

OHIO E.P.A.

MAR 16 2012

Effective Date MAR 16 2012

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Shirley Massarelli :
710 Park Ave. NW :
New Philadelphia, OH 44663 :

Respondent,

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Shirley Massarelli (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 the 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 The Red Onion Bar, 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. OH 7936112) is located at 2352 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 60 persons.

4. In August 2009, the Respondent submitted an application and application fee to renew the 2009 license to operate (LTO) for The Red Onion Bar.
5. On September 18, 2009, the Director issued a proposed action denying The Red Onion Bar's 2009 LTO and subsequent LTOs for five years for failure to monitor for total coliform bacteria, nitrate, and nitrite. The Director's proposed action also cited the Respondent's failure to comply with a September 29, 1999 Bilateral Compliance Agreement and August 7, 2001 Director's Orders as a basis for the proposed denial.
6. On August 12, 2010, Ohio EPA held an adjudication hearing on the Director's proposed denial. On March 14, 2011, after considering the Hearing Officer's Report and Ohio EPA's objections, the Director issued Orders denying The Red Onion Bar's LTO for five (5) years.
7. On October 27, 2011, after an August 31, 2011 oral argument, the Environmental Review Appeals Commission rendered a decision that the provision in the March 14, 2001 Director's Orders prohibiting Respondent from reapplying for a LTO for a period of five (5) years was unlawful.
8. On May 28, 2010, the Court of Common Pleas of Tuscarawas County issued a decision in case number 2010 CV 04 0541 which required Respondent to cease operation of The Red Onion Bar until a valid LTO was obtained.
9. 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.
10. Respondent submitted an application and application fee for a 2012 LTO on January 4, 2012.
11. In accordance with OAC Rule 3745-81-32, the owner or operator of a PWS shall provide public notification for violations and submit copies of the required public notice and verification forms to the Director.
12. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification and submit a copy of the required public notice and verification form for:
 - a. Failing to monitor for total coliform bacteria during the January 1 to March 31, 2005; July 1 to September 30, 2005; October 1 to December 31, 2005; January 1 to March 31, 2006; April 1 to June 30, 2006; July 1 to September 30, 2006; January 1 to March 31, 2007; April 1 to June 30, 2007; July 1 to September 30, 2007; January 1 to March 31, 2008; April 1 to June 30, 2008; July 1 to September 30, 2008; January 1 to March 31, 2009;

- April 1 to June 30, 2009; and January 1 to March 31, 2010 monitoring periods;
- b. Failing to monitor for nitrate during the July 1 to December 31, 2004 and July 1 to December 31, 2005 monitoring periods; and
 - c. Failing to monitor for nitrite during the July 1 to December 31, 2005 monitoring period.
13. On February 13, 2012, Ohio EPA conducted a sanitary survey of Respondent's PWS and identified the following deficiencies requiring action on the part of Respondent in a letter issued February 22, 2012:
- a. Address the fuel oil tank located within the 50' sanitary isolation radius of the PWS well by either constructing a secondary containment vessel or moving the tank outside of the isolation radius, in accordance with OAC Rule 3745-9-04(A)(6);
 - b. Replace any chemicals and/or components of the water system (e.g. the water softener system and brine tank) that do not meet ANSI/NSF standards 60 or 61, in accordance with OAC Rule 3745-83-01;
 - c. Cover the brine tank to ensure that contaminants cannot enter the PWS;
 - d. Monitor for contaminants as required, in accordance with OAC Rules 3745-81-21 and 3745-81-23; and
 - e. Post public notice for 30 days upon re-opening for business, in accordance with OAC Rule 3745-81-32.
14. On February 27, 2012, Ohio EPA received a letter from Respondent dated February 24, 2012. Respondent indicated the following in response to the sanitary survey requirements:
- a. Secondary containment of the fuel oil tank has been installed;
 - b. Chemicals and/or components of the water system (i.e. the water softener system and brine tank) have been disconnected from the water system;
 - c. The brine tank has been discarded;
 - d. A contract has been established with Ream & Haager Laboratory to collect and analyze the PWS's required samples; and

- e. Respondent has agreed to post public notice upon re-opening for business.
- 15. On March 1, 2012, Ohio EPA conducted a site visit of the PWS and verified that all requirements have been met as indicated in Respondent's February 24, 2012 letter.
- 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 # 8, 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 maintain the contract established with the certified laboratory to collect and analyze the PWS's required samples.
- 4. From the effective date of these Orders, Respondent shall comply with total coliform bacteria MCL and monitoring requirements, including both routine and repeat samples, in accordance with OAC Rules 3745-81-14 and 3745-81-21.
- 5. From the effective date of these Orders, Respondent shall comply with all current and subsequent monitoring schedules issued by the Director in accordance with OAC Chapter 3745-81.
- 6. Immediately upon opening for business, Respondent shall remedy the violations in Finding No. 12 by issuing a public notification for a period of thirty (30) days, and by submitting copies of the required public notice and verification form to the contact listed in Section IX of these Orders within ten (10) days of opening for business, in accordance with the requirement of the February 13, 2012 sanitary survey and OAC Rule 3745-81-32.
- 7. From the effective date of these Orders, Respondent shall issue public notice for all violations in accordance with OAC Rule 3745-81-32.
- 8. From the effective date of these Orders, Respondent shall comply with all PWS LTO renewal requirements in 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. 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, District Office Compliance Coordinator

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

X. 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.

XI. 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

XII. 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

MAR 16 2012

Date