

OHIO E.P.A.

APR 28 2010

ENTERED DIRECTOR'S JOURNAL

Effective Date APR 28 2010

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Jerry Timmons :
7108 Scioto Darby Road :
Ashville, Ohio 43103 :

Respondent,

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Jerry Timmons (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 the obligations of the Respondent 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:

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: Janet Kessler Date: 4-28-10

1. Jerry Timmons has been the owner of the public water system (PWS) at the Wagon Wheel Mobile Home Park (Wagon Wheel) since approximately October 1980; James H. Croston, Jr. operated the PWS at Wagon Wheel under a land contract from January 2008 through December 31, 2009.
2. These Orders are being issued to Respondent to address the violations that occurred during his operations prior to the land contract; violations listed below which occurred between January 1, 2008 and December 31, 2009 are included in a separate set of Orders with James H. Croston, Jr. as the responsible party.
3. Respondent owns or operates a PWS, which is also a "community water system" as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.
4. Respondent's PWS (PWS ID# 6502812) at Wagon Wheel is located at 13380 Tenny Road, Mount Sterling (Pickaway County), Ohio, 43143.
5. 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 117 persons.
6. On March 10, 2003, Respondent's PWS was designated by the Director as a Class A PWS in accordance with OAC Rule 3745-7-03.
7. 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.
8. In violation of OAC Rule 3745-7-02(A)(1), James H. Croston, Jr. failed to designate an operator of record with a valid Class A certification or above to oversee the technical operation of the Wagon Wheel PWS from approximately January 1 to November 17, 2008 and May 27 to September 14, 2009.
9. James H. Croston, Jr. passed his Class A operator examination on February 7, 2007, receiving his Operator in Training certification; his Class A certificate was issued on August 10, 2009 and he became operator of record for the PWS on September 14, 2009, returning the PWS to compliance.
10. In accordance with ORC § 6109.12, every owner or operator of a PWS shall have analyses of the water made at such intervals and in such manner as may be ordered by Ohio EPA. Records of the results of such analyses shall be maintained and reported as required by Ohio EPA.

11. In accordance with OAC Rule 3745-83-01(I)(1), the owner or operator of a PWS shall prepare an operation report for each month (MOR) of operation on forms acceptable to the Director.
12. In accordance with OAC Rule 3745-83-01(I)(2), the MOR shall be signed by the operator in responsible charge, designated in accordance with OAC Rule 3745-7-02, and submitted to the district office no later than the tenth of the month following the month for which the report was prepared.
13. In violation of OAC Rule 3745-83-01(I)(2), James H. Croston, Jr. failed to submit signed MORs by the tenth day of the month for the months of May 2009, June 2009 and July 2009.
14. In accordance with OAC Rule 3745-81-23(E)(1), ground water systems shall take and analyze one sample at each sampling point during each compliance period for arsenic to determine compliance with the arsenic maximum contaminant level (MCL) in OAC Rule 3745-81-11(B).
15. In accordance with OAC Rules 3745-81-23, 3745-81-24 and 3745-81-26, the Director issued chemical contaminant monitoring schedules for the PWS for the following compliance periods:
 - a. The 2008 monitoring schedule was issued on 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.

Pursuant to these monitoring schedules, James H. Croston, Jr. was required to monitor for arsenic quarterly.

16. In accordance with OAC 3745-81-11(B), the MCL for arsenic is 0.010 milligrams per liter (mg/L).
17. 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.

18. In violation of OAC Rule 3745-81-11(B), the Respondent's PWS exceeded the arsenic MCL during the October 1 to December 31, 2006 monitoring period with an RAA of 0.012 mg/L and during the July 1 to September 30, 2007 monitoring period with an RAA of 0.011 mg/L.
19. Respondent's current RAA for arsenic at the Wagon Wheel PWS is 0.0048 mg/L.
20. In violation of OAC 3745-81-23 and the 2009 monitoring schedule, James H. Croston, Jr. failed to monitor for arsenic during the April 1 to June 30, 2009 monitoring period.
21. In accordance with OAC Rule 3745-81-21(A)(1)(a), a community water system serving a population less than or equal to one thousand persons shall monitor for total coliforms at a minimum monitoring frequency of one (1) sample per month.
22. In violation of OAC Rule 3745-81-21(A)(1)(a), James H. Croston, Jr. failed to monitor for total coliform during the month of February 2008.
23. On December 9, 2008, James H. Croston, Jr. signed a Bilateral Compliance Agreement (BCA) with Ohio EPA, which was triggered by arsenic MCL violations, total coliform monitoring violations and arsenic results fluctuating between non-detect and 19 micrograms per liter.
24. The December 9, 2008 BCA stated that the arsenic fluctuation should be investigated to determine if it was related to raw water levels and/or sampling technique. Item No. 5 of the BCA instructed James H. Croston, Jr. to:

Investigate fluctuations in arsenic levels and prepare a strategy to comply with the arsenic maximum contaminant level consistently and reliably. This investigation should include collecting monthly samples for a period of 12 months at all raw water sources and the entry point. Within 45 days of completion of sampling, provide Ohio EPA with a report summarizing results and a preferred strategy to maintain arsenic level at the entry point to below the maximum contaminant level.
25. James H. Croston, Jr. failed to comply with the December 9, 2008 BCA by not collecting monthly raw water and entry point samples to evaluate arsenic levels for a twelve month period as agreed upon. James H. Croston, Jr. also has not submitted a report describing a preferred strategy to maintain compliance with the arsenic MCL.
26. In accordance with OAC Rule 3745-83-01(C)(1), all community PWSs shall maintain a minimum of at least two-tenths milligram per liter free chlorine or one milligram per liter combined chlorine measured at representative points in the distribution system.

27. As a result of complaints, monitoring was performed during Limited Scope Site Visits (LSSVs) by Ohio EPA on April 16, 2008, June 10, 2008, June 13, 2008 and June 26, 2008, which documented that James H. Croston, Jr. was in violation of OAC Rule 3745-83-01(C)(1) by not meeting the minimum free or combined chlorine residual in the distribution system.
28. In violation of OAC Rule 3745-83-07(C)(1), James H. Croston, Jr.'s daily chlorine residual results recorded on MORs submitted for the months of June 2008, November 2008, January 2009 and April 2009 document either free or combined chlorine residuals below the minimum required or the failure to sample free or combine chlorine from the distribution system.
29. 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 future monitoring schedules issued by the Director.
2. From the effective date of these Orders, Respondent shall continue to comply with OAC Rule 3745-7-02(A)(1), by ensuring an operator of record with a valid Class A certification or above is designated to oversee the technical operation of Respondent's PWS.
3. From the effective date of these Orders, Respondent shall comply with total coliform bacteria monitoring requirements, in accordance with OAC Rule 3745-81-21.
4. From the effective date of these Orders, Respondent shall comply with arsenic monitoring and reporting requirements, in accordance with OAC Rule 3745-81-23.
5. From the effective date of the Orders, Respondent shall, in accordance with OAC Rule 3745-83-01(I)(2), submit MORs, signed by the operator in responsible charge, designated in accordance with OAC Rule 3745-7-02, to Ohio EPA, CDO, DDAGW, no later than the tenth of the month following the end of the period for which the report was prepared.
6. Within thirty (30) days of the effective date of these Orders, Respondent shall initiate the investigation into the cause of the arsenic fluctuation by collecting monthly raw water samples from each of the PWS wells and entry point samples to evaluate arsenic levels for a twelve-month period.
7. Within fifteen (15) months of the effective date of these Orders, Respondent shall submit a report describing the results of the arsenic fluctuation investigation.
8. Based upon the results of the report submitted in Order No. 7, Respondent shall complete either of the following:

- a. If the investigation shows that arsenic levels at the entry point and in both wells are consistently and reliably below the MCL, Respondent's compliance with Order Nos. 9-14 will not be required. However, Respondent shall maintain continuous compliance with the arsenic MCL; or,
 - b. If the investigation shows that arsenic levels at the entry point and in both wells are not consistently and reliably below the MCL, Respondent will be required to comply with Order Nos. 9-14.
9. Within sixteen (16) months of the effective date of these Orders, Respondent shall submit detail plans for a conventional arsenic treatment system (three copies) in accordance with OAC Chapter 3745-91 to Ohio EPA.
10. 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 for the treatment system.
11. Within thirty (30) days of Ohio EPA approval of detail plans, Respondent shall hire and retain a Class I or higher certified operator in accordance with OAC Rule 3745-7-03.
12. Within six (6) months of detail plan approval by Ohio EPA, in accordance with OAC Chapter 3745-91, Respondent shall complete installation and commence operation of the treatment system.
13. Within seven (7) days after the deadlines given in Order Nos. 11-12, Respondent shall send written notification of compliance with the requirements of each of the Orders to Ohio EPA at the address in Section X.
14. Within twelve (12) months of completion of the installation and commencement of operation of the treatment system, Respondent shall maintain continuous compliance with arsenic MCL.
15. From the effective date of the Orders, Respondent shall, in accordance with OAC Rule 3745-83-01(C)(1), maintain a minimum of at least two-tenths mg/L free chlorine or one mg/L combined chlorine at representative points in the distribution system.
16. Respondent shall pay the amount of two thousand, seven hundred dollars (\$2,700.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 6109. Within thirty (30) days of the effective date of these Orders, payment to Ohio EPA shall be made by an official check, made payable to the "Treasurer, State of Ohio" for two thousand, seven hundred dollars (\$2,700.00). 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.

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

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

Ohio EPA, Central District Office
Division of Drinking and Ground Waters
50 West Town Street, Suite 700
Columbus, Ohio 43215

Attn: Susan Hampton

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 agrees 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:

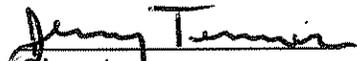
Ohio Environmental Protection Agency


Chris Korleski, Director

4/27/10
Date

IT IS SO AGREED:

Jerry Timmons


Signature

4-5-10
Date