

OHIO E.P.A.

JAN 22 2009

REGISTERED DIRECTOR'S JOURNAL

Effective Date JAN 22 2009

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Cuda Jo's Inc. :
Attn: Mr. Curtiss Aitken :
801 Hillman Road S. :
Columbus, Ohio 43207 :

Respondent,

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Cuda Jo's 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.

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: [Signature] Date: 1-22-09

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 water system" as defined by Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID# OH2345812) is located at 13607 Shell Beach Road (Fairfield County), Ohio, 43076.
3. Respondent's PWS obtains its drinking water from a "ground water under the influence of surface water" source as defined by OAC Rule 3745-81-01 and serves a population of 60 persons.
4. On August 11, 1999, the Director of Ohio EPA designated the well serving Respondent as being "ground water under the influence of surface water". The designation became effective on September 27, 1999, and gave PWS eighteen (18) months to:
 - a. Comply with the surface water treatment rules by installing filtration and disinfection facilities;
 - b. Eliminate deficiencies and have well re-evaluated and re-designated as a ground water source;
 - c. Abandon the existing well and install an adequate, approved new well;
 - d. Abandon the existing well and install an approved hauled water system; or
 - e. Abandon the existing well and purchase water from an approved PWS.
5. From February 2002 through June 2004, Respondent was a hauled water system, documented with proper receipts. Since June 2004, however, Respondent has not produced any documentation that it continued to purchase its water from a licensed hauler and is, therefore, presumed by Ohio EPA to have been using the well designated as "ground water under the influence of surface water" referenced in Findings #3 and #4 since that time.
6. In accordance with OAC Rule 3745-81-73, a PWS that uses a surface water source, in whole or part, shall provide treatment consisting of both disinfection and filtration treatment no later than eighteen (18) months following designation by the Director as a surface water source.
7. In violation of OAC Rule 3745-81-73, Respondent failed to provide adequate treatment of a surface water source during the monitoring periods of October through December 2005, January through March 2006, April through June 2006, July through September 2006, October through December 2006, January through March 2007, April through June 2007, July through September 2007 and October

through December 2007.

8. In accordance with OAC Rule 3745-81-21(A)(2)(c), a noncommunity water system using a surface water source, in whole or part, serving a population of fewer than four thousand one hundred persons shall monitor for total coliform at least four times per month for any month the noncommunity water system serves water to the public.
9. In violation of OAC Rule 3745-81-21(A)(2)(c), Respondent failed to monitor for total coliform at least four times during the monitoring periods of February 2006, March 2006, April 2006, July 2006, October 2006, and February 2008.
10. In accordance with OAC Rule 3745-81-21(B)(6), effective April 1, 1999 to January 1, 2008, when a PWS monitoring with fewer than five samples per month has one or more total coliform-positive samples, 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), effective April 1, 1999 to January 1, 2008, Respondent failed to collect five samples in the month following a total coliform-positive result for the June 2007 monitoring period.
12. In accordance with OAC Rule 3745-81-14(B), effective August 3, 2004 to January 1, 2008, a PWS which monitors with fewer than forty samples per month is in compliance with the MCL for total coliform when no more than one sample during the month is total coliform-positive.
13. In violation of OAC Rule 3745-81-14(B), effective August 3, 2004 to January 1, 2008, Respondent exceeded the MCL for total coliform by having more than one total coliform-positive sample during the May 2007 monitoring period.
14. In accordance with OAC Rule 3745-81-23(B)(2), all PWSs, which are surface water systems, shall monitor monthly to determine compliance with the MCL for nitrate.
15. In violation of OAC Rule 3745-81-23(B), Respondent failed to monitor for nitrate during the August 2007 monitoring period.
16. 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.
17. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notice for the following violations:
 - a. Failure to provide adequate treatment of a surface water source violations for October through December 2005, January through March 2006, April through June 2006, July through September 2006, October through

- December 2006, January through March 2007, April through June 2007, July through September 2007 and October through December 2007.
- b. Total coliform bacteria monitoring violations for failing to collect four samples per month for February 2006, March 2006, April 2006, July 2006, October 2006 and February 2008.
 - c. Total coliform bacteria monitoring violation for failing to collect five samples in the month following a total coliform-positive result for June 2007.
 - d. Total coliform bacteria MCL violation for May 2007.
18. Respondent returned to compliance for a portion of the public notice violations in Finding #17 by submitting copies of the required public notices and verification forms to Ohio EPA on October 7, 2008 and November 10, 2008 for the following violations:
- a. Failure to provide adequate treatment of a surface water source violations for July through September 2006 and October through December 2007.
 - b. Total coliform bacteria monitoring violation for failing to collect four samples per month for April 2006.
19. Each violation cited above represents a separate violation of ORC § 6109.31.

V. ORDERS

1. From the effective date of these Orders and as long as Respondent is a PWS, Respondent shall comply with all current and future monitoring schedules issued by the Director.
2. From the effective date of these Orders and as long as Respondent is a PWS and obtains water from a surface water source, Respondent shall monitor for total coliform bacteria with a minimum of four (4) samples per month in accordance with OAC Rule 3745-81-21(A)(2)(c) and shall comply with the MCL requirements for total coliform bacteria in accordance with OAC Rule 3745-81-14.
3. 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 remaining violations listed in Finding #17 not stated in Finding #18. Respondent shall provide copies of all public notices and verification forms within ten (10) days of posting to Ohio EPA at the address listed in Section X. Respondent shall continue to issue public notice in accordance with OAC Rule 3745-81-32 until Respondent complies with the surface water treatment rule requirements.
4. Within thirty (30) days of the effective date of these Orders, Respondent shall complete connection to Respondent's approved new drinking water well.

5. Immediately upon connection to the Respondent's approved new drinking water well, Respondent shall cease operation and physically separate the existing treatment plant from the distribution system. Within thirty (30) days from connection to the new approved drinking water well, Respondent shall properly abandon and seal existing drinking water well in accordance with OAC Rule 3745-9-10.
6. Immediately upon connection to Respondent's approved new drinking water well, Respondent shall comply with OAC Rule 3745-81-76 until Respondent's approved new drinking water well is designated by the Director as a ground water source.
7. Respondent shall pay the amount of five thousand two hundred dollars (\$5,200.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6109. Of this total amount, two thousand nine hundred sixty dollars (\$2,960.00) shall be paid to Ohio EPA in four (4) quarterly installments of seven hundred forty dollars (\$740.00) each by official check made payable to "Treasurer, State of Ohio" with the first installment of seven hundred forty dollars (\$740.00) being paid to Ohio EPA within thirty (30) days of the effective date of these Orders. Each official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

8. In lieu of paying one thousand forty dollars (\$1,040.00) of the remaining two thousand two hundred forty dollars (\$2,240.00) of the civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of one thousand forty dollars (\$1,040.00) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for one thousand forty dollars (\$1,040.00). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

9. In lieu of paying one thousand two hundred dollars (\$1,200.00) of the remaining two thousand two hundred forty dollars (\$2,240.00) of the civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a SEP by hiring and retaining for a period of one (1) year a Class I operator in accordance with OAC Rule 3745-7-03.

10. Should Respondent fail to fund either SEP within the required timeframes set forth in Order # 8 or 9, Respondent shall pay to Ohio EPA \$1,040.00 or \$1,200.00, respectively, of the civil penalty in accordance with the procedures in Order # 7.

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(D)(4) for a municipal facility.

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 shall be addressed to:

Ohio Environmental Protection Agency
Central District Office
Division of Drinking and Ground Waters
P.O. Box 1049
Columbus, Ohio 43216-1049

Attn: Susan Hampton

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

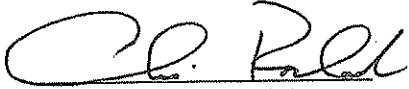
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

JAN 22 2009

Date

IT IS SO AGREED:

**Mr. Curtiss Aitken
Cuda Jo's Inc.**



Signature

12-26-08

Date

CURTISS AITKEN PRES.

Printed or Typed Name and Title