

OHIO E.P.A.

FEB 25 2005

Effective Date FEB 25 2005

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Robert Wanenmacher
d.b.a. Bird's Nest Resort
1371 Langram Road
P.O. Box 473
Put-in-Bay, Ohio 43456

Respondent,

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Robert Wanenmacher (Respondent) d.b.a. the Bird's Nest Resort 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, heirs, and/or successors in interest liable under Ohio law. No change in ownership of the public water system (PWS) 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 PWS at the Bird's Nest Resort as defined by ORC § 6109.01 and a "transient non-community water system" as defined by Ohio Administrative Code (OAC) Rule 3745-81-01.

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

On 25 FEB 2005

2. Respondent's PWS (PWS ID:6256512) at the Bird's Nest Resort serves a population of at least 25 people and is located at 1371 Langram Road, Put-in-Bay, Put-In-Bay (Ottawa County), Ohio. Respondent operates seasonally from May through September.
3. ORC § 6109.31 states "[n]o person shall violate this chapter, any rule adopted under it, or any order or term or condition of a license, license renewal, variance, or exemption granted by the director of environmental protection under it. Each day of noncompliance is a separate violation."
4. Pursuant to ORC § 6109.04(C)(7), the Director may issue, modify, and revoke orders as necessary to carry out the Director's powers and duties under ORC Chapter 6109 and primary enforcement responsibility for PWSs under the "Safe Drinking Water Act."
5. Pursuant to ORC § 6109.06, whenever the Director of Ohio EPA determines that use of water from a PWS presents a threat to the health of persons using such water, he may issue a "water use advisory" alerting the owner, operator, or users of such system of the threat and advising that the use of the water be discontinued or that the water be boiled or otherwise treated to render it safe for use. The Director may order the owner or operator of such system to notify its users, or potential users, of the water use advisory by newspaper or other means and to provide notification to radio and television stations.
6. Pursuant to ORC § 6109.07(A) and OAC Rule 3745-91-02(A), no person shall begin construction or installation of a PWS, or make a substantial change in a PWS, until plans therefor have been approved by the Director. In violation of ORC § 6109.07(A) and OAC Rule 3745-91-02(A), Respondent failed to obtain plan approval from the Director prior to installing its PWS.
7. ORC § 6109.12 states that 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 the Ohio EPA. Records of the results of such analyses shall be maintained and reported as required by the Ohio EPA.
8. On August 26, 2004, Director's Final Findings and Orders were issued to Respondent which required Respondent to, among other things, conduct sampling for total coliform, install a raw water tap, correct any deficiencies with the PWS, submit as built plans, and address issues with the PWS's chlorinator, if applicable.
9. On September 15, 2004, Respondent's PWS was monitored by Michigan State University. Results submitted on September 24, 2004 showed a positive result for the Camylobacter test. On January 27, 2005, further speciation performed by the Center for Disease Control indicated the presence of the bacteria genus Acinetobacter.

10. Based upon the positive Acinetobacter results of January 27, 2005, one Escherichia coli positive on June 23, 2004, and five Escherichia coli positive samples on July 7, 2004, and pursuant to OAC Rule 3745-81-76, the Director issued a proposed surface water source water designation to Respondent's PWS on February 2, 2005. A copy of the February 2, 2005 designation letter and the informational sheet that was included with this letter are attached hereto as Attachment A, and incorporated by reference as if fully rewritten herein.

V. ORDERS

1. The Director's Final Findings and Orders issued to Respondent on August 26, 2004 are hereby revoked.
2. Respondent shall implement one of the options listed in the February 2, 2005 designation letter or implement the interim measure provided for in Option 4 in the informational sheet, prior to recommencing with operation of the PWS at the Bird's Nest Resort.
3. Within sixty (60) days of the effective date of these Orders, should Respondent decide to implement the interim measure provided for in Option 4 in the informational sheet or implement Option 1 of the February 2, 2005 letter (filtration and disinfection), Respondent shall hire a registered well driller and cause the registered well driller to initiate an investigation of the well components and casing to determine possible causes of the bacteriological contamination. Within ninety (90) days of the effective date of these Orders, Respondent shall submit a written report of the registered well driller's findings and recommendations of how to eliminate any identified causes of contamination to the Ohio EPA, Division of Drinking and Ground Waters (DDAGW), Northwest District Office (NWDO).
4. Within sixty (60) days of the effective date of these Orders, should Respondent decide to implement Option 2 of the February 2, 2005 designation letter (hailed water system) or implement the interim measures provided for in Option 4 in the informational sheet, Respondent shall hire a licensed plumber and cause the plumber to initiate an investigation of the interior plumbing to determine possible causes of the bacteriological contamination. Within ninety (90) days of the effective date of these Orders, Respondent shall submit a written report of licensed plumber's findings and recommendations of how to eliminate any identified causes of contamination to the Ohio EPA, DDAGW, NWDO.
5. Within ninety (90) days of the effective date of these Orders, Respondent shall submit approvable as built plans and any other plans necessary to implement the option the Respondent has selected for its PWS if applicable.
6. If Respondent chooses to implement the interim measure, Respondent shall take one total coliform sample from the distribution system weekly in accordance with

- OAC Rule 3745-81-21, and shall timely submit the sample results to Ohio EPA, DDAGW, NWDO. Respondent shall conduct any required repeat sampling in accordance with OAC Rules 3745-81-14 and 3745-81-21.
7. If Respondent chooses to implement the hauled water option, Respondent shall take one total coliform sample from the distribution system quarterly in accordance with OAC Rule 3745-81-21, and shall timely submit the sample results to Ohio EPA, DDAGW, NWDO. Respondent shall conduct any required repeat sampling in accordance with OAC Rules 3745-81-14 and 3745-81-21.
 8. Respondent shall maintain a minimum chlorine residual of at least two-tenths milligram per liter free chlorine, or one milligram per liter combined chlorine, at representative points throughout the distribution system, if applicable to the option selected.
 9. Every thirty (30) days, Respondent shall issue public notification in accordance with OAC Rule 3745-81-32 and Attachment A, if applicable to the option selected for the PWS. In accordance with OAC Rule 3745-81-32, Respondent shall submit copies of such public notices and verification forms to Ohio EPA.
 10. Within fourteen (14) days of receipt of notification from Ohio EPA, Respondent shall provide Ohio EPA with a written response addressing any comments or deficiencies and/ or submit any additional information requested with regard to the any of the submittals required by these Orders.
 11. If Respondent chooses to implement the interim measure, Respondent shall select and have one of the permanent options operational within eighteen (18) months of the effective date of the groundwater under the influence designation letter.

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.

IX. NOTICE

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

Ohio Environmental Protection Agency
Northwest District Office, DDAGW
347 North Dunbridge Road
Bowling Green, OH 43402

Attn: Doug Scharp

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

X. RESERVATION OF RIGHTS

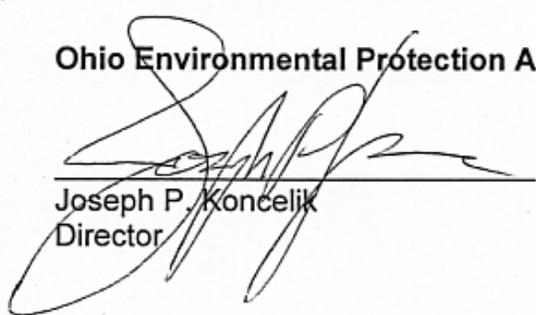
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders 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 actions 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.

XI. 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



Joseph P. Koncelik
Director

FEB 25 2005

Date

PUBLIC NOTICE

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 Robert Wanenmacher d.b.a. the Bird's Nest. 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

II. PARTIES BOUND

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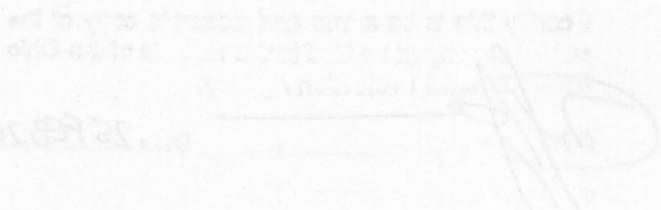
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IV. FINDINGS

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1. Respondent owns and operates a PWS at the Bird's Nest Resort as defined by ORC § 6109.01 and a "transient non-community water system" as defined by Ohio Administrative Code (OAC) Rule 3745-81-01.

A handwritten signature in blue ink is written over a date stamp that reads "FEB 25 2005". The signature appears to be "Robert Wanenmacher".