

OHIO E.P.A.

Effective Date DEC 4 2007

DEC -4 2007

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY



In the Matter of:
M.H. Eby, Inc. :
4435 State Route 29 :
PO Box 137 :
West Jefferson, Ohio 43162 :

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Respondent,

**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.**

PREAMBLE

By: [Signature] Date: 12-4-07

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to M.H. Eby, 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) which is also a "nontransient noncommunity water system" as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.

2. Respondent's PWS (PWS ID# 4943512) is located at 4435 State Route 29, West Jefferson (Madison County), Ohio, 43162.
3. Respondent's PWS obtains its drinking water from a "ground water" source as defined by OAC Rule 3745-81-01 and the PWS serves a population of sixty (60) persons.
4. In accordance with OAC Rule 3745-81-14(B), a PWS which monitors with fewer than forty (40) total coliform samples per month is in compliance with the maximum contaminant level (MCL) for total coliforms 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 monthly MCL in February 2005 when more than one sample was total coliform-positive.
6. In accordance with OAC Rule 3745-81-23(E)(2)(a), a PWS scheduled by the Director to monitor for arsenic in 2005 which detects arsenic above 0.008 milligram per liter (mg/L) shall collect a sample for arsenic analysis quarterly in 2006 to determine compliance with the MCL in OAC Rule 3745-81-11(B).
7. In accordance with OAC Rule 3745-81-23(E)(2)(a), Respondent has monitored for arsenic quarterly in 2006. Arsenic sample results taken by Respondent were 0.021 mg/L on January 19, 2006, 0.017 mg/L on April 11, 2006, 0.024 mg/L on July 11, 2006, and 0.017 mg/L on October 24, 2006.
8. In accordance with OAC Rule 3745-81-11(B), the MCL for arsenic is 0.010 mg/L.
9. In accordance with OAC Rule 3745-81-23(H)(2), compliance with the MCL for arsenic is determined by the running annual average. A PWS is not considered in violation until it has completed one year of sampling unless any one sample result would cause the running annual average to exceed the MCL.
10. In violation of OAC Rule 3745-81-11(B), as determined by OAC Rule 3745-81-23(H)(2), Respondent exceeded the arsenic MCL during the July through September 2006 and October through December 2006 monitoring periods when the arsenic running annual average was greater than 0.010 mg/L. Respondent's current running annual average is 0.020 mg/L.
11. In accordance with OAC Rule 3745-07-03(B)(1)(a), the classification of a PWS may change when there are system changes that affect the quality of the source, the complexity of the treatment or the distribution system, the population served, or the potential public health hazards.

12. In accordance with OAC Rule 3745-07-03(B)(4), any PWS treating ground water to remove arsenic shall be classified as at least a Class 1 PWS.
13. In accordance with OAC Rules 3745-07-03(B)(1)(c), when the Director changes the classification of a PWS, the owner of a PWS has up to twelve months to meet the staffing requirements in OAC Rule 3745-07-03(C) for the new classification.
14. 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 requirements, in accordance with OAC Rule 3745-81-14.
2. From the effective date of these Orders, and for as long as Respondent operates the PWS, Respondent shall comply with arsenic monitoring and reporting requirements, in accordance with OAC Rule 3745-81-23.
3. From the effective date of these Orders, and for as long as Respondent operates the PWS, Respondent shall issue public notice for all arsenic MCL violations in accordance with OAC Rule 3745-81-32.
4. By November 16, 2007, Respondent shall submit detail plans to Ohio EPA for arsenic removal treatment in accordance with OAC Chapter 3745-91.
5. By January 1, 2008, in accordance with detail plans approved by Ohio EPA and OAC Chapter 3745-91, Respondent shall begin construction on the treatment plant.
6. By February 15, 2008, in accordance with the detail plans approved by Ohio EPA and OAC Chapter 3745-91, Respondent shall complete installation and commence operation of the treatment for arsenic removal.
7. Within twelve (12) months of completion of arsenic treatment system, Respondent shall achieve compliance with the arsenic MCL.
8. Within twelve (12) months of completion of arsenic treatment system, Respondent shall designate an operator of record holding a valid Class 1 certification or higher to oversee the technical operation of the PWS, in accordance with OAC Chapter 3745-07.
9. 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.

10. Respondent shall pay the amount of four thousand six hundred dollars (\$4,600.00) in settlement of Ohio EPA's claim for civil penalties which may be assessed 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 one thousand one hundred fifty (\$1,150.00). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to: Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049.
11. In lieu of paying three thousand four hundred fifty dollars (\$3,450.00) of civil penalty, Respondent shall implement a Supplemental Environmental Project (SEP) by providing bottled water for drinking purposes at M.H. Eby, Inc. until compliance with the arsenic MCL is obtained.

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 Division of Drinking and Ground Waters 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.

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 (with the exception of the penalty payment referenced in the Orders) shall be addressed to:

Ohio EPA
Central District Office
Division of Drinking and Ground Waters
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Susan Hampton, DOCC

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

XI. RESERVATION OF RIGHTS

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, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. 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

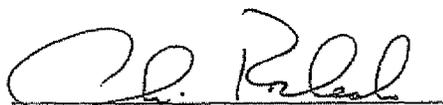
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

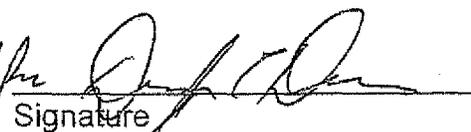


Chris Korleski, Director

DEC 4 2007
Date

IT IS SO AGREED:

M.H. Eby, Inc.

M.H. Eby, Inc.

Signature

10/30/07
Date

M.H. Eby, Inc.
Douglas L. Deaver
Printed or Typed Name and Title

V.P. - Ohio Division