

Effective Date MAR 10 2008

OHIO E.P.A.

MAR 10 2008

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

McCartyville Well Association :  
Intersection of St. Route 29 :  
and St. Route 119 :  
McCartyville, Ohio 45302 :

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.

Respondent,

I. JURISDICTION

By: [Signature] Date: 3-10-08

These Director's Final Findings and Orders (Orders) are issued to the McCartyville Well Association (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 there under.

IV. FINDINGS

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

1. Respondent owns and operates a "public water system" (PWS), which is also a "community water system" as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID# 7500812) is located at the intersection of St. Route 29 and St. Route 119 McCartyville, (Shelby County), Ohio, 45302.

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 approximately 190 persons.
4. On December 7, 2002, Respondent's PWS designation by the Director, as a Class A PWS in accordance with OAC Rule 3745-7-03, became effective.
5. In accordance with OAC Rule 3745-7-03(B)(4), a PWS with ground water treatment to remove any chemical contaminant (i.e. arsenic) with a maximum contaminant level (MCL) and a design flow of less than 0.5 million gallons per day shall be classified as a Class I system.
6. In accordance with OAC Rule 3745-81-23(E)(2)(a), a community PWS scheduled by the Director to monitor for arsenic in 2005 which detected arsenic above 0.008 milligrams per liter (mg/L) was required to collect a sample for arsenic analysis quarterly in 2006. These samples were required to determine compliance with the arsenic MCL in OAC Rule 3745-81-11(B).
7. On December 16, 2005, the Director issued chemical contaminant monitoring schedules to Respondent (2006 monitoring schedules) for the compliance period that began on January 1, 2006 and ended on December 31, 2006. Pursuant to the 2006 monitoring schedules, Respondent was required to monitor for arsenic quarterly at two specified sampling monitoring points: EP001(STUID:7558201); EP002 (STUID:7560596).
8. In violation of OAC Rule 3745-81-23(E)(2)(a) and the 2006 monitoring schedules, Respondent failed to monitor and report results for arsenic at both sampling monitoring points during the July 1 to September 30, 2006 monitoring period. Respondent returned to compliance by monitoring for arsenic at both sampling monitoring points on October 18, 2006.
9. Respondent's arsenic sample results at EP001 were 0.005 mg/L on March 19, 2006, 0.011 mg/L on June 20, 2006, 0.010 mg/L on October 18, 2006, 0.013 mg/L on December 22, 2006, <0.0030 mg/L on March 20, 2007, 0.020 mg/L on May 29, 2007, and 0.014 mg/L on September 18, 2007; arsenic sample results at EP002 were 0.012 mg/L on March 19, 2006, 0.011 mg/L on June 20, 2006, 0.013 mg/L on October 18, 2006, 0.014 mg/L on December 22, 2006, 0.015 mg/L on March 20, 2007, 0.019 mg/L on May 29, 2007, and 0.011 mg/L on September 18, 2007.

10. In accordance with OAC Rule 3745-81-23(H)(2), for PWSs which are conducting monitoring at a frequency greater than annual, compliance with the MCL for arsenic is determined by a running annual average (RAA) at each sampling point. The PWS will not be considered in violation of the MCL until it has completed one year of quarterly sampling. If a PWS fails to collect the required number of samples, compliance with the MCL (average concentration) will be based on the total number of samples collected.
11. In accordance with OAC Rule 3745-81-11(B), the MCL for arsenic is 0.010 mg/L.
12. In violation of OAC Rule 3745-81-11(B), Respondent exceeded the arsenic MCL, at EP001 during the April through June 2007 quarter with an arsenic RAA of 0.011 mg/L, and July through September 2007 with an arsenic RAA of 0.012 mg/L; and at EP002 during the October through December 2006 quarter with an arsenic RAA of 0.012 mg/L, January through March 2007 with an arsenic RAA of 0.013 mg/L, April through June 2007 quarter with an arsenic RAA of 0.016 mg/L, and July through September 2007 quarter with an arsenic RAA of 0.015 mg/L.
13. In accordance with OAC Rule 3745-81-23(B)(1), PWSs which are ground water systems shall monitor for nitrate annually.
14. On December 12, 2001, the Director issued to Respondent a chemical monitoring schedule (2002 monitoring schedule) for the compliance period that began on January 1, 2002 and ended on December 31, 2002.
15. In accordance with OAC Rule 3745-81-23(B)(1) and Respondent's 2002 monitoring schedule, Respondent was required to monitor for nitrate at both sampling monitoring points during the July 1 through December 31, 2002 monitoring period.
16. In violation of OAC Rule 3745-81-23(B)(1) and the 2002 monitoring schedule, Respondent failed to monitor for nitrate at monitoring point (EP001) during the July 1 through December 31, 2002 monitoring period. Respondent returned to compliance by monitoring for nitrate at both monitoring points on August 4, 2003.
17. In accordance with OAC Rule 3745-81-24(B), community and nontransient noncommunity PWSs shall monitor for synthetic organic chemicals (SOCs) with MCLs listed in OAC Rule 3745-81-12(E).
18. On December 10, 2004, the Director issued Respondent a chemical monitoring schedule (2005 monitoring schedule) for the compliance period that began on January 1, 2005 and ended on December 31, 2005.

19. In violation of OAC Rule 3745-81-24(B) and Respondent's 2005 monitoring schedule, Respondent failed to monitor for the following SOCs at both sampling monitoring points during the October 1 through December 31, 2005 monitoring period: alachlor, atrazine, and simazine. Respondent returned to compliance on March 29, 2006 by monitoring for the SOCs at both monitoring points.
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 an acceptable public notification and submit copies of the required public notice and verification form for:
  - a. failing to monitor and report results for nitrate during the July 1 through December 31, 2002 monitoring period;
  - b. failing to monitor and report results for alachlor, atrazine, and simazine during the October 1 through December 31, 2005 monitoring period;
  - c. failing to monitor and report results for arsenic during the July 1 to September 30, 2006 monitoring period; and
  - d. exceeding the arsenic MCL at EP001 during the April through June 2007 quarter; and at EP002 during the October through December 2006 quarter, January through March 2007, and April through June 2007 quarter.
22. In accordance with OAC Rule 3745-7-02(A)(1), each person owning or operating a PWS, shall designate one or more operator of record to oversee the technical operation of the PWS or each water treatment plant and distribution system within the PWS. Each operator of record shall have a valid certification of a class equal to or greater than the classification of the PWS, distribution system or water treatment plant.
23. In violation of OAC Rule 3745-7-02(A)(1), Respondent has failed to maintain an appropriately certified operator of record at the PWS. Respondent's operator of record Larry J. Poppe, failed to renew certification as required by December 31, 2006.
24. 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 violations in Finding No. 21 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:
  - a. failing to monitor and report results for nitrate during the July 1 through December 31, 2002 monitoring period;
  - b. failing to monitor and report results for alachlor, atrazine, and simazine during the October 1 through December 31, 2005 monitoring period;
  - c. failing to monitor and report results for arsenic during the July 1 to September 30, 2006 monitoring period; and
  - d. exceeding the arsenic MCL at EP001 during the April through June 2007 quarter; and at EP002 during the October through December 2006 quarter, January through March 2007, and April through June 2007 quarter.
2. Within thirty (30) days of the effective date of these Orders, Respondent shall hire and retain an appropriately certified operator, in accordance with OAC Rule 3745-7-03.
3. From the effective date of these Orders, Respondent shall comply with all current and future chemical contaminant monitoring schedules issued by the Director.
4. 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.
5. From the effective date of these Orders, Respondent shall comply with arsenic monitoring and reporting requirements, in accordance with OAC Rule 3745-81-23.
6. From the effective date of these Orders, Respondent shall issue public notice for all arsenic MCL violations in accordance with OAC Rule 3745-81-32.
7. Within sixty (60) days of completion of Respondent's current pilot study for arsenic removal treatment, Respondent shall submit a report in which the data collected, results of the data analysis, and the conclusions and recommendations

are presented in an acceptable format to Ohio EPA, Central Office, DDAGW, Engineering for review and approval. Data shall also be submitted in an agreed-upon electronic format. The report shall also include all other data collected during start-up prior to each test period. For each operation mode performed during the pilot study, the pertinent parameters (raw water source, chemical type and dose, pH, etc.) shall be clearly defined and presented in the report.

8. If the pilot study is not acceptable because the treatment failed to demonstrate sufficient consistent and reliable treatment, a revised pilot study protocol is required to be submitted to Ohio EPA, within ninety (90) days of receiving a written comment letter from Ohio EPA.
9. If Ohio EPA should require any revisions to the revised pilot study protocol. Respondent shall make any such changes or modifications and/or submit any additional information to Ohio EPA within thirty (30) days of receiving a written comment letter from Ohio EPA.
10. Within thirty (30) days of approval of the revised pilot study protocol, Respondent shall commence the pilot study, and within sixty (60) days of completion of the pilot study, Respondent shall submit a report as specified in order No. 7.
11. Within sixty (60) days of pilot study report approval, Respondent shall submit detailed plans for arsenic removal treatment (three copies), in accordance with OAC Chapter 3745-91, to Ohio EPA, DDAGW, CO Engineering Section, Lazarus Government Center, P.O. Box 1049, Columbus, Ohio 43216-1049, for review and approval.
12. Within three (3) months of detail plan approval, in accordance with detail plans approved by Ohio EPA and OAC Chapter 3745-91, Respondent shall commence installation/construction of the selected option for correcting the arsenic MCL violation.
13. Within nine (9) months of detail plan approval, in accordance with the detail plans approved by Ohio EPA and OAC Chapter 3745-91, Respondent shall complete installation and commence operation of the treatment for arsenic removal.
14. Within thirty (30) days of completion of the treatment for arsenic removal, Respondent shall designate an operator of record holding a valid Class 1 certification or higher to oversee the technical operation of the PWS, in accordance with OAC Chapter 3745-07.
15. Within twelve (12) months of completion of an arsenic treatment system, but no later than February 1, 2011, Respondent shall achieve compliance with the arsenic MCL, in accordance with OAC Rule 3745-81-12.

16. Within seven (7) days after the deadlines given in Orders No. 12, 13, and 14 above, Respondent shall send written notification of compliance with the requirements of each of the Orders to Ohio EPA, DDAGW, Southwest District Office, 401 East Fifth Street, Dayton, Ohio, 45402-2911.
17. Within thirty (30) days of receipt of notification, Respondent shall respond in writing to address any comments or deficiencies noted by Ohio EPA on any plan 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(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 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.

**X. NOTICE**

Except as specifically required by an individual Order, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio EPA, Southwest District Office  
Division of Drinking and Ground Waters  
401 East Fifth Street  
Dayton, Ohio, 45402-2911  
Attn: Dave Secor

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

**XI. 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 and/or for the violations described herein. 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 action which Ohio EPA may seek to require of 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.

**XII. 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 ORC § 3745.04. 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 the 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 upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

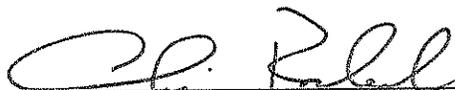
Environmental Review Appeals Commission  
309 South Fourth Street, Room 222  
Columbus, OH 43215

**XIII. 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

MAR 10 2008

Date