

OHIO E.P.A.

JAN 26 2012

Effective Date: JAN 26 2012

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

NNCK Marathon, LLC  
2822 Dayton Pike  
Germantown, OH 45327

:  
:  
:  
:

Respondent,

**I. JURISDICTION**

These Director's Final Findings and Orders (Orders) are issued to NNCK Marathon, LLC (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 NNCK Marathon, which is also a "transient noncommunity" as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID No. OH5748012) is located at 2822 Dayton Pike, Germantown (Montgomery County), Ohio, 45327.
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 100 persons.

4. On June 4, 2010, the Director issued Unilateral Findings and Orders (2010 F&Os) which conditioned Respondent's 2010 license to operate (LTO) due to violations of OAC Chapters 3745-9, 3745-81, and 3745-91. The 2010 F&Os included a penalty of seven thousand dollars (\$7,000) which may be assessed pursuant to ORC Chapters 6109.23.
5. In violation of the 2010 F&Os, Respondent failed to submit a check to Ohio EPA for the seven thousand dollar (\$7,000) penalty by July 7, 2010.
6. On September 20, 2010 and November 1, 2010, Respondent submitted payments of \$200 and \$100, respectively; these payments were applied towards the seven thousand dollar (\$7,000) penalty in accordance with the 2010 F&Os.
7. On January 19, 2011, the Director issued Unilateral Findings and Orders (2011 F&Os) which conditioned Respondent's 2011 LTO due to non-compliance with the 2010 F&Os and violations of OAC Chapter 3745-81.
8. The 2011 F&Os required Respondent to pay the outstanding penalty amount from the 2010 F&Os of six thousand eight hundred dollars (\$6,800).
9. In violation of the 2011 F&Os, Respondent failed to submit a check to Ohio EPA for the six thousand eight hundred dollars (\$6,800) outstanding penalty amount by February 18, 2011.
10. On October 18, 2011, the Director referred Respondent to the Attorney General's Office (AGO), Collections Enforcement Section (888-246-0688), 150 E. Gay Street, 21<sup>st</sup> Floor, Columbus, Ohio 43215 (Ohio EPA Revenue ID: K-764478/AGO Account # 10272623) for the outstanding penalty amount.
11. On November 14, 2011, Respondent arranged a payment plan with the AGO consisting of seven (7) monthly installments of \$944.78, and a final installment of \$944.94 to be submitted by July 15, 2012.
12. In accordance with OAC Rule 3745-81-21(A)(2)(a), a non-community water system using ground water and serving not more than one thousand (1000) persons shall monitor with at least one total coliform bacteria sample each quarter that the water system provides water to the public.
13. In violation of OAC Rule 3745-81-21(A)(2)(a), Respondent failed to monitor for total coliform bacteria during the January 1 through March 31, 2011 monitoring period.
14. 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.

15. In accordance with OAC Rule 3745-84-03, Respondent submitted an application and application fee for the 2012 LTO on December 30, 2011.
16. 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 2012 LTO for Respondent's PWS is issued with the conditions listed in Orders # 2 through #5, 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. 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.
4. From the effective date of these Orders, Respondent shall submit payments in accordance with the payment plan established with the AGO to fulfill the outstanding penalty balance, including interest assessed by the AGO, totaling \$7,483.60. The payments include seven (7) monthly installments of \$944.78 from December 2011 to June 2012, and a final installment of \$944.94 to be submitted by July 15, 2012.
5. From the effective date of these Orders, Respondent shall comply with all PWS LTO renewal requirements in accordance with OAC Chapter 3745-84.

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate upon renewal of the LTO for Respondent's PWS or upon any subsequent LTO action by the Director.

#### **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  
Southwest District Office  
401 East Fifth Street  
Dayton, OH 45402-2911  
Attn: David Secor, District Office Compliance Coordinator

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

**JAN 26 2012**  
\_\_\_\_\_  
Date