

OHIO E.P.A.

FEB 12 2009

Effective Date FEB 12 2009

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Hawley-Zonker Inc. :
1923 State Route 60 :
Ashland, Ohio 44805 :

Respondent,

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Hawley-Zonker, 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.

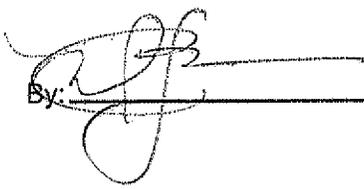
II. PARTIES BOUND

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.

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.

By: 

Date: 2/12/09

IV. FINDINGS

The Director of Ohio EPA (Director) has determined the following findings:

1. Respondent owns and operates a "public water system" (PWS) which is also a transient noncommunity water system as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID# 0342212) is located at 1923 State Route 60, Ashland County, Ashland, Ohio, 44805.
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 700 persons.
4. In accordance with OAC Rule 3745-81-14(B), a PWS which monitors with fewer than forty samples per month is in compliance with the maximum contaminant level (MCL) for total coliform when no more than one sample during a month is total coliform-positive.
5. In violation of OAC Rule 3745-81-14(B), Respondent exceeded the total coliform bacteria MCL during July 2006 when more than one sample during the month was total coliform-positive.
6. In accordance with OAC Rule 3745-81-14(D), version effective from August 3, 2004 through December 31, 2007, failure to monitor with repeat samples as required by OAC Rule 3745-81-21 is a MCL violation as well as a monitoring and reporting violation. Failure to monitor with the required repeat samples is a violation that may pose an acute risk to human health (acute MCL).
7. In accordance with OAC Rule 3745-81-21(B)(1), when a routine sample is determined to be total coliform-positive, the PWS shall monitor with a set of four repeat samples within twenty-four (24) hours of being notified of the positive result.
8. In violation of OAC Rule 3745-81-14(D) and 3745-81-21(B)(1), Respondent exceeded the microbiological acute MCL by failing to monitor with a set of four repeat samples within twenty-four (24) hours of being notified of routine total coliform-positive results on July 18, 2005 and December 19, 2006.
9. In accordance with OAC Rule 3745-81-21(B)(6), version effective April 1, 1999 through December 31, 2007, when a PWS monitors with fewer than five samples a month and one or more samples are total coliform-positive, the PWS is required to monitor with at least five samples during the next month that the PWS provides water to the public.

10. In violation of OAC Rule 3745-81-21(B)(7), Respondent failed to monitor with at least five samples in the months of August 2006 and January 2007 following total coliform-positive sample results in the preceding months.
11. In accordance with OAC Rule 3745-81-21(A)(2)(a), a noncommunity water system using only ground water or purchased water and serving not more than one thousand persons shall monitor with at least one total coliform sample each calendar quarter that the noncommunity water system provides water to the public.
12. In violation of OAC Rule 3745-81-21(A)(2)(a), Respondent failed to monitor with at least one total coliform sample per quarter during the April through June 2005, October through December 2005, and January through March 2008 monitoring periods.
13. The Director issued chemical contaminant monitoring schedules to Respondent for the compliance periods that began on January 1 and ended on December 31 for the years of 2003, 2004, 2005, and 2006.
14. In accordance with OAC Rule 3745-81-23(B) and (C) and Respondent's 2003, 2004, 2005 and 2006 chemical monitoring schedules, the Respondent was required to monitor for the inorganic contaminants nitrate and nitrite to determine compliance with MCLs listed in OAC Rule 3745-81-11(A).
15. In violation of OAC Rule 3745-81-23(B) and Respondent's 2003, 2004, 2005 and 2006 chemical monitoring schedules, Respondent failed to monitor for nitrate during the monitoring periods of January 1 through June 30 in 2003, 2004, 2005 and during January 1 through May 31, 2006. Samples were untimely collected by Respondent on July 8, 2003, September 22, 2004, and January 18, 2007.
16. In violation of OAC Rule 3745-81-23(C) and Respondent's 2005 chemical monitoring schedule, Respondent failed to monitor for nitrite during the monitoring period of January 1 through June 30, 2005. A sample was untimely collected by Respondent on January 18, 2007.
17. In accordance with OAC Rule 3745-81-21(A), PWSs shall collect total coliform routine samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. Such plans are subject to review and revision by the Director.
18. In violation of OAC Rule 3745-81-21(A), Respondent failed to have a written sample siting plan since at least Ohio EPA's March 15, 1997 sanitary survey through March 14, 2008.
19. In violation of OAC Rule 3745-7-02(A)(1), Respondent has failed to maintain an Operator of Record with a certification equal or greater than a Class A.

20. In accordance with OAC Rule 3745-9-05(O) and (U)(2), 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.
21. In violation of OAC Rule 3745-9-05(O) and (U)(2), from at least November 13, 2000 to early September 2008, Respondent's PWS well casing height failed to meet the minimum standard of at least twelve inches above the finished grade and at least twelve inches above the well house floor or concrete apron surface.
22. On September 8, 2008, Ohio EPA, Northwest District Office inspected Respondent's PWS and verified that the well casing had been raised to eighteen inches above the finished grade; however, there is a hole in the casing below where the extension was made which is required to be repaired to prevent contaminants from entering the well.
23. Each violation cited above represents a separate violation of ORC § 6109.31.

V. ORDERS

1. From the effective date of these Orders Respondent shall comply with total coliform bacteria MCL and monitoring requirements, in accordance with OAC Rule 3745-81-14 and OAC Rule 3745-81-21, respectively.
2. Respondent shall comply with its contaminant monitoring schedule for the calendar year 2009 and all subsequent monitoring schedules issued by the Director.
3. Within thirty (30) days of the effective date of these Orders, Respondent shall hire or retain an Operator of Record with a certification equal or greater than a Class A in accordance with OAC Rule 3745-7-02(A)(1).
4. Within fourteen (14) days of the effective date of these Orders, Respondent shall repair the hole in PWS well casing to prevent contaminants from entering the well pursuant to OAC Rule 3745-9-05.
5. Within thirty (30) days of the effective date of these Orders, Respondent shall pay the amount of four thousand dollars (\$4,000.00) in administrative penalties pursuant to ORC Chapter 6109. Payment shall be made by an official check made payable to "Treasurer, State of Ohio". The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

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.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders (with the exception of the penalty payment in Order No. 5) shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Drinking and Ground Waters
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: JoAnn Sabo, 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 actions 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 which the Commission, in its discretion, may reduce if by affidavit you demonstrate 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:

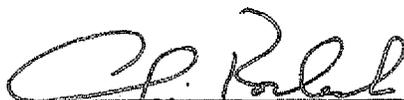
Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, OH 43215

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 AND AGREED:

Ohio Environmental Protection Agency



Chris Korleski, Director

FEB 12 2009

Date