gallon per day extended aeration plant, 500 gallon dosing chamber, 50 square foot subsurface sand filter and a 345 gallon

chlorination/dechlorination tank. The WWTP discharged final effluent to Pigeon Creek via a storm sewer, with flows to Wolf Creek and then to the Tuscarawas River, all constituting "waters of the state."

2. An Ohio National Pollutant Discharge Elimination System ("NPDES") permit, No. 3PR00258\*AD, was issued to Respondent on May 18, 2000, effective July 1, 2000, which authorized the discharge.
3. The NPDES permit expired on June 30, 2005.
4. Ohio Administrative Code ("OAC") Rule 3745-33-04(C)(1) provides that an NPDES permit holder who wishes to continue to discharge after the expiration date of its NPDES permit must file for reissuance of the permit at least one hundred eighty days prior to the permit's expiration.
5. OAC Rule 3745-33-04(C)(2) provides that an NPDES permit shall not be renewed unless the Director determines that the permittee is making satisfactory progress toward the achievement of all applicable limitations and has complied with the terms and conditions of the existing permit.
6. Pursuant to ORC § 6111.04(A), no person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state. Such an action is prohibited under ORC § 6111.04(A) and is declared to be a public nuisance unless the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in ORC §§ 6111.01 to 6111.08 or if the person's application for renewal of such a permit is pending.
7. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC sections 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
8. On at least June 8, 2006, December 18, 2006, and April 30, 2007, Ohio EPA observed that Respondent discharged raw or partially treated sewage from the WWTP which caused pollution of Pigeon Creek, without having a valid unexpired permit. Respondent received notices of these violations by letters dated June 19, 2006 and December 20, 2006.
9. Respondent did not submitted an NPDES permit renewal application and was therefore discharging pollutants to waters of the state in violation of ORC §§ 6111.04 and 6111.07.

10. Respondent did not submitted the Monthly Operating Reports required by the NPDES permit, which omission was a violation of the NPDES permit and ORC § 6111.07.
11. The WWTP was a semi-public disposal system as that term is defined in OAC Rule 3745-33-01(KK).
12. OAC Rule 3745-33-08(B) provides that no NPDES permit shall be issued for a semi-public disposal system whenever the sewage system of a publicly owned treatment works is available and accessible in accordance with ORC § 6117.51.
13. In a December 20, 2006 letter, Respondent was notified that a publicly owned sanitary sewer was available in front of the 1410 South Cleveland-Massillon Road property, and that Respondent was required to properly abandon the WWTP and connect to the sewer as soon as possible.
14. Connection to the sewer was made on or about July 13, 2007.
15. Respondent has properly decommissioned the wastewater treatment plant.
16. The following Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Any such construction or modification is subject to the permit to install requirement of ORC §§ 6111.44 and 6111.45 and OAC Chapter Rule 3745-42.
17. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the state to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

## V. ORDERS

1. Respondent shall pay the amount of thirty-eight thousand nine hundred fifty dollars (\$38,950.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) 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 thirty-one thousand one hundred sixty dollars (\$31,160.00) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, at

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

A photocopy of the check shall be sent to Ohio EPA Northeast District Office in accordance with Section X of these Orders.

2. In lieu of paying the remaining seven thousand seven hundred ninety dollars (\$7,790.00) of the civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of seven thousand seven hundred ninety dollars (\$7,790.00) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, at:

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

A copy of each check shall be sent to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at:

Ohio EPA  
Division of Surface Water  
P.O. Box 1049  
Columbus, Ohio 43216-1049

3. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 2, Respondent shall immediately pay to Ohio EPA the remaining seven thousand seven hundred ninety dollars (\$7,790.00) of the civil penalty in accordance with the procedures in Order No. 1.

## **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 Ohio EPA's Division of Surface Water 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.

#### **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 site.

#### **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 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**

Unless otherwise specified herein, all documents required to be submitted by Respondent shall be addressed to:

Ohio Environmental Protection Agency  
Division of Surface Water  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: Enforcement Supervisor, Division of Surface Water

#### **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**

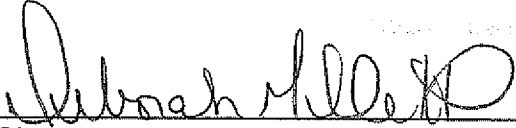
Each undersigned representative or a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:  
Ohio Environmental Protection Agency**

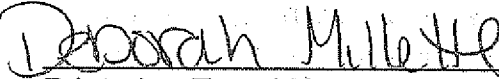
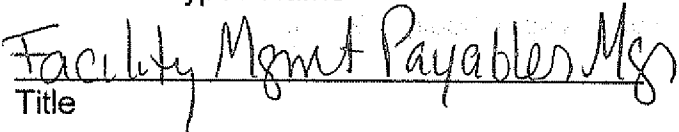
  
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Chris Korleski  
Director

1/14/08  
Date

**IT IS SO AGREED:  
Copley CVS, Inc.**

  
\_\_\_\_\_  
Signature

12/31/07  
Date

  
\_\_\_\_\_  
Printed or Typed Name  
  
\_\_\_\_\_  
Title