

OHIO E.P.A.

JUN -7 2010

ENTERED DIRECTOR'S JOURNAL

Effective Date _____

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Franklin Monroe Local School :
District - :
PO Box 78 :
Pittsburg, Ohio 45385 :

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.

Respondent,

PREAMBLE

By: *MASHapiro*

Date: *6/7/2010*

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to the Franklin Monroe Local School District (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 Franklin Monroe High School, which is also a non-transient water system as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID# OH1933712) is located at 8639 Oakes Road, Arcanum (Darke County), Ohio, 45304.
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 390 persons.
4. In accordance with OAC Rule 3745-81-11(B), the maximum contaminant level (MCL) for arsenic is 0.010 milligrams per liter (mg/L) for all non-transient non-community water systems.
5. In accordance with OAC Rule 3745-81-23(H)(2), for PWSs which conduct monitoring at a frequency greater than annual, compliance with the MCL for arsenic is determined by a running annual average (RAA) at each sampling point. The PWS will not be considered in violation of the MCL until it has completed one year of quarterly sampling. If, however, any one sample result would cause the RAA to exceed the MCL, the PWS is out of compliance immediately.
6. In violation of OAC Rules 3745-81-11(B) and 3745-81-23(H)(2), Respondent exceeded the RAA MCL for arsenic during the January through March 2009, April through June 2009, July through September 2009 and the October through December 2009 monitoring periods. Currently, the Respondent's RAA is 0.005 mg/L.
7. In accordance with OAC Rule 3745-81-23, non-transient non-community water systems shall monitor for inorganic chemicals at the entry point to the system according to a schedule provided by the Director.
8. The Director issued a chemical contaminant monitoring schedule for the Respondent's PWS on December 16, 2005 for the compliance period that began on January 1, 2006 and ended on December 31, 2006. Pursuant to this monitoring schedule, Respondent was required to monitor for arsenic quarterly.
9. In violation of OAC Rule 3745-81-23, Respondent failed to monitor for arsenic during the April through June 2006 monitoring period.
10. 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.

11. In violation of OAC Rule 3745-81-32, the Respondent failed to issue public notification and submit copies of the required public notices and verification forms for exceeding the arsenic MCL during the January through March 2009 and the October through December 2009 monitoring periods.
12. On February 16, 1991, Respondent's PWS was designated by the Director as a Class I PWS in accordance with OAC Rule 3745-7-03.
13. In accordance with OAC Rule 3745-7-02(A)(1), each person owning or operating a PWS shall designate one or more operator of record to oversee the technical operation of the PWS or each water treatment plant and distribution system within the PWS. Each operator of record shall have a valid certification of a class equal to or greater than the classification of the PWS, distribution system or water treatment plant. Additionally:
 - a. The owner of a PWS shall notify the Director of the identity of an operator of record in the event of a change in such position.
 - b. Notification shall be made on a form acceptable to the Director within three (3) days of a change in an operator of record.
14. In violation of OAC Rule 3745-7-02(A)(1), Respondent has failed to designate an operator of record to oversee the technical operation of the PWS.
15. Each violation cited above represents a separate violation of ORC § 6109.31.
16. On November 25, 2009, the Director issued site acceptances to Respondent for two new PWS wells for PWS ID OH1950512.
17. Respondent's initial raw water sampling results for new well No. 1 indicates the well will exceed the MCL for arsenic (with a level of 0.011 mg/L).
18. Respondent's initial raw water sampling results for new well No. 2 indicate the results for arsenic were below, but close to, the MCL.
19. Respondent's wells, as well as an arsenic removal system and a non-potable water system for flushing urinals and toilets, are planned to be put into use with the opening of a new school, which is scheduled for Fall 2011. The new school will be an entirely new PWS (OH1950512) and the former school's PWS (OH1933712) will be inactivated once the new PWS is operational.
20. Detail plans for the new PWS (OH1950512) wells and arsenic removal system were approved by Ohio EPA on April 27, 2010.

V. ORDERS

1. Respondent shall comply with its chemical monitoring schedule for the 2010 calendar year and all subsequent monitoring schedules issued by the Director.

2. Within thirty (30) days of the effective date of these Orders, Respondent shall remedy the violations in Finding No. 11 by issuing a public notification and by submitting copies of the required public notice and verification form to the Ohio EPA, Division of Drinking and Ground Waters (DDAGW), Central Office (CO), Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049, in accordance with OAC Rule 3745-81-32, for exceeding the arsenic MCL during the January through March 2009 and the October through December 2009 monitoring periods.
3. From the effective date of these Orders, Respondent shall comply with arsenic monitoring and reporting requirements, in accordance with OAC Rule 3745-81-23.
4. From the effective date of these Orders, all of the water fountains in the school will be shut down. By August 1, 2010, until initiation of operation of the arsenic removal system, Respondent shall provide bottled water in place of drinking fountains at no cost to students and faculty.
5. Within sixty (60) days of the effective date of these Orders, Respondent shall retain a certified Class I Water Supply "Operator of Record" for at least the minimum staffing time required per OAC Rule 3745-7-04, (i.e., 3 days per week for a minimum of 1.5 hours per week), and shall forward the completed Operator of Record form to the Ohio EPA, DDAGW, Central Office (CO), Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049, Attn: Julie Gillenwater.
6. By July 1, 2011, Respondent shall complete installation of the arsenic removal system and demonstrate that PWS ID OH1950512 is operational before PWS ID #1933712 is inactivated.
7. Within six (6) months of the initiation of operation of new PWS ID OH1950512, Respondent shall properly abandon the wells and system associated with PWS ID OH1933712.
8. Respondent's new PWS ID OH1950512 shall maintain compliance with the arsenic MCL upon initiation of operation of the arsenic removal system, in accordance with OAC Rule 3745-81-11(B) as determined by OAC Rule 3745-81-23(H)(2).
9. Within seven (7) days after the deadlines given in Orders No. 6 and 7, Respondent shall send written notification of compliance with the requirements of these Orders to Ohio EPA, SWDO, Division of Drinking and Ground Waters (DDAGW), as specified in Section X of these Orders.
10. Within thirty (30) days of notification, Respondent shall respond in writing to address any comments or deficiencies noted by Ohio EPA on any plan or other documentation submitted by Respondent.

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(E).

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
Southwest District Office
Division of Drinking and Ground Waters
401 East Fifth Street
Dayton, Ohio 45402
Attn: Dave 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

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 other 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 cite 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


Chris Korleski, Director

JUN 7 2010
Date

IT IS SO AGREED:

Franklin Monroe Local School District


Signature 5/10/10 Date

DAVID A. GRAY - SUPT.
Printed or Typed Name and Title