

OHIO E.P.A.

Date Effective APR 15 2005

APR 15 2005

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:
Alvan Motor Freight, Inc.
3600 Alvan Road
Kalamazoo, MI 49001

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 Alvan Motor Freight, 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 Alvan Motor Freight, Inc. 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

1. Respondent owns and operates a "public water system" (PWS), which is a "non-transient, non-community water system" (NTNCWS), as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.

I hereby certify this to be a true and accurate copy of the
original document as filed in the records of the Ohio
Environmental Protection Agency.

Donna Jacobs 4-15-05

2. Respondent's PWS (PWS ID# 7729112) is located at 2755 Brecksville Road, Richfield (Summit County), Ohio and serves a population of approximately fifty-five people.
3. Respondent's PWS obtains its source water from one well, which is a "ground water" source as defined by OAC Rule 3745-81-01.
4. In accordance with OAC Rule 3745-81-21(A), PWSs shall collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. Such plans are subject to review and revision by the Director.
5. In violation of OAC Rule 3745-81-21(A), Respondent has failed to prepare and maintain a written sample siting plan for the collection of total coliform routine samples at sites which are representative of water throughout the distribution system from September 9, 2003 until the effective date of these Orders.
6. In accordance with OAC Rule 3745-81-21(A)(2)(a), a NTNCWS using only ground water and serving a population of not more than one thousand persons shall collect a minimum of one sample for total coliform analysis during each calendar quarter that the PWS provides water to the public.
7. In violation of OAC Rule 3745-81-21(A)(2)(a), Respondent failed to conduct total coliform routine monitoring for the following calendar quarters: October through December 2003, January through March 2004, April through June 2004, July through September 2004, and October through December 2004.
8. On December 10, 2003, Ohio EPA issued a chemical monitoring entry point and distribution schedule to Respondent (2004 monitoring schedule) for the compliance period that began on January 1, 2004 and ended on December 31, 2004.
9. On February 27, 2004, Ohio EPA issued a revised chemical monitoring distribution schedule to Respondent (2004 revised monitoring schedule) for the compliance period that began on January 1, 2004 and ended on December 31, 2004.
10. In accordance with OAC Rule 3745-81-23(B)(1), PWSs using a ground water source shall monitor annually to determine compliance with the maximum contaminant level (MCL) for nitrate in OAC Rule 3745-81-11 according to a schedule provided by the Director.
11. In violation of OAC Rule 3745-81-23(B)(1) and the 2004 monitoring schedule, Respondent failed to monitor to determine compliance with the MCL for nitrate between July 1 and December 31, 2004.

12. In accordance with OAC Rule 3745-81-23(C), PWSs using a ground water source shall monitor to determine compliance with the MCL for nitrite in OAC Rule 3745-81-11 according to a schedule provided by the Director.
13. In violation of OAC Rule 3745-81-23(C) and the 2004 monitoring schedule, Respondent failed to monitor to determine compliance with the MCL for nitrite between July 1 and December 31, 2004.
14. In accordance with OAC Rule 3745-81-23(D)(1), NTNCWSs shall monitor during the first three-year compliance period for each nine-year compliance cycle to determine compliance with the MCL for asbestos in OAC Rule 3745-81-11 according to a schedule provided by the Director.
15. In violation of OAC Rule 3745-81-23(D)(1) and the 2004 revised monitoring schedule, Respondent failed to monitor to determine compliance with the MCL for asbestos between July 1 and December 31, 2004.
16. In accordance with OAC Rule 3745-81-23(E)(1), NTNCWSs using a ground water source shall monitor with one sample at each sampling point during each compliance period to determine compliance with the MCL for inorganic chemicals (IOCs) in OAC Rule 3745-81-11(B) according to a schedule provided by the Director.
17. In violation of OAC Rule 3745-81-23(E)(1) and the 2004 monitoring schedule, Respondent failed to monitor for IOCs between July 1 and December 31, 2004.
18. In accordance with OAC Rule 3745-81-24(B)(3), NTNCWSs shall monitor initially for volatile organic chemicals (VOCs) with four consecutive quarterly samples for each contaminant listed in OAC Rule 3745-81-12(D) during each compliance period according to a schedule provided by the Director.
19. In violation of OAC Rule 3745-81-24(B)(3) and the 2004 monitoring schedule and 2004 revised monitoring schedule, Respondent failed to monitor for VOCs during the calendar quarters of January through March 2004, April through June 2004, July through September 2004, and October through December 2004.
20. In accordance with OAC Rule 3745-81-24(C)(1) and (3), NTNCWSs using a ground water source shall monitor to determine compliance with the MCL for synthetic organic chemicals (SOCs) with a minimum of one sample at each sampling point, each time monitoring is required, for each contaminant listed in OAC Rule 3745-81-12(E) according to a schedule provided by the Director.

21. In violation of OAC Rule 3745-81-24(C)(1) and (3) and the 2004 monitoring schedule, Respondent failed to monitor for SOCs between July 1 and September 30, 2004.
22. In accordance with OAC Rule 3745-81-86(D)(1)(b), all small and medium PWSs shall monitor initially for lead and copper (Pb/Cu) during each six-month monitoring periods until one of the conditions contained in paragraphs (i) or (ii) are met.
23. In violation of OAC Rule 3745-81-86(D)(1)(b), Respondent failed to monitor for Pb/Cu during the January 1 through June 30, 2004 and July 1 through December 31, 2004 initial six-month monitoring periods.
24. In accordance with OAC Rule 3745-9-05(O), a PWSs well casing height shall be at least twelve (12) inches above finished grade and at least twelve (12) inches above the well house floor or concrete apron surface.
25. In violation of OAC Rule 3745-9-05(O), Respondent has failed to extend the well casing to a height of at least twelve (12) inches above finished grade since September 9, 2003 until the effective date of these Orders.
26. In accordance with OAC Rule 3745-81-32, the owner or operator of a PWS shall provide public notification for violations.
27. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failure to perform routine total coliform bacteria monitoring during the calendar quarters of October through December 2003, January through March 2004, April through June 2004, July through September 2004, and October through December 2004.
28. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failure to monitor for nitrate, nitrite, asbestos, and IOCs between July 1 and December 31, 2004.
29. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failure to monitor for VOCs during the calendar quarters of January through March 2004, April through June 2004, July through September 2004, and October through December 2004.
30. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failure to monitor for SOCs between July 1 and September 30, 2004.

31. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failure to monitor for Pb/Cu during the January 1 through June 30, 2004, and July 1 through December 31, 2004 monitoring periods.
32. Each of the violations cited above represents a separate violation of ORC § 6109.31.

V. ORDERS

1. Respondent shall immediately comply with the routine and repeat sampling requirements for total coliform bacteria, in accordance with OAC Rule 3745-81-21.
2. From the effective date of these Orders, and for as long as Respondent operates a PWS, Respondent shall comply with Pb/Cu monitoring requirements, in accordance with OAC Rule 3745-81-86.
3. On or before March 31, 2005, Respondent shall monitor for VOCs in accordance with OAC Rule 3745-81-24 and the chemical monitoring distribution schedule issued to Respondent on December 10, 2004 for the compliance period that began on January 1, 2005 and ends on December 31, 2005 (2005 monitoring schedule).
4. Respondent shall comply with the 2005 monitoring schedule and all subsequent monitoring schedules issued by the Director.
5. Within thirty (30) days of the effective date of these Orders, Respondent shall post public notices for the monitoring violations in Findings Nos. 27 through 31. Respondent shall submit copies of the public notices and verification forms to Ohio EPA, Northeast District Office (NEDO), Division of Drinking and Ground Waters (DDAGW).
6. Within thirty (30) days of the effective date of these Orders, Respondent shall prepare a written total coliform sample siting plan pursuant to OAC Rule 3745-81-21 (A) and shall submit this plan to Ohio EPA, NEDO, DDAGW for review and comment.
7. Respondent shall pay to Ohio EPA eighteen thousand eight hundred dollars (\$18,800.00) in settlement of Ohio EPA, DDAGW claims 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.

8. Within thirty (30) days of the effective date of these Orders, Respondent shall pay Ohio EPA the amount of seven thousand dollars (\$7,000.00) of the civil penalty to be deposited into the Drinking Water Protection Fund established pursuant to ORC § 6109.30. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$7,000.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent.
9. In lieu of payment to Ohio EPA of the remaining eleven thousand eight hundred dollars (\$11,800.00) of civil penalty, on or before November 1, 2005, Respondent shall perform the following activities to receive supplemental environmental project (SEP) credit:
 - a. Connect to the City of Richfield's municipal water supply; and
 - b. Properly abandon and seal the existing drinking water well in accordance with OAC Chapter 3745-9.
10. On or before December 1, 2005, Respondent shall submit documentation to confirm completion of the SEP outlined in Order No. 9 to Ohio EPA.
11. Should the Respondent fail to complete the SEP outlined in Order No. 9 on or before November 1, 2005, Respondent shall pay to Ohio EPA eleven thousand eight hundred dollars (\$11,800.00) of the civil penalty in accordance with the procedures in Order No. 8.
12. Should Respondent fail to timely and/ or fully complete the SEP outlined in Order No. 9, upon receipt of written notification from Ohio EPA, Respondent shall be required to complete the following activities:
 - a. Within thirty (30) days of the effective date of these Orders, Respondent shall hire an individual or firm qualified for such modifications to extend the casing at least twelve (12) inches above grade in accordance with OAC Rule 3745-9-05. Within thirty (30) days of completion, Respondent shall submit written notification to Ohio EPA; and
 - b. Within (30) days, Respondent shall commence with monitoring the untreated PWS source water for total coliform bacteria for four consecutive calendar quarters, with no total coliform-positive sample results; and

- c. Should Respondent be unable to complete four consecutive calendar quarters of source water monitoring without total coliform-positive results, Respondent shall, within ninety (90) days of notification of any total coliform-positive source water sample result or within ninety (90) days of the end date of a quarter during which Respondent failed to obtain the required sample, install an adequate, approved, water source and submit plans therefor to the Director, in accordance with ORC § 6109.07 and OAC Chapter 3745-91.
- d. Within thirty (30) days, Respondent shall monitor for IOCs, nitrate and nitrite in accordance with OAC Rule 3745-81-23 and the requirements from the 2004 monitoring schedule.
- e. Within thirty (30) days, Respondent shall monitor for asbestos in accordance with OAC Rule 3745-81-23 and the requirements from the 2004 revised monitoring schedule.

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).

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 Alvan Motor Freight.

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 the Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders (with the exception of the penalty payment referenced in Order # 8) shall be addressed to:

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

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

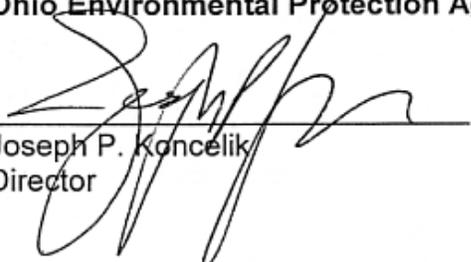
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

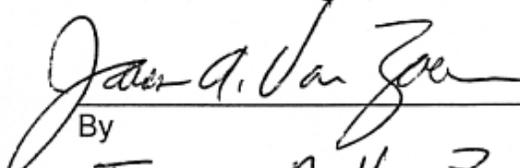


Joseph P. Koncek
Director

APR 15 2005
Date

IT IS SO AGREED:

Alvan Motor Freight, Inc.


By _____
James A. Van Zoeren
Name & Title
President & CEO

3/29/05
Date