

OHIO E.P.A.

MAR 29 2005

Effective Date MAR 29 2005

ENTERED DIRECTOR'S JOURNAL



BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: :
:
Belgrade Gardens South, Inc. :
401 East State Street :
Barberton, Ohio 44203 :

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Respondent,

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Belgrade Gardens South, 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 (PWS) 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 correct copy of the
original as filed with the Ohio Environmental Protection Agency

Michael A. Shapiro 3/29/05

1. Respondent owns and operates a "public water system" (PWS) at Belgrade Gardens South which is a "non-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: 7790812) serves an average population of approximately forty (40) persons and a maximum population of three hundred (300) persons, and is located at 401 East State Street (Summit County), Ohio.
3. In accordance with OAC Rule 3745-81-14(B), a PWS which monitors with fewer than forty (40) 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 (monthly MCL).
4. In violation of OAC Rule 3745-81-14(B), Respondent received total coliform monthly MCL violations in December 1999, June 2000, November 2000, June 2003, March 2004 and April 2004.
5. 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 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 MCL).
6. 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 repeat samples within twenty-four (24) hours of being notified of the positive result.
7. In violation of OAC Rules 3745-81-14(D) and 3745-81-21(B)(1), Respondent failed to monitor with a set of four repeat samples within twenty-four (24) hours of being notified of routine total coliform positive results on November 16, 2000 and June 25, 2003, and received an acute MCL violation as well as a monitoring and reporting violation.
8. In accordance with OAC Rule 3745-81-21(A)(2)(a), a non-community water system using only ground water and serving not more than one thousand (1,000) persons shall monitor with at least one sample for total coliform each calendar quarter that the non-community water system provides water to the public.
9. In violation of OAC Rule 3745-81-21(A)(2)(a), Respondent failed to monitor with one routine total coliform bacteria sample during the July 1 through September 30, 2002 monitoring period.
10. Under OAC Rule 3745-81-76(D) and the definitions of "ground water" and "surface water" contained in OAC Rule 3745-81-01, the Director is required to designate in

writing the source water for each non-community water system as surface water or ground water.

11. In accordance with OAC Rule 3745-81-76(D) (version effective December 31, 1990 through December 31, 2001), on May 12, 1999, the Director issued a surface water source water designation to Respondent's PWS. On June 23, 1999, the surface water source designation became effective. This designation required Respondent to take action within eighteen (18) months of the effective date to install approved disinfection and filtration treatment for a surface water source, in accordance with OAC Rules 3745-81-72 and 3745-81-73, or provide for a source of water that would not be subject to treatment requirements as a surface water source.
12. In accordance with OAC Rule 3745-81-76(B)(2)(a) through (c), source water shall be designated as ground water when the source water comes from a well which meets all of the following criteria:
 - (a) The well shall meet all of the requirements for wells in OAC Chapter 3745-9;
 - (b) Untreated water samples from the well shall have been analyzed for total coliform contamination for at least the previous four calendar quarters of a year with no analysis showing any coliform bacteria present; and
 - (c) Water from the well shall have no history of carrying any known or suspected waterborne disease organism.
13. In accordance with OAC Rule 3745-81-76(C), designation of a PWS's water source as surface water brings the water system under the requirements of OAC Rules 3745-81-71 through 3745-81-75, the surface water treatment rules.
14. In the source designation letter dated May 12, 1999, the Director informed Respondent that options for achieving compliance with OAC Rules 3745-81-71 through 3745-81-75 included:
 - A) installation of approved filtration and disinfection treatment;
 - B) elimination of all of the construction and isolation defects of existing wells so that a redesignation as ground water could be possible;
 - C) abandonment of those wells designated as surface water and installation of an adequate, approved, ground water source;

- D) abandonment of those wells designated as surface water and installation of an approved hauled water system; or
 - E) abandonment of those wells designated as surface water and purchasing water from an approved PWS.
15. In accordance with OAC Rule 3745-81-73, a PWS that uses a surface water source, in whole or in part, shall provide filtration treatment which complies with the requirements of paragraph (A), (B), or (C) of this rule within eighteen (18) months following designation by the Director as a surface water source.
 16. In violation of OAC Rule 3745-81-73, Respondent failed to provide filtration treatment which complies with the requirements of paragraph (A), (B), or (C) of this rule during the months of January 2001, February 2001 and March 2001.
 17. Respondent collected four calendar quarters of untreated water samples from the PWS well with no analysis showing any coliform bacterium present. In accordance with OAC Rule 3745-81-76(D), on February 6, 2002, the Director issued a ground water source water designation to Respondent; on March 25, 2002, this ground water source designation became effective.
 18. In accordance with OAC Rule 3745-81-86 (D)(4)(d), a PWS monitoring annually or less frequently shall conduct the lead and copper tap water monitoring during the months of June, July, August, or September (June through September monitoring period).
 19. In violation of OAC Rule 3745-81-86 (D)(4)(d), Respondent failed to monitor for lead and copper as required during the June 1 through September 30, 2002 monitoring period.
 20. In accordance with OAC Rule 3745-81-32, the owner or operator of a PWS shall provide public notification for violations.
 21. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for exceeding the total coliform bacteria monthly MCL for December 1999, June 2000, November 2000, June 2003, March 2004 and April 2004.
 22. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for exceeding the total coliform bacteria acute MCL for November 2000 and June 2003, when Respondent failed to collect four repeat samples within twenty-four (24) hours after being notified of the positive result.

23. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failing to monitor with one routine total coliform bacteria sample during the July 1 through September 30, 2002 monitoring period.
24. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failing to install surface water treatment for March 2001.
25. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failing to monitor for lead and copper during the June 1 through September 30, 2002 monitoring period.
26. Each of the violations cited above represents a separate violation of ORC § 6109.31.

V. ORDERS

1. From the effective date of these Orders, and for as long as Respondent operates a PWS, 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, and for as long as Respondent operates a PWS, Respondent shall comply with lead and copper monitoring requirements, in accordance with OAC Rule 3745-81-86.
3. Within thirty (30) days of the effective date of these Orders, Respondent shall initiate an investigation, by hiring a registered well driller, of the well components and casing to determine possible causes of the bacteriological contamination. Within sixty (60) days of the effective date of these Orders, Respondent shall submit a written report of the well driller's findings and recommendations regarding the well components and casing to Ohio EPA.
4. Within thirty (30) days of the effective date of these Orders, Respondent shall initiate an investigation, by hiring a licensed plumber, on the interior plumbing of Belgrade Gardens South to determine possible causes of the bacteriological contamination. Within sixty (60) days of the effective date of these Orders, Respondent shall submit a written report of the licensed plumber's findings and recommendations on the distribution system to Ohio EPA.
5. Within thirty (30) days of the effective date of these Orders, Respondent shall install a new well cap and repair the electrical conduit. Within sixty (60) days of the effective date of these Orders, Respondent shall submit written verification of the installation of the new well cap and repair of the electrical conduit to Ohio EPA.

6. Respondent shall pay Ohio EPA the amount of five thousand two hundred and fifty dollars (\$5,250.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6109., and which will be deposited into the Drinking Water Protection Fund established pursuant to ORC § 6109.30. Payment shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049 together with a letter identifying Respondent as follows:
 - a. Within thirty (30) days of the effective date of these Orders, Respondent shall pay Ohio EPA two thousand six hundred and twenty-five dollars (\$2,625.00); and
 - b. Within ninety (90) days of the effective date of these Orders, Respondent shall pay Ohio EPA two thousand six hundred and twenty-five dollars (\$2,625.00).

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 defined in OAC Rule 3745-33-03(D)(1) for a corporation.

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 Respondent's operations or the PWS at the Belgrade Gardens South.

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.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to (with the exception of the penalty referenced in Order No. 6):

Ohio Environmental Protection Agency
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969

Att: Enforcement Supervisor, 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

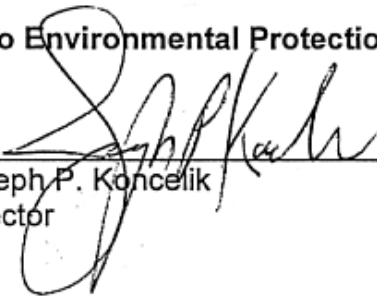
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Joseph P. Koncelik
Director

MAR 29 2005

Date

IT IS SO AGREED:

Belgrade Gardens South, Inc.



Signature

03/10/05

Date

MILOS K. PAPICH MANAGER
Printed or Typed Name and Title