

OHIO E.P.A.

Effective Date DEC 08 2011

DEC -8 2011

BEFORE THE
DIRECTOR OF THE OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

David Ball
3673 Dover-Zoar Rd NE
Dover, Ohio 44622

RE: DB Saloon
2397 State Route 39 NE
New Philadelphia, OH 44663

Respondent,

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to David Ball (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), at DB Saloon (formerly known as The Red Onion Party Center), which is also a "transient non-community water system" as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID No. OH7937812) is located at 2397 State Route 39 NE, New Philadelphia, Tuscarawas County, OH 44663.

3. Respondent's PWS obtains its drinking water from a "ground water" source as defined by OAC Rule 3745-81-01 and serves a population of approximately 75 persons.
4. Since October 2002, Respondent has been the owner of the property at 2397 State Route 39 NE, New Philadelphia, OH. From approximately October 2002 through March 10, 2011, Shirley Massarelli owned/operated the Red Onion Party Center PWS at this address under a land contract with Respondent.
5. During the land contract, drinking water monitoring was not performed at the PWS as required by OAC Chapter 3745-81; consequently, the Director denied the license to operate (LTO) the PWS for 2009 and 2010 pursuant to OAC Rule 3745-84-06(A).
6. On May 28, 2010, the Court of Common Pleas Tuscarawas County issued an order in Case No. 2010 CV 04 0541 which required the PWS to close until a valid LTO was obtained.
7. On July 26, 2011, Respondent contacted the Ohio EPA and stated that he had completed a land contract repossession of the PWS property from Shirley Massarelli.
8. On August 24, 2011, Ohio EPA performed a sanitary survey at Respondent's PWS and observed significant regulatory deficiencies as described in a letter dated September 22, 2011, and outlined below:
 - a. No well log was available during the sanitary survey, which is required to assess the viability and correct installation of the well in accordance with OAC Chapter 3745-9.
 - b. In accordance with OAC Rule 3745-9-05(O), the well casing height above finished grade shall be at least twelve inches, and at least twelve inches above the well house floor or concrete apron surface.
 - c. In violation of OAC Rule 3745-9-05(O), the well casing terminates below grade in a shallow pit with no sump or daylight drain.
9. In accordance with OAC Rule 3745-81-60(D), a PWS shall respond to the Director in writing, within thirty (30) days following receipt of a sanitary survey letter, indicating how and on what schedule the PWS will address any significant deficiencies noted in the sanitary survey.
10. In violation of OAC Rule 3745-81-60(D), Respondent has failed to respond in writing indicating how and on what schedule he will address the deficiencies

noted in the September 22, 2011 sanitary survey letter.

11. On August 24, 2011, Respondent signed a document stating that he is solely responsible for the PWS property and the DB Saloon.
12. As the PWS was not monitored as required during the land contract, Ohio EPA does not have documentation regarding the PWS's current status of compliance with drinking water contaminant standards.
13. In accordance with OAC Rule 3745-84-02(A), no person shall operate or maintain a PWS in the state of Ohio without a LTO issued by the Director.
14. In accordance with OAC Rule 3745-84-03, Respondent submitted an application and application fee for a 2011/2012 LTO on November 15, 2011.
15. In accordance with OAC Rule 3745-84-06(A), the Director may condition a LTO at any time to require corrections of violations of ORC Chapter 6109 and the administrative rules adopted thereunder.

V. ORDERS

1. From the effective date of these Orders until January 30, 2013, the 2011/2012 LTO for Respondent's PWS is issued with the conditions listed in Orders # 2 through # 7, in accordance with OAC Rule 3745-84-06.
2. From the effective date of these Orders, Respondent shall prominently display the conditioned LTO, in accordance with OAC Rule 3745-84-04(D).
3. Within fourteen (14) days of the effective date of these Orders, Respondent shall submit a plan in writing to address the significant deficiencies identified at the PWS as outlined in the September 22, 2011 Ohio EPA sanitary survey letter.
4. From the effective date of these Orders, Respondent shall issue public notice for all violations in accordance with OAC Rule 3745-81-32.
5. From the effective date of these Orders, Respondent shall comply with all current and subsequent contaminant monitoring schedules issued by the Director in accordance with OAC Chapter 3745-81. To remain in compliance with the 2011 contaminant monitoring schedule, the Respondent must submit the 4th quarter total coliform bacteria sample as well as the annual nitrate sample by December 31, 2011.
6. From the effective date of these Orders, Respondent shall comply with all PWS

LTO renewal requirements in OAC Chapter 3745-84.

7. From the effective date of these Orders, Respondent shall contact the Ohio EPA prior to any change in ownership or operation of the DB Saloon PWS.

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.

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

Except as specifically required by an individual Order, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Division of Drinking and Ground Waters
Southeast District Office
2195 Front Street
Logan, OH 43138
Attn: Russell Flagg

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

XI. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 6109 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further action which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

XII. APPEAL RIGHTS

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC § 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00, made payable to "Treasurer, State of Ohio," which the Commission, in its discretion, may reduce if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, OH 43215

XIII. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency



Scott J. Nally, Director

DEC 08 2011

Date