

OHIO E.P.A.

JAN 24 2012

ENTERED DIRECTOR'S JOURNAL

Effective Date JAN 24 2012

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Teague Brothers Shopping
Center, Inc.
10924 Kinsman Road
P.O. Box 380
Newbury, Ohio 44065

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Respondent,

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Teague Brothers Shopping Center, Inc. (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) as defined by ORC § 6109.01, which is also a nontransient noncommunity water system" as defined Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID# OH2857512) is located at 10762 Kinsman Road, Newbury (Geauga County), Ohio, 44065.
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 60 persons.
4. In accordance with OAC Rule 3745-81-11(B), the MCL for arsenic is 0.010 milligrams/liter (mg/L).
5. In accordance with OAC Rule 3745-81-23(H)(2), compliance with the MCL for arsenic is determined by the running annual average (RAA). A PWS is not considered in violation until it has completed one year of sampling unless any one sample result would cause the RAA to exceed the MCL.
6. In violation of OAC Rule 3745-81-11(B), as determined by OAC Rule 3745-81-23(H)(2), Respondent exceeded the arsenic MCL when their arsenic RAA was greater than 0.010 mg/L during the monitoring period April 1 through June 30, 2007.
7. On September 30, 2008, the Director issued Final Findings and Orders (2008 Orders) to Respondent.
8. The 2008 Orders contained a compliance schedule for Respondent to resolve violations of OAC Chapter 3745-81 at Teague Brothers Shopping Center via PWS improvements.
9. The 2008 Orders required Respondent, within one hundred twenty (120) days of detail plan approval, in accordance with the detail plans approved by Ohio EPA and OAC Chapter 3745-91, to complete installation and commence operation of the arsenic removal system.
10. In a letter to Ohio EPA, received September 16, 2010, Respondent stated that the installation of an arsenic removal system would "be a huge financial burden on our company," because of a substantial decrease in revenue since "February of 2008."
11. Ohio EPA has received the results of eight (8) quarters of arsenic sampling from Respondent's PWS at levels below the MCL (02/09/2010 through 11/01/2011).

V. ORDERS

1. Respondent's 2008 Orders shall be terminated; these Orders, as outlined below, shall incorporate the outstanding requirements of the 2008 Orders.
2. From the effective date of these Orders, Respondent shall comply with all current and subsequent contaminant monitoring schedules issued by the Ohio EPA.
3. From the effective date of these Orders, Respondent shall issue public notice for all arsenic MCL violations in accordance with OAC Rule 3745-81-32.
4. Respondent shall monitor for arsenic quarterly through 3rd Quarter 2012 to continue to demonstrate compliance with the MCL for arsenic. Within sixty (60) days of an arsenic MCL exceedance, Respondent shall submit detail plans for arsenic removal to Ohio EPA – Northeast District Office in accordance with OAC Chapter 3745-91.
5. Within one hundred twenty (120) days of detail plan approval, in accordance with the detail plans approved by Ohio EPA and OAC Chapter 3745-91, Respondent shall complete installation and commence operation of the arsenic removal system.
6. Upon completion of the installation of the arsenic removal system, Respondent shall hire and retain the services of a Class I or higher operator, in accordance with OAC Rule 3745-7-03.
7. Within twelve (12) months of the completion of the arsenic removal system, Respondent shall achieve compliance with the arsenic MCL.
8. If the arsenic MCL is not exceeded through 3rd Quarter 2012, Respondent shall not be required to submit detail plans or install the arsenic removal system under these Orders.

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 (D) (4).

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

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

Ohio Environmental Protection Agency
Northeast District Office
Division of Drinking and Ground Waters
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: David Maschak, DDAGW-NEDO

Or

Ohio Environmental Protection Agency
Central Office
Lazarus Government Center
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: John Arduini, DDAGW-CO

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

XI. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. 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, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders, which right Ohio EPA does not waive, 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

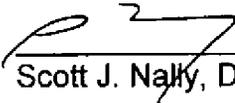
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Scott J. Nally, Director

JAN 24 2012

Date

IT IS SO AGREED:

Teague Brothers Shopping Center, Inc.



Signature

January 11, 2012

Date

Linda D. Berbow Secretary/Treasurer

Printed or Typed Name and Title