

OHIO E.P.A.

AUG 26 2011

Effective Date AUG 26 2011

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL FINDINGS AND ORDERS

CDS Real Estate Investment, LLC :  
4033 State Route 43 :  
Kent, Ohio 44240 :

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.

Re: Pour House Pub and Drive  
Thru

By: Donna Lasser Date: 8/26/11

Respondent,

**I. JURISDICTION**

These Director's Final Findings and Orders (Orders) are issued to CDS Real Estate Investment, LLC (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 "transient non-community water system" as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID#OH6784212) is located at 4033 State Route 43 Portage County, Kent, Ohio, 44240, was formerly operated as McDaniel's Pub,

and is currently being operated as the Pour House Pub and Drive Thru.

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 50 persons.
4. In accordance with OAC Rule 3745-81-21(A)(2)(a), a non-community water system using only ground water or purchased water and serving not more than one thousand persons shall monitor with at least one sample each calendar quarter that the non-community water system provides water to the public.
5. In violation of OAC Rule 3745-81-21(A)(2)(a), Respondent failed to monitor for total coliform bacteria during April-June 2006, October-December 2006, April-June 2007, October-December 2007, January-March 2008, April-June 2008, and October-December 2008 monitoring quarters.
6. 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.
7. In violation of OAC Rule 3745-81-21(A), during an Ohio EPA sanitary survey on March 7, 2006 and the limited scope site visit (LSSV) conducted on May 18, 2009, Respondent failed to provide a bacteria sample siting plan.
8. On or about January 1, 2006, the Director issued a contaminant monitoring schedule to Respondent (2006 monitoring schedule) for the compliance period that began on January 1, 2006 and ended on December 31, 2006. Pursuant to the 2006 monitoring schedule, Respondent was required to monitor for nitrate with one sample between June 1 and October 31, 2006.
9. On or about January 1, 2007, the Director issued a contaminant monitoring schedule to Respondent (2007 monitoring schedule) for the compliance period that began on January 1, 2007 and ended on December 31, 2007. Pursuant to the 2007 monitoring schedule, Respondent was required to monitor for nitrate with one sample between June 1 and October 31, 2007.
10. In accordance with OAC Rule 3745-81-23(B)(1), all ground water PWSs shall monitor annually to determine compliance with the MCL for nitrate in OAC Rule 3745-81-11.
11. In violation of OAC Rule 3745-81-23(B)(1), and Respondent's 2006 and 2007 monitoring schedules, Respondent failed to monitor for nitrate during the January 1 – December 31, 2006, and January 1 – December 31, 2007 monitoring periods.

12. In accordance with OAC Rule 3745-9-05(O)(2), the finished grade shall be sloped for surface water runoff away from the well.
13. In violation of OAC Rule 3745-9-05(O)(2), during the May 18, 2009, LSSV of Respondent's PWS, the finished grade surrounding Respondent's well was not sloped for surface water runoff away from the well.
14. Each violation cited above represents a separate violation of ORC § 6109.31.
15. In accordance with OAC Rule 3745-84-02(A), no person shall operate or maintain a PWS in the state of Ohio without a license to operate (LTO) issued by the Director.
16. Respondent submitted an application and application fee for a 2011 LTO on July 28, 2011.
17. In accordance with OAC Rule 3745-84-06(A), the Director may condition a LTO at any time to require corrections of violations of ORC Chapter 6109 and the administrative rules adopted thereunder.

#### **V. ORDERS**

1. From the effective date of these Orders until January 31, 2012, the 2011 LTO renewal for Respondent's PWS is issued with the conditions listed in Orders # 2 through # 8, 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. From the effective date of these Orders, Respondent shall comply with all current and future contaminant monitoring schedules issued by the Director.
4. Within thirty (30) days of the effective date of these Orders, Respondent shall complete a bacteria sample siting plan, in accordance with OAC Rule 3745-81-21(A) and submit a copy of the plan to Ohio EPA, NEDO, DDAGW, 2110 E. Aurora Road, Twinsburg, Ohio, 44087, as verification of compliance.
5. From the effective date of these Orders, Respondent shall comply with total coliform bacteria monitoring requirements, including both routine and repeat samples, in accordance with OAC Rule 3745-81-21.
6. By no later than October 31, 2011, Respondent shall take a minimum of one nitrate water sample, in accordance with OAC Rule 3745-81-23(B), and

Respondent's 2011 contaminant monitoring schedule.

7. Within thirty (30) days of the effective date of these Orders, Respondent shall re-grade the surface surrounding Respondent's well so that it drains away from the well's casing, and shall insure that the height of the casing remains 12 inches above grade in compliance with OAC Rule 3745-9-05(O).
8. From the effective date of these Orders, Respondent shall comply with all PWS LTO renewal requirements in OAC Chapter 3745-84.

#### **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**

Except as specifically required by an individual 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  
Northeast District Office  
2110 E. Aurora Road  
Twinsburg, Ohio, 44087  
Attn: David Maschak, 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 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.

#### **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, 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  
77 South High Street, 17<sup>th</sup> floor  
Columbus, Ohio 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**

  
\_\_\_\_\_  
Scott J. Nally, Director

**AUG 26 2011**  
\_\_\_\_\_  
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

**THE POUR HOUSE PWS**

**PWS ID: OH6784212**

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.

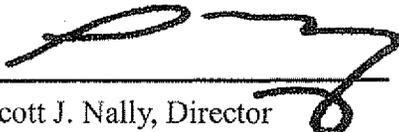
**THIS LICENSE WILL EXPIRE ON JANUARY 30, 2012**

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

EFFECTIVE DATE: **AUGUST 26, 2011**

EXPIRATION DATE: **JANUARY 30, 2012**

LICENSE NUMBER: **6784212-815868-2011**

  
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Scott J. Nally, Director

## **POUR HOUSE PUB ORDERS**

**Effective Date: August 26, 2011**

1. From the effective date of these Orders until January 31, 2012, the 2011 LTO renewal for Respondent's PWS is issued with the conditions listed in Orders # 2 through # 8, 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. From the effective date of these Orders, Respondent shall comply with all current and future contaminant monitoring schedules issued by the Director.
4. Within thirty (30) days of the effective date of these Orders, Respondent shall complete a bacteria sample siting plan, in accordance with OAC Rule 3745-81-21(A) and submit a copy of the plan to Ohio EPA, NEDO, DDAGW, 2110 E. Aurora Road, Twinsburg, Ohio, 44087, as verification of compliance.
5. From the effective date of these Orders, Respondent shall comply with total coliform bacteria monitoring requirements, including both routine and repeat samples, in accordance with OAC Rule 3745-81-21.
6. By no later than October 31, 2011, Respondent shall take a minimum of one nitrate water sample, in accordance with OAC Rule 3745-81-23(B), and Respondent's 2011 contaminant monitoring schedule.
7. Within thirty (30) days of the effective date of these Orders, Respondent shall re-grade the surface surrounding Respondent's well so that it drains away from the well's casing, and shall insure that the height of the casing remains 12 inches above grade in compliance with OAC Rule 3745-9-05(O).
8. From the effective date of these Orders, Respondent shall comply with all PWS LTO renewal requirements in OAC Chapter 3745-84.