

OHIO E.P.A.

JAN 31 2007

ENTERED DIRECTOR'S JOURNAL

Effective Date JAN 31 2007

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Ohio Fresh Eggs :
11212 Croton Road :
Croton, Ohio 43013 :

Respondent,

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Ohio Fresh Eggs (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:

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: Doreen Jackson Date: 1-31-07

1. Respondent owns and operates "public water systems" (PWSs), which are also "nontransient noncommunity water systems" as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWSs at Layer #1 and Layer #4 (PWS ID#'s 4555612 and 4555912) are located at 11212 Croton Road, Licking County, Croton, Ohio, 43013.
3. Respondent's PWSs obtain their drinking water from "ground water" sources as defined by OAC Rule 3745-81-01 and serve a combined population of approximately 66 persons.
4. In accordance with OAC Rule 3745-81-21(A)(2)(a), a noncommunity water system using only ground water and serving not more than one thousand persons shall monitor with at least one sample each calendar quarter that the water system provides water to the public.
5. In violation of OAC Rule 3745-81-21(A)(2)(a), Respondent failed to monitor at Layer #1 with a minimum of one routine total coliform sample during the October through December 2005 and July through September 2006 monitoring periods.
6. In violation of OAC Rule 3745-81-21(A)(2)(a), Respondent failed to monitor at Layer #4 with a minimum of one routine total coliform sample during the April through June 2005, October through December 2005, and July through September 2006 monitoring periods.
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 (4) repeat samples within twenty-four (24) hours of being notified of the positive result.
8. In accordance with OAC Rule 3745-81-14(D), failure to monitor with repeat samples as required by OAC Rule 3745-81-21 is a maximum contaminant level (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 microbiological MCL).
9. In violation of OAC Rules 3745-81-21(B)(1) and 3745-81-14(D), Respondent received an acute microbiological MCL violation at Layer #1 due to the failure to monitor with a set of four (4) repeat samples within twenty-four (24) hours of being notified of a routine total coliform-positive sample result on August 11, 2003.
10. In violation of OAC Rules 3745-81-21(B)(1) and 3745-81-14(D), Respondent received an acute microbiological MCL violation at Layer #4 due to the failure to monitor with a set of four (4) repeat samples within twenty-four (24) hours of being notified of a routine total coliform-positive sample result on October 4, 2004.

11. On December 6, 2002, the Director issued a chemical contaminant monitoring schedule to Respondent (2003 monitoring schedule) for the compliance period that began on January 1, 2003 and ended on December 31, 2003.
12. In accordance with OAC Rule 3745-81-24 and Respondent's 2003 monitoring schedule, Respondent was required to monitor for volatile organic chemicals (VOCs) at both Layers #1 and #4 during the July through December 2003 monitoring period.
13. In violation of OAC Rule 3745-81-24 and Respondent's 2003 monitoring schedule, Respondent failed to monitor for VOCs at both Layers #1 and #4 during the July through December 2003 monitoring period.
14. In accordance with OAC Rule 3745-81-23 and Respondent's 2003 monitoring schedule, Respondent was required to monitor for inorganic chemicals (IOCs) during the July through December 2003 monitoring period.
15. In violation of OAC Rule 3745-81-23 and Respondent's 2003 monitoring schedule, Respondent failed to monitor for IOCs at Layer #4 during the July through December 2003 monitoring period. Respondent sampled untimely on March 10, 2004.
16. On June 22, 2005, Ohio EPA sent Respondent a survey inspection letter based on an evaluation that began on June 2, 2005 with subsequent follow-up inspections. In the letter, several items were noted as being deficient during this evaluation. The letter stated that at both Layers #1 and #4 pond wells are connected to the potable system and past inspections required these wells to be disconnected due to the possibility of cross-contamination. Additionally, the treatment units at each Layer were not been maintained in accordance with Director's Plan Approval.
17. In accordance with OAC Rule 3745-95-02(B), no person shall install or maintain a connection between a PWS or consumer's water system and an auxiliary water system unless the auxiliary water system, the method of connection and the use of such system have been approved by the supplier of water and by the Director as required by ORC § 6109.13.
18. In violation of OAC Rule 3745-95-02(B), Respondent has pond wells connected to the potable water systems at Layers #1 and #4, which may result in cross-contamination of the potable system and threaten the entire aquifer with surface water contamination/infiltration.
19. In accordance with ORC § 6109.07(C), no person shall operate a PWS, and no person who is the owner of a PWS shall permit its operation, if the person knows or has reason to know that the system was constructed or installed or that a

- substantial change was made in the system, in violation of divisions (A) or (B) of this section, unless the person has obtained written authorization from the Director to operate the system pursuant to division (D) of this section.
20. In accordance with OAC Rule 3745-91-08(G), no person shall construct or install a PWS or make any substantial change in a PWS that is not in accordance with plans approved by the Director.
 21. In violation of ORC § 6109.07(C) and OAC Rule 3745-91-08(G)(1), Respondent has softeners and chlorinators at Layers #1 and #4, which are not being maintained in accordance with Director's Plan Approval. Chlorine pumps at both layers have sodium encrustation around the injection points which may inhibit the chlorine feed. The chlorine pump at Layer #1 is oversized for the system and unnecessarily feeds chlorine constantly, which will likely cause exceedances of the Maximum Residual Disinfection Level as set forth in OAC Rule 3745-81-10(C).
 22. In violation of ORC § 6109.07(C) and OAC Rule 3745-91-08(G)(1), Respondent has not maintained the secondary containment platforms under the chemical pumps in accordance with Director's Plan Approval. An Ohio EPA survey letter of June 22, 2005 and an inspection conducted March 21, 2006 noted that the platforms at both Layers #1 and #4 were filled with water, rendering the secondary containment useless in the event of a spill.
 23. In accordance with OAC Rule 3745-81-31(A), the PWS is responsible for ensuring that the results of a test, measurement, or analysis required to be made by OAC Chapter 3745-81 are reported to the Director within the first ten (10) days following the month in which the result is received for that test, measurement, or analysis or within the first ten (10) days following the end of the required monitoring period as specified by the Director, whichever occurs first.
 24. In violation of OAC Rule 3745-81-31(A), Respondent failed to comply with the monthly reporting requirements for both Layers #1 and #4 for the month of January 2004.
 25. In accordance with OAC Rule 3745-81-32, the owner or operator of a PWS shall provide public notification for violations.
 26. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notice at Layer #1 for the acute MCL violation during August 2003, for the failure to monitor for VOCs during the July through December 2003 monitoring period, and for the failure to sample routinely for total coliform during the October through December 2005 monitoring period.

27. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notice at Layer #4 for the failure to monitor for VOCs during the July through December 2003 monitoring period and for the failure to monitor routinely for total coliform during the April through June 2005 monitoring period.
28. 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 monitoring and MCL requirements, in accordance with OAC Rules 3745-81-21 and 3745-81-14, respectively.
2. From the effective date of these Orders, Respondent shall comply with the monitoring and reporting requirements in accordance with its 2007 chemical monitoring schedule.
3. From the effective date of these Orders, Respondent shall comply with monthly reporting requirements in accordance with OAC Rule 3745-81-31(A).
4. Within thirty (30) days of the effective date of these Orders, Respondent shall notify the public, in accordance with OAC Rule 3745-81-32, for the violations identified in Finding Nos. 26 and 27. Respondent shall provide copies of all public notices and verification forms to Ohio EPA, Central District Office, 122 South Front Street, Columbus, Ohio 43215.
5. Within ninety (90) days of the effective date of these Orders, Respondent shall sever any connection from the potable water systems at Layers #1 and #4 to the pond wells to eliminate any possible cross-connection, in accordance with OAC Rule 3745-95-02(B). Ohio EPA shall be given reasonable notification of when the disconnections are to be made so that a representative can be present to observe the disconnections.
6. Within sixty (60) days of the effective date of these Orders, Respondent shall operate and maintain softeners, chlorinators, and secondary containment platforms in accordance with Director's plan approval for the PWS and ORC § 6109.07(C) and OAC Rules 3745-91-08(G)(1). Respondent shall notify Ohio EPA when the softeners, chlorinators, and secondary containment platforms have been fixed, cleaned, and are in good working order such that completion of this work can be verified by Ohio EPA.
7. Respondent shall pay Ohio EPA the amount of thirteen thousand two hundred fifty dollars (\$13,250.00) in administrative penalties pursuant to ORC Chapter 6109. Within thirty (30) days after the effective date of these Orders, payment shall be

made by an official check made payable to "Treasurer, State of Ohio" for ten thousand six hundred dollars (\$10,600.00). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent.

8. In lieu of paying two thousand six hundred fifty dollars (\$2,650.00) of civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of \$2,650.00 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for two thousand six hundred and fifty dollars. 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

9. Should Respondent fail to fund the SEP within the required timeframe set forth in Order No. 8, Respondent shall pay to Ohio EPA \$2,650.00 of the civil penalty in accordance with the procedures in Order No. 7.

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).

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) shall be addressed to:

Ohio Environmental Protection Agency
Central District Office
Division of Drinking and Ground Waters
50 West Town Street, Suite 700
Columbus, Ohio 43215
Att: Susan Hampton

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.

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 Section 3745.04 of the Ohio Revised Code. 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:

Ohio Environmental Protection Agency



Director

JAN 31 2007

Date