

OHIO E.P.A.

AUG 25 2010

ENTERED DIRECTOR'S JOURNAL

Effective Date AUG 25 2010

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Ripp Family Enterprises LLC :
415 West Eaton Pike :
Richmond, Indiana 47374 :

Respondent,

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Ripp Family Enterprises 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.

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: Don Lassiter Date: 8-25-10

IV. FINDINGS

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

1. Respondent owns and operates a "public water system" (PWS) at Skyborn Skateland, 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#OH2938512) is located at 5309 Haddix Road, Fairborn, (Greene County), Ohio, 45324.
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 75 persons.
4. The Director issued chemical contaminant monitoring schedules for Respondent's PWS for the following compliance periods:
 - a. The 2008 monitoring schedule was issued on or about January 1, 2008 for the compliance period that began on January 1, 2008 and ended on December 31, 2008; and,
 - b. The 2009 monitoring schedule was issued on or about January 1, 2009 for the compliance period that began on January 1, 2009 and ended on December 31, 2009.
5. In accordance with OAC Rule 3745-81-23(B), all PWSs which are ground water systems shall monitor annually to determine compliance with the maximum contaminant level (MCL) for nitrate. PWSs shall monitor inorganic chemicals according to a schedule provided by the Director.
6. In violation of OAC Rule 3745-81-23(B), and the 2008 and 2009 monitoring schedules, Respondent failed to monitor for nitrate during the January 1 to May 31, 2008 and January 1 to May 31, 2009 monitoring periods. Respondent has returned to compliance by taking a nitrate sample on September 30, 2009.
7. 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 for total coliform at a minimum monitoring frequency of one sample per quarter.
8. In violation of OAC Rule 3745-81-21(A)(2)(a), Respondent failed to monitor for total coliform during the following monitoring periods: July to September 2006; January to March 2008; July to September 2008; October to December 2008; January to March 2009; April to June 2009; and October to December 2009.

9. In accordance with OAC Rule 3745-81-32, the owner or operator of a PWS shall provide public notification for violations and submit copies of the required public notice and verification forms to the Director.
10. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification and submit a copy of the required public notice and verification form for failing to monitor for nitrate during the January 1 to May 31, 2008 monitoring period.
11. In accordance with OAC Rule 3745-81-60(D), a PWS shall respond to the Director in writing, within forty-five days following receipt of a sanitary survey letter, indicating how and on what schedule the PWS will address any significant deficiencies noted in the survey.
12. On January 27, 2010, Ohio EPA mailed Respondent a letter identifying significant regulatory deficiencies observed at Respondent's PWS during the January 11, 2010 sanitary survey. These deficiencies included, but were not limited to the following:
 - a. An air gap was present between the end of the electrical conduit line and the well cap in violation of OAC Rule 3745-9-05;
 - b. A seal did not exist between the well casing and the metal plate that surrounds the well casing, providing an avenue for water to seep down into the well casing, and it could not be determined that conditions below the metal plate promote drainage away from the well as required by OAC Rule 3745-9-05 (O);
 - c. Two plastic drain lines were submerged into the septic system drain line, creating a backflow hazard in violation of OAC Rule 3745-95-05; and,
 - d. The hose bib connections were not equipped with atmospheric vacuum breakers in violation of OAC Rule 3745-95-05.
13. Mr. David Ripp has stated that he left a voice message for Mr. David Secor of Ohio EPA on February 5, 2010, on behalf of Respondent, requesting an extension to the sanitary survey response deadline.
14. In violation of OAC Rule 3745-81-60(D), Respondent failed to respond to the Director, in writing, within forty-five (45) days following receipt of the January 27, 2010 sanitary survey letter, indicating how and on what schedule the significant deficiencies noted in the survey letter would be addressed by Respondent. On May 17, 2010, Respondent submitted a written response to the sanitary survey via email.
15. On May 19, 2010 Mr. David Secor of Ohio EPA conducted a limited scope site visit of Respondent's PWS and confirmed that items a., c. and d. of Finding No. 12 have been corrected.

16. Each violation cited above represents a separate violation of ORC § 6109.31.

V. ORDERS

1. Within thirty (30) days of the effective date of these Orders, Respondent shall remedy the violation in Finding No. 10 by issuing a public notification and by submitting copies of the required public notice and verification form to the Ohio EPA, Division of Drinking and Ground Waters (DDAGW), Central Office (CO), Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049, in accordance with OAC Rule 3745-81-32, for the failure of Respondent to monitor for nitrate during the January 1 to May 31, 2008 monitoring period.
2. From the effective date of these Orders, Respondent shall comply with all current and future contaminant monitoring schedules issued by the Director.
3. Within twelve (12) months of the effective date of these Orders, Respondent shall retain a certified Class A Water Supply "Operator of Record" for at least the minimum staffing time required per OAC Rule 3745-7-04, and shall forward the completed Operator of Record form to the Ohio EPA, DDAGW, Central Office (CO), Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049, Attn: Julie Gillenwater.
4. Should Respondent fail to comply with the timeframe in Order No. 3, Respondent shall pay the amount of eight hundred dollars (\$800.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 6109. Payment shall be made by an official check, made payable to "Treasurer, State of Ohio", and 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.
5. From the effective date of these Orders, Respondent shall comply with total coliform bacteria monitoring and MCL requirements, in accordance with OAC Rules 3745-81-21 and 3745-81-14, respectively.
6. Within twelve (12) months of the effective date of these Orders, Respondent shall backfill the outdoor well pit with clean cohesive soils or grout, in accordance with OAC Chapter 3745-9-05.
7. Within seven (7) days after the deadline given in Order No. 6, Respondent shall send written notification of compliance with the requirements to Ohio EPA at the address in Section X.

8. Should the pressure tank or other equipment associated with the PWS within the indoor well pit fail during the time these Orders are in effect, Respondent shall submit detail plans and a schedule for the Director's approval to raise equipment associated with the PWS out of the indoor well pit, in accordance with OAC Chapter 3745-91.
9. Within thirty (30) days of receipt of notification, Respondent shall respond in writing to address any comments or deficiencies noted by Ohio EPA on the detail plans or other documentation submitted by Respondent.

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 noted otherwise in specific orders, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southwest District Office
Division of Drinking and Ground Waters
401 East Fifth Street
Dayton, Ohio 45402
Attn: David Secor

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

AUG 25 2010
Date

IT IS SO AGREED:

Ripp Family Enterprises, LLC


Signature

July 23, 2010
Date

DAVID J. RIPP PRESIDENT
Printed or Typed Name and Title