

OHIO E.P.A.

FEB 25 2005

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ENTERED DIRECTOR'S JOURNAL

Effective Date _____

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Merchant Service Center :
1234 South Cleveland- :
Massillon Road :
Akron, Ohio 44321 :

Respondent,

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Merchant Service Center (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

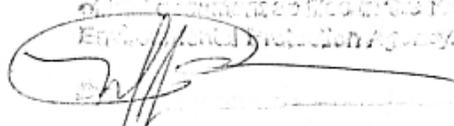
Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6109. and the rules promulgated thereunder.

IV. FINDINGS

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

1. Respondent owns and operates a "public water system" (PWS), 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 certify this to be a true and accurate copy of the
original document filed in the records of the Ohio
Environmental Protection Agency.

 25 FEB 2005

2. Respondent's PWS (PWS ID: 7721412) serves a population of approximately seventy-five (75) persons and is located at 1234 South Cleveland-Massillon Rd, Akron (Summit County), Ohio.
3. Respondent's PWS obtains its drinking water from a "surface water" source as defined by OAC Rule 3745-81-01.
4. In accordance with OAC Rule 3745-81-14 (B), a PWS which monitors with fewer than forty (40) samples per month is in compliance with the maximum contaminant level (MCL) for total coliforms when no more than one sample during a month is total coliform positive (monthly MCL).
5. In violation of OAC Rule 3745-81-14 (B), Respondent exceeded the total coliform monthly MCL in April 2004, August 2004, and September 2004 when more than one sample was total coliform positive.
6. In accordance with OAC Rule 3745-81-14 (D), failure to monitor with repeat samples as required by OAC Rule 3745-81-21 is a MCL violation as well as a monitoring and reporting violation. Failure to monitor with the required repeat samples is a violation that may pose an acute risk to human health (acute MCL).
7. In accordance with OAC Rule 3745-81-21 (B)(1), when a routine sample is determined to be total coliform-positive, the PWS shall monitor with a set of four repeat samples within twenty-four (24) hours of being notified of the positive result.
8. In violation of OAC Rules 3745-81-14 (D) and 3745-81-21 (B)(1), Respondent failed to monitor with a set of four repeat samples within twenty-four (24) hours of being notified of routine total-coliform positive result on March 17, 2004, and received an acute MCL violation as well as a monitoring and reporting violation.
9. In December 2003, the Director issued a chemical contaminant monitoring schedule to Respondent (2004 monitoring schedule) for the compliance period that began on January 1, 2004 and ends on December 31, 2004.
10. In accordance with OAC Rule 3745-81-24, NTNCWS shall monitor for organic chemicals according to a schedule provided by the Director.
11. In violation of OAC Rule 3745-81-24 and Respondent's 2004 monitoring schedule, Respondent failed to monitor for synthetic organic chemicals (SOCs) during the May through July 2004 monitoring period. Respondent monitored untimely for SOCs on October 19, 2004.
12. In violation of OAC Rule 3745-81-24 and Respondent's 2004 monitoring schedule, Respondent failed to monitor for volatile organic chemicals (VOCs) during the

January through March and April through June 2004 monitoring periods. Respondent monitored untimely for VOCs on September 29, 2004.

13. In accordance with OAC Rule 3745-81-76 (D) (version effective December 31, 1990 through December 31, 2001), on May 12, 1999, the Director issued a surface water source water designation to the former owner of Respondent's PWS. On June 23, 1999, the surface water source designation became effective. This designation required the former owner of Respondent's PWS to take action within eighteen (18) months of the effective date to install approved disinfection and filtration treatment for a surface water source, in accordance with OAC Rules 3745-81-72 and 3745-81-73, or provide for a source of water that would not be subject to treatment requirements as a surface water source.
14. In accordance with OAC Rule 3745-81-76 (B)(2)(a) through (c), source water shall be designated as ground water when the source water comes from a well which meets all of the following criteria:
 - (a) The well shall meet all of the well requirements in OAC Chapter 3745-9;
 - (b) Untreated water samples from the well shall have been analyzed for total coliform contamination for at least the previous four calendar quarters of a year with no analysis showing any coliform bacteria present; and
 - (c) Water from the well shall have no history of carrying any known or suspected waterborne disease organism.
15. In accordance with OAC Rule 3745-81-76 (C), designation of a PWS's water source as surface water brings the water system under the requirements of OAC Rules 3745-81-71 through 3745-81-75, the surface water treatment rules.
16. In the source designation letter dated May 12, 1999, the Director informed the former owner of Respondent's PWS that options for achieving compliance with OAC Rules 3745-81-71 through 3745-81-75 included:
 - A) installation of approved filtration and disinfection treatment;
 - B) elimination of all of the construction and isolation defects of existing wells so that a re-designation as ground water could be possible;
 - C) abandonment of those wells designated as surface water and installation of an adequate, approved, ground water source;

- D) abandonment of those wells designated as surface water and installation of an approved hauled water system; or
 - E) abandonment of those wells designated as surface water and purchasing water from an approved PWS.
17. In accordance with OAC Rule 3745-81-73, a PWS that uses a surface water source, in whole or in part, shall provide filtration treatment which complies with the requirements of paragraph (A), (B), or (C) of this rule within eighteen (18) months following designation by the Director as a surface water source. Pursuant to the June 23, 1999 effective date of the surface water source designation, such treatment was required to be provided at Respondent's PWS by December 23, 2000.
 18. In violation of OAC Rule 3745-81-73, Respondent has failed to provide filtration treatment which complies with the requirements of paragraph (A), (B), or (C) of this rule during each month from October 1, 2003, the date Respondent became the responsible owner of the PWS, to the effective date of these Orders.
 19. In accordance with OAC Rule 3745-81-86 (D)(1)(b), all small and medium-size PWSs shall monitor for lead and copper during each six-month monitoring period (July through December and January through June) until:
 - (i) The system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements under OAC Rule 3745-81-81, in which case the system shall continue monitoring in accordance with paragraph (D)(2) of this rule, or
 - (ii) The system monitoring results do not exceed the lead or copper action level during two consecutive six-month monitoring periods, in which case the system may reduce monitoring in accordance with paragraph (D)(4) of this rule.
 20. In violation of OAC Rule 3745-81-86 (D)(1)(b), Respondent failed to monitor for lead and copper during the July 2003 to December 2003 monitoring period.
 21. In accordance with OAC Rule 3745-81-21(A), a PWS shall collect total coliform routine samples at sites which are representative of water throughout the distribution system according to a written sample siting plan.
 22. From at least October 1, 2003, to December 20, 2004, in violation of OAC Rule 3745-81-21(A), Respondent 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.

23. In accordance with OAC Rule 3745-81-32, the owner or operator of a PWS shall provide public notification for violations.
24. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for exceeding the total coliform bacteria monthly MCL for April 2004, August 2004, and September 2004.
25. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for exceeding the total coliform bacteria acute MCL for March 2004, when Respondent failed to collect four repeat samples within twenty-four (24) hours after being notified of the positive result.
26. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failure to monitor for SOCs during the May through July 2004 monitoring period.
27. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failure to monitor for VOCs during the during the January through March and April through June 2004 monitoring periods.
28. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failure to provide adequate treatment for their surface water source during the months of December 2003, January 2004, February 2004, March 2004, April 2004, May 2004, June 2004, July 2004, August 2004, September 2004, and October 2004.
29. Each of the violations cited above represents a separate violation of ORC § 6109.31.

V. ORDERS

1. From the effective date of these Orders, and for as long as Respondent operates a PWS, Respondent shall comply with total coliform bacteria monitoring and MCL requirements, in accordance with OAC Rules 3745-81-21 and 3745-81-14, respectively.
2. From the effective date of these Orders, and for as long as Respondent operates a PWS, Respondent shall comply with lead and copper monitoring and reporting requirements, in accordance with OAC Rules 3745-81-86 through 3745-81-90.
3. For as long as Respondent's PWS continues using a surface water source, Respondent shall monitor for total coliform bacteria four times per month from the distribution system and for nitrate with one sample per month from the entry point into the distribution system, in accordance with OAC Rules 3745-81-21 and 3745-81-23, respectively.

4. Respondent shall comply with the 2004 monitoring schedule and all subsequent chemical contaminant monitoring schedules issued by the Director.
5. Within thirty (30) days of the effective date of these Orders, Respondent shall notify the public, in accordance with OAC Rule 3745-81-32, for the violations identified in Finding Nos. 24 through 28, and shall submit copies of all public notices and verification forms to Ohio EPA, Northeast District Office (NEDO), Division of Drinking and Ground Waters (DDAGW).
6. For as long as Respondent's PWS uses a surface water source without providing approved filtration under OAC Rule 3745-81-73, Respondent shall notify the public of the treatment technique violations by continuous posting, in accordance with OAC Rule 3745-81-32. Respondent shall submit to Ohio EPA, NEDO, DDAGW copies of all public notices and verification forms by not later than ten (10) days after the end of each month.
7. Respondent shall pay to Ohio EPA sixteen thousand dollars (\$16,000.00) in settlement of Ohio EPA, Division of Drinking and Ground Waters (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 to Ohio EPA four thousand dollars (\$4,000.00) 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 \$4,000.00. 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 twelve thousand dollars (\$12,000.00) of civil penalty, on or before March 31, 2005, Respondent shall perform the following activities to receive supplemental environmental project (SEP) credit:
 - a. Connect to the City of Akron's municipal water supply; and
 - b. Properly abandon and seal the well in accordance with OAC Chapter 3745-9.
10. On or before April 31, 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 March 31, 2005, Respondent shall pay to Ohio EPA the twelve thousand dollars (\$12,000.00) of civil penalty. Payment shall be made by an official check made

payable to "Treasurer, State of Ohio" for \$12,000.00. 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.

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 initiate of an investigation of its PWS, by hiring an individual or firm qualified for such inspections, to determine possible causes of the bacteriological contamination. Within sixty days (60) days, Respondent shall submit a written report of the inspector's findings and recommendations 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.

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 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 Merchant Service Center.

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 shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Drinking and Ground Waters
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969
Att: Enforcement Supervisor

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. Koncelik, Director

2/24/05
Date

IT IS SO AGREED:

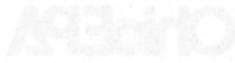
Merchant Service Center



Signature

02/10/05
Date

Daniel M. Heller
Printed or Typed Name and Title



State of Ohio Environmental Protection Agency

SUMMIT

MAILING ADDRESS
P.O. Box 1049
Columbus, OH 43216-1049

PUBLIC NOTICE

STREET ADDRESS
Lester G. Johnson Center
122 S. Front Street
Columbus, Ohio 43215

OHIO ENVIRONMENTAL PROTECTION AGENCY

Notice is hereby given that the Director of the Ohio Environmental Protection Agency, pursuant to Sections 3745.01 and 6109.04 of the Ohio Revised Code, has issued Final Findings and Orders to require Merchant Service Center to make payment of an administrative penalty. This final action was effective on February 25, 2005, and may be appealed to the Environmental Review Appeals Commission (ERAC) pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be filed with the ERAC within thirty (30) days after notice of the Director's action. A copy of the appeal must be served upon the Director of the Ohio Environmental Protection Agency within three (3) days of filing at the ERAC. The ERAC's address is:

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

I have enclosed a certified copy of the findings and orders, and a copy of the public notice that the Ohio EPA is required to publish.

If you have any questions concerning compliance with these findings and orders, please give me a call at (614) 644-2782.

Sincerely,

Lori Richmond
Environmental Specialist

Enclosures

cc: Scott Williams, Environmental Supervisor, DDAGW, NEBO
Unisa Museimen, Environmental Specialist, DDAGW, NEBO
Kim Rhoads, Office of Legal Services
Carol Hester, Manager, PIC