

OHIO E.P.A.

DEC - 1 2009

ENTERED DIRECTOR'S JOURNAL

DEC 0 1 2009

Effective Date

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

Hiney's Saloon :  
Attn: Jeanette Jones :  
9514 Mink Street Road :  
Marysville, Ohio 43040 :

Respondent,

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to the Hiney's Saloon (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.

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: Jim Lassiter Date: 12-1-09

#### **IV. FINDINGS**

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

1. Respondent owns and operates a "public water system" (PWS) as defined by ORC § 6109.01, which is also a "transient noncommunity water system" as defined by Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID#8039612) is located at 25 S. Main Street, Magnetic Springs (Union County), Ohio, 43036.
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 noncommunity 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.
5. In violation of OAC Rule 3745-81-21(A)(2)(a), Respondent failed to monitor for total coliform bacteria during the July 1 through September 30, 2005, July 1 through September 30, 2007, October 1 through December 31, 2007, and January 1 through March 31, 2008 monitoring periods.
6. In accordance with OAC Rule 3745-81-14(C), a PWS is in violation of the maximum contaminant level (MCL) for total coliform bacteria, and may pose an acute risk to human health, if any repeat sample collected in accordance with OAC Rule 3745-81-21 is fecal coliform-positive, Escherichia coli-positive (E. coli-positive), total coliform-positive following a fecal coliform-positive routine sample, or total coliform-positive following an E. coli-positive routine sample.
7. In violation of OAC Rule 3745-81-14(C), Respondent exceeded the monthly total coliform acute MCL during the April 2007 monitoring period, when an E. coli-positive repeat sample was collected following an E. coli-positive routine sample.
8. In accordance with OAC Rule 3745-81-21(B)(1), when a routine sample is determined to be total coliform-positive, a PWS shall monitor with a set of four repeat samples within twenty-four hours of being notified of the positive result.
9. In violation of OAC Rule 3745-81-21(B)(1), Respondent failed to collect four repeat samples within the required time period after May 2007 total coliform-positive sample.

10. In accordance with OAC Rule 3745-81-21(B)(6), version effective April 1, 1999 through December 31, 2007, when a PWS monitoring with fewer than five samples per month has one or more total coliform-positive samples, then the PWS shall monitor with at least five samples during the next month that the PWS provides water to the public.
11. In violation of OAC Rule 3745-81-21(B)(6), Respondent failed to collect the required five total coliform samples during the month following a total coliform-positive sample for the June 2007 monitoring period.
12. In accordance with OAC Rules 3745-09-05(O), (P), (T), and (U), well construction shall provide a well casing at least twelve inches above finished grade; a well cap to prevent the entrance of water, dirt, animals, insects, or other foreign matter; a vent on well cap; and protection for the top of the well from contamination or damage.
13. In violation of OAC Rules 3745-09-05(O), (P), (T), and (U), respectively, Respondent failed to provide a well casing at least twelve inches above the finished grade; failed to provide a well cap to prevent the entrance of water, dirt, animals, insects, or other foreign matter; failed to provide a vent on the well cap; and failed to protect the top of the well from contamination or damage.
14. In accordance with OAC Rule 3745-81-23(B)(1), all groundwater PWSs shall monitor to determine compliance with the MCL for nitrate annually according to a schedule provided by the Director.
15. On February 27, 2004, the Director issued Respondent a Chemical Monitoring Schedule for the compliance period that began March 1, 2004 and ended December 31, 2004.
16. On December 9, 2005, the Director issued Respondent a Chemical Monitoring Schedule for the compliance period that began January 1, 2006 and ended December 31, 2006.
17. In violation of OAC Rule 3745-81-23(B)(1) and Respondent's Chemical Monitoring Schedules for 2004 and 2006, Respondent failed to monitor for nitrate during the July 1 through December 31, 2004 and the June 1 through October 31, 2006 monitoring periods.
18. In accordance with OAC Rule 3745-81-23(C), all PWSs shall monitor to determine compliance with the MCL for nitrite according to a schedule provided by the Director.

19. In violation of OAC Rule 3745-81-23(C) and Respondent's Chemical Monitoring Schedule for 2004, Respondent failed to monitor for nitrite during the July 1 through December 31, 2004 monitoring period.
20. 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 these violations.
21. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notice for the following:
  - a. Total coliform bacteria monitoring violations for July 1 through September 30, 2005, July 1 through September 30, 2007, October 1 through December 31, 2007 and January 1 through March 31, 2008 monitoring periods.
  - b. Total coliform bacteria acute MCL violation for the April 2007 monitoring period.
  - c. Failure to collect five total coliform samples for the June 2007 monitoring period.
  - d. Nitrate monitoring violation for the June 1 through October 31, 2006 monitoring period.
22. Each violation cited above represents a separate violation of ORC § 6109.31.
23. Respondent has drilled a new well in response to the above-referenced violations in an effort to return the PWS to compliance.
24. Ohio EPA has reviewed Respondent's financial documentation and determined that Respondent does not have the ability to pay the \$6,000 penalty assessed pursuant to ORC Chapter 6109 for the above-referenced violations.

#### **V. ORDERS**

1. From the effective date of these Orders, Respondent shall comply with all current and subsequent monitoring schedules issued by the Director.
2. From the effective date of these Orders, Respondent shall comply with the MCL requirements for total coliform bacteria, in accordance with OAC Rule 3745-81-14.
3. From the effective date of these Orders, Respondent shall monitor for total coliform Bacteria with a minimum of one routine sample quarterly from the distribution system, and promptly perform any required repeat monitoring, in accordance with OAC Rule 3745-81-21.

4. Within thirty (30) days from the effective date of these Orders, Respondent shall post public notice, in accordance with OAC Rule 3745-81-32, for the violations listed in Finding #21. Respondent shall provide Ohio EPA with copies of all public notices and verification forms to Ohio EPA at the address listed in Section X of these Orders.

#### **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.

#### **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 otherwise required by specific Orders, 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  
Lazarus Government Center  
50 W. Town St., Suite 700  
Columbus, Ohio 43215

Attn: Ken Baughman

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 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**



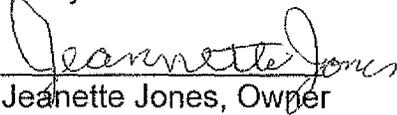
Chris Korleski, Director

DEC 01 2009

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Hiney's Saloon**



Jeannette Jones, Owner

10/30/09

\_\_\_\_\_  
Date