

OHIO E.P.A.

Effective Date JUN -4 2010

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

NNCK Marathon, LLC :  
2822 Dayton Pike :  
Germantown, OH 45327 :

Respondent,

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

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.

 Date: 6/4/2010

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to NNCK Marathon, Inc. (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Chapters 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 or wastewater treatment 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 Chapters 6109 and 6111 and the rules promulgated thereunder.

IV. FINDINGS

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

1. Respondent owns and operates at NNCK Marathon, a "public water system" (PWS) as defined by ORC § 6109.01, which is also a "transient non-community water system" as defined by Ohio Administrative Code (OAC) Rule 3745-81-01.

2. Respondent's PWS (PWS ID# OH5748012) is located at 2822 Dayton Pike, Germantown (Montgomery County), Ohio, 45327, obtains its drinking water from a "ground water" source as defined by OAC Rule 3745-81-01, and serves a population of 100 persons.
3. In accordance with OAC Rule 3745-81-21(A)(2)(a), a transient non-community water system using ground water and serving not more than one thousand (1000) persons shall monitor with at least one total coliform bacteria sample each quarter that the water system provides water to the public.
4. In violation of OAC Rule 3745-81-21(A)(2)(a), Respondent failed to collect at least one total coliform bacteria sample during the monitoring periods of April 1 through June 30, 2007, July 1 through September 30, 2007, October 1 through December 31, 2007, April 1 through June 30, 2008, July 1 through September 30, 2008, October 1 through December 31, 2008, January 1 through March 31, 2009, April 1 through June 30, 2009, and July 1 through September 30, 2009.
5. On December 9, 2005, the Director issued a chemical contaminant monitoring schedule to Respondent (2006 monitoring schedule) for the compliance period that began on January 1, 2006 and ended on December 31, 2006. In December 2007, the Director issued a monitoring schedule to Respondent (2008 monitoring schedule) for the compliance period that began on January 1, 2008 and ended on December 31, 2008. In December 2008, the Director issued a monitoring schedule to Respondent (2009 monitoring schedule) for the compliance period that began on January 1, 2009 and ended on December 31, 2009.
6. In accordance with OAC Rule 3745-81-23, PWSs shall monitor to determine compliance with the maximum contaminant level (MCL) for nitrate according to a schedule provided by the Director.
7. In accordance with OAC Rule 3745-81-23 and Respondent's 2006, 2008 and 2009 monitoring schedules, Respondent was required to monitor for nitrate during the January 1 through December 31, 2006, January 1 through December 31, 2008, and January 1 through December 31, 2009 monitoring periods, respectively.
8. In violation of OAC Rule 3745-81-23 and Respondent's 2006, 2008 and 2009 monitoring schedules, Respondent failed to monitor for nitrate during the January 1 through December 31, 2006, January 1 through December 31, 2008, and January 1 through December 31, 2009 monitoring periods.
9. In accordance with OAC 3745-09-05 (P), a well shall have a well cap or seal to prevent the entrance of water, dirt, animals, insects, or other foreign matter.

10. In violation of OAC Rule 3745-09-05 (P), Respondent failed to have a well cap that securely and tightly fits to the well and prevents insects and other pests from entering the well since at least January 17, 2007.
11. In accordance with OAC Rule 3745-91-02 (A), no person shall make a substantial change to a public water system prior to approval from the director of environmental protection.
12. In violation of OAC Rule 3745-91-02 (A), Respondent installed a UV disinfection system without prior plan approval since at least January 17, 2007.
13. In accordance with OAC Rule 3745-81-32, the owner or operator of a PWS having violations shall notify the persons served by the PWS of violations.
14. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notice for the following violations:
  - a. Total coliform monitoring violations for the monitoring periods of April 1 through June 30, 2007, July 1 through September 30, 2007, October 1 through December 31, 2007, April 1 through June 30, 2008, July 1 through September 30, 2008, October 1 through December 31, 2008, January 1 through March 31, 2009, April 1 through June 30, 2009, and July 1 through September 30, 2009; and
  - b. Nitrate monitoring violation for the monitoring periods January 1 through December 31, 2006, January 1 through December 31, 2008, and January 1 through December 31, 2009.
15. Each violation cited above represents a separate violation of ORC § 6109.31.
16. In accordance with OAC Rule 3745-84-02(A), except as provided in ORC § 6109.21, no person shall operate or maintain a PWS in the state of Ohio without a PWS license issued by the Director.
17. In accordance with OAC Rule 3745-84-03(A), a PWS license to operate (LTO) shall expire on the thirtieth day of January in the year following its issuance.
18. In accordance with OAC Rule 3745-84-03(B), a person holding a PWS LTO who is proposing to continue to operating the PWS shall submit an application and the appropriate fee not less than thirty days prior to the expiration of the license.
19. Respondent untimely submitted an application and application fee for a 2010 LTO renewal on May 6, 2010.
20. In accordance with OAC Rule 3745-84-06(A), the Director may condition an LTO at any time to require corrections of violations of ORC Chapter 6109 and the

administrative rules adopted thereunder. In conditioning a LTO, the Director shall act in accordance with the provisions of ORC Chapters 119., 3745., and 6109.

## **V. ORDERS**

1. From the effective date of these Orders, the LTO renewal for Respondent's PWS is issued with the conditions listed in Orders # 2 through #9, until January 30, 2011, 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. Respondent shall comply with all current and subsequent chemical monitoring schedules issued by the Director, in accordance with OAC Rule 3745-81-23 and OAC Rule 3745-81-24.
4. From the effective date of these Orders, Respondent shall comply with total coliform bacteria monitoring and MCL requirements, in accordance with OAC Rule 3745-81-21 and OAC Rule 3745-81-14, respectively.
5. Within thirty (30) days from the effective date of these Orders, Respondent shall install a new well cap that meets the requirements of OAC Rule 3745-09-05 (P).
6. From the effective date of these Orders, Respondent shall remove the UV disinfection unit from the public water system.
7. Within thirty (30) days from the effective date of these Orders, Respondent shall provide public notice to all persons served by the Respondent's PWS, in accordance with OAC Rule 3745-81-32, for violations listed in Finding #14. Respondent shall provide copies of all public notices and verification forms within ten (10) days of delivery of public notices to Ohio EPA at the address listed in Section X of these Orders.
8. From the effective date of these Orders, Respondent shall issue public notice for any future violations in accordance with OAC Rule 3745-81-32.
9. Respondent shall pay the amount of seven thousand dollars (\$7,000.00) in settlement of Ohio EPA's claim for administrative penalties which may be assessed pursuant to ORC Chapters 6109.23. 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 seven thousand dollars (\$7,000.00). 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.

## **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 acknowledge, 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 or wastewater treatment system.

## **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 required by a specific 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  
P.O. Box 1049  
Columbus, Ohio 43216-1049

Attn: Tanushree Courlas

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 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:

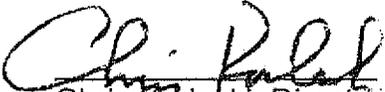
Environmental Review Appeals Commission  
309 South Fourth Street, Room 222  
Columbus, OH 43215

**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**

  
Chris Korleski, Director

**JUN 4 2010**

\_\_\_\_\_  
Date



State of Ohio Environmental Protection Agency

**CONDITIONAL LICENSE TO OPERATE OR MAINTAIN  
A PUBLIC WATER SYSTEM**

THE OHIO EPA, PURSUANT TO SECTION 6109.21 OF THE OHIO REVISED CODE, HEREBY ISSUES THIS  
LICENSE TO OPERATE OR MAINTAIN A PUBLIC WATER SYSTEM TO

**NNCK MARATHON**

**PWS ID: OH5748012**

THE LICENSEE IS OBLIGATED TO ENSURE THAT THE PUBLIC WATER SYSTEM IS OPERATED AND  
MAINTAINED IN ACCORDANCE WITH THE REQUIREMENTS OF CHAPTER 6109 OF THE OHIO REVISED  
CODE, ALL OTHER APPLICABLE STATUTES AND THE ADMINISTRATIVE RULES ADOPTED THEREUNDER.

**THIS LICENSE WILL EXPIRE ON JANUARY 30, 2011**

APPLICATION FOR RENEWAL IS REQUIRED TO BE SUBMITTED TO THE OHIO EPA AT LEAST THIRTY  
DAYS PRIOR TO THIS DATE.

EFFECTIVE DATE: JUNE 4, 2010

EXPIRATION DATE: JANUARY 30, 2011

LICENSE NUMBER: 5748012-732999-2010

A handwritten signature in cursive script, reading "Chris Kralak", written over a horizontal line.

Director

## **NNCK Marathon, LLC. ORDERS**

**Effective Date: June 4, 2010**

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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. Respondent shall comply with all current and subsequent chemical monitoring schedules issued by the Director, in accordance with OAC Rule 3745-81-23 and OAC Rule 3745-81-24.
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