

OHIO E.P.A.

APR 20 2009

ENTERED DIRECTOR'S JOURNAL

Effective Date APR 20 2009

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Mario Marra, Owner
Treasure Island
1898 West 25th St.
Cleveland, Ohio 44113

Respondent,

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: 4-20-09

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Mario Marra (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) at Treasure Island 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# OH0441712) is located at 5611 Pymatuning Lake Rd., Andover (Ashtabula County), Ohio, 44003.
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 30 persons.
4. In accordance with OAC Rule 3745-81-14(B), a PWS which monitors with fewer than forty samples per month is in compliance with the maximum contaminant level (MCL) for total coliform bacteria when no more than one sample during a month is total coliform-positive.
5. In violation of OAC Rule 3745-81-14(B), Respondent exceeded the monthly total coliform bacteria MCL during the February 2007 monitoring period when two samples tested total coliform-positive.
6. 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.
7. 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, 2004, October 1 through December 31, 2004, July 1 through September 30, 2005, October 1 through December 31, 2005, April 1 through June 30, 2006, July 1 through September 30, 2006, July 1 through September 30, 2007, October 1 through December 31, 2007, April 1 through June 30, 2008 and July 1 through September 30, 2008 monitoring periods.
8. In accordance with OAC Rule 3745-81-21(B)(6), version effective April 1, 1999 through December 31, 2007, when a PWS 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.
9. In violation of OAC Rule 3745-81-21(B)(6), version effective April 1, 1999 through December 31, 2007, Respondent failed to collect the required five total coliform samples during the month following a total coliform-positive sample for the monitoring period of March 2007.
10. In accordance with OAC Rule 3745-81-23, PWSs shall monitor for inorganic chemicals according to a schedule provided by the Director, and all groundwater PWSs shall monitor to determine compliance with the MCL for nitrate annually.

11. On or about January 1, 2004, the Director issued Respondent a Chemical Monitoring Schedule for the compliance period that began January 1, 2004 and ended December 31, 2004.
12. 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.
13. On or about January 1, 2007, the Director issued Respondent a Chemical Monitoring Schedule for the compliance period that began January 1, 2007 and ended December 31, 2007.
14. On or about January 1, 2008, the Director issued Respondent a Chemical Monitoring Schedule for the compliance period that began January 1, 2008 and ended December 31, 2008.
15. In violation of OAC Rule 3745-81-23(B)(1) and Respondent's Chemical Monitoring Schedules for 2004, 2006, 2007 and 2008, Respondent failed to monitor for nitrate during the January 1 through June 30, 2004, January 1 through May 31, 2006, January 1 through May 31, 2007 and January 1 through May 31, 2008 monitoring periods.
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:
 - a. Total coliform bacteria monthly MCL violation for the February 2007 monitoring period.
 - b. Total coliform bacteria monitoring violations for the July 1 through September 30, 2004, October 1 through December 31, 2004, July 1 through September 30, 2005, October 1 through December 31, 2005, April 1 through June 30, 2006, July 1 through September 30, 2006, March 2007, July 1 through September 30, 2007, October 1 through December 31, 2007, April 1 through June 30, 2008 and July 1 through September 30, 2008 monitoring periods.
 - c. Nitrate monitoring violations for the January 1 through June 30, 2004, January 1 through May 31, 2006, January 1 through May 31, 2007 and January 1 through May 31, 2008 monitoring periods.
18. In accordance with OAC Rule 3745-84-01(B)(1), no person shall operate or maintain a PWS without a PWS license issued by the Director.

19. In accordance with OAC Rule 3745-84-01(C), a person holding a PWS license or a license renewal shall submit a completed application for license renewal to the Director not less than thirty days prior to the expiration date of the license or license renewal and the application shall be accompanied by the appropriate fee.
20. As of the effective date of these Orders, in violation of OAC Rule 3745-84-01(C), Respondent has failed to submit a renewal application and fee payment for Respondent's 2005, 2006, 2008 and 2009 PWS Licenses to Operate.
21. In accordance with OAC Rule 3745-9-05(P), a well shall have a well cap to prevent the entrance of water, dirt, animals, insects, or other foreign matter. The well cap shall fit securely to the top of the well casing, be secured with screws or other appropriate connections, and vent to the atmosphere.
22. In accordance with OAC Rule 3745-9-05(O)(2), the finished grade around the well head shall be sloped for surface water runoff away from the well.
23. In violation of OAC Rules 3745-9-05(P) and (O)(2), Ohio EPA discovered during the November 9, 2004 sanitary survey that Respondent failed to properly secure the well cap and the grade around well head is not properly sloped to allow surface water runoff away from the well.
24. Each violation cited above represents a separate violation of ORC § 6109.31.

V. ORDERS

1. From the effective date of these Orders, Respondent shall comply with all current and subsequent Chemical Monitoring Schedules issued by the Director in accordance with OAC Chapter 3745-81.
2. 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.
3. 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.
4. From the effective date of these Orders, Respondent shall comply with all PWS license to operate renewal requirements in OAC Rule 3745-84-01(C).
5. Within fourteen (14) days of 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 #17. Respondent shall provide Ohio EPA with copies of all public notices and verification forms at the address listed in Section IX of these Orders.

6. Within fourteen (14) days of the effective date of these Orders, Respondent shall submit a renewal application and fee payment for Respondent's 2009 PWS License to Operate to Nick Haritos at Ohio EPA, DDAGW, P.O. Box 1049, Columbus, Ohio, 43216-1049.
7. Within thirty (30) days of the effective date of these Orders, Respondent shall submit verification to Ohio EPA, at the address indentified in Section IX, that payment or arrangement of a payment plan has been made with the Attorney General's Office, Collections Enforcement Section, 150 E. Gay Street, 21st Floor, Columbus, Ohio 43215, for the unpaid 2005, 2006, and 2008 PWS License to Operate fees (Ohio EPA Revenue IDs: 465370, 525318, and 631893).
8. Within thirty (30) days of the effective date of these Orders, Respondent shall correct the well deficiencies noted in Finding #23 and send verification when complete to the address listed in Section IX of these Orders.
9. Respondent shall pay the amount of three thousand five hundred dollars (\$3,500.00) in settlement of Ohio EPA's claim for administrative penalties, which may be assessed pursuant to ORC Chapter 6109. Within thirty (30) days of the effective date of these Orders, payment to Ohio EPA shall be made by official check made payable to "Treasurer, State of Ohio". 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

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. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Drinking and Ground Waters
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: Dave Maschak

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

X. 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. 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 actions which Ohio EPA may seek to require 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.

XI. 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 Section 3745.04 of the Ohio Revised Code. 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 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 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 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
309 South Fourth Street, Room 222
Columbus, OH 43215

XII. 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


Chris Korleski, Director

APR 20 2009
Date