

Date Effective AUG 20 2004

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: : DIRECTOR'S FINAL
: : FINDINGS AND ORDERS
Robert Linger d.b.a. :
Cook's Market :
2323 Greenville Road :
Cortland, OH 44410 :

Respondent,

OHIO E.P.A.
AUG 20 2004
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Robert Linger (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Chapter 6109., §§ 6111.03, and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent, and his heirs and successors in interest liable under Ohio law. No change in ownership relating to the Cook's Market public water system (PWS) or wastewater treatment plant (WWTP) shall in any way alter Respondent's obligations under these Orders.

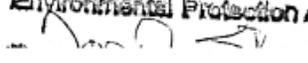
III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 6109. and 6111. and the rules promulgated thereunder.

IV. FINDINGS

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

1. Respondent, doing business as Cook's Market, owns and operates a PWS, 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 official document as filed in the records of the Ohio Environmental Protection Agency.


2. Respondent's PWS (PWS ID# 7850012) is located on 2323 Greenville Road, Cortland, Trumbull County, Ohio, 44410.
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 500 people.
4. On June 16, 2003, the Director issued Final Findings and Orders (June 16, 2003 Orders) to Respondent (copy attached hereto and incorporated as if fully rewritten herein).
5. Pursuant to ORC § 6109.31, no person shall violate ORC Chapter 6109., any rule adopted under it or any Order; each day of noncompliance is a separate violation.
6. In violation of ORC § 6109.31 and the June 16, 2003 Orders, Respondent has failed to comply with any of the OAC Rule requirements contained within the June 16, 2003 Orders.
7. In accordance with OAC Rule 3745-81-21(A), PWSs shall collect total coliform routine samples at sites which are representative of water throughout the distribution system according to a written sample siting plan.
8. 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 at least December 2000 to the effective date of these Orders.
9. In accordance with OAC Rule 3745-81-21(A)(2)(a), a non-community water system using only ground water and serving a population of not more than one thousand persons shall monitor with at least one total coliform sample each calendar quarter that the system provides water to the public.
10. In violation of OAC Rule 3745-81-21(A)(2)(a), Respondent failed to conduct total coliform routine monitoring for the following calendar quarters: January through March 2001, July through September 2001, October through December 2001, January through March 2002, April through June 2002, July through September 2002, October through December 2002, and April through June 2003.
11. OAC Rule 3745-81-23 requires PWSs that have a ground water source to monitor annually in accordance with a schedule provided by the Director (monitoring schedule) to determine compliance with the maximum contaminant level (MCL) for nitrate in OAC Rule 3745-81-11.
12. On December 15, 2000, Ohio EPA issued a chemical contaminant monitoring schedule to Respondent (2001 monitoring schedule) for the compliance period that began on January 1, 2001 and ended on December 31, 2001.
13. On December 12, 2001, Ohio EPA issued a chemical contaminant monitoring schedule to Respondent (2002 monitoring schedule) for the compliance period that began on January 1, 2002 and ended on December 31, 2002.

14. On December 15, 2002 , Ohio EPA issued a chemical contaminant monitoring schedule to Respondent (2003 monitoring schedule) for the compliance period that began on January 1, 2003 and ended on December 31, 2003.
15. On December 18, 2003, Ohio EPA issued a chemical contaminant monitoring schedule to Respondent (2004 monitoring schedule) for the compliance period that began on January 1, 2004 and ended on December 31, 2004.
16. In violation of OAC Rule 3745-81-23 and the 2001, 2002, and 2003 monitoring schedules, Respondent failed to monitor for nitrate during the monitoring periods of July through December 2001, July through December 2002, and July through December 2003.
17. In accordance with OAC Rule 3745-81-32(A)(2), version effective from April 1, 1996 to December 31, 2002, the owner or operator of a PWS which fails to perform the monitoring established by OAC Chapter 3745-81, or fails to comply with a testing procedure required by that Chapter, shall notify persons served by the PWS as follows:
 - (c) a non-community PWS shall give notice within thirty (30) days of the violation...by mail or hand delivery or continuous posting in conspicuous places throughout the area served by the PWS.
18. In violation of OAC Rule 3745-81-32, version effective from April 1, 1996 to December 31, 2002, Respondent failed to issue public notification for the failure to conduct total coliform routine monitoring during the following calendar quarters: January through March 2001, July through September 2001, October through December 2001, January through March 2002, April through June 2002, July through September 2002, and October through December 2002.
19. In violation of OAC Rule 3745-81-32, version effective from April 1, 1996 to December 31, 2002, Respondent failed to issue public notification for the failure to conduct nitrate monitoring during the monitoring periods of July through December 2001, and July through December 2002.
20. In accordance with OAC Rule 3745-81-32(D), version effective January 1, 2003 to present, the owner or operator of a PWS with violations of the monitoring and testing procedure requirements pursuant to OAC Chapter 3745-81 shall notify the persons served by the PWS by providing the notice as soon as practical, but not later than thirty (30) days after the PWS learns of the violation or situation, unless the notice is included with the next bill to customers, then the notice shall be distributed not later than ninety (90) days after the PWS learns of the violation or situation. Noncommunity water systems shall provide notice in accordance with OAC Rule 3745-81-32(D)(2)(ii)(a) & (b).
21. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failing to monitor for nitrate during the July through December 2003 monitoring period.

22. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification for failing to monitor for total coliform during the April through June 2003 monitoring period.
23. Respondent owns and operates a WWTP, located at 2323 Greenville Road, Cortland, Trumbull County, Ohio.
24. In accordance with ORC § 6111.04(A)(1)(A), no person shall cause pollution or place or cause to be placed any sewage, industrial waste, or other wastes in a location where they cause pollution of any waters of the state, and any such action shall be declared a public nuisance, unless the Director has issued a valid and unexpired permit, or renewal thereof, as provided in ORC §§ 6111.01 to 6111.08, or an application for renewal permit is pending.
25. In accordance with ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08.
26. In accordance with OAC Rule 3745-33-02(A), no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant without applying for and obtaining an Ohio national pollutant discharge elimination system (NPDES) permit in accordance with the requirements of OAC Chapter 3745-33.
27. The Mosquito Reservoir constitutes "waters of the state" as defined in ORC § 6111.01(H).
28. The discharge of household wastes from Respondent's WWTP constitutes "sewage" as defined in ORC § 6111.01(B).
29. The term "pollution," as defined in ORC § 6111.01(A), includes, but is not limited to, the placing of "sewage" in any "waters of the state."
30. On at least October 18, 1991, July 14, 1993, and October 28, 1998, Ohio EPA documented discharges from Respondent's WWTP to the Mosquito Reservoir.
31. In violation of ORC §§ 6111.04 and 6111.07 and OAC Rule 3745-33-02(A), Respondent does not hold a valid, unexpired NPDES permit for the discharge of pollutants to waters of the state.
32. As of the effective date of these Orders, Respondent has failed to submit the required NPDES permit application to the Director.
34. Each of the violations cited above represents a separate violation of ORC §§ 6109.31 or 6111.07.
35. With respect to Orders issued pursuant to ORC Chapter 6111. herein, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

As required by the June 16, 2003 Orders, Respondent shall:

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. Within thirty (30) days of the effective date of these Orders, Respondent shall monitor for nitrate in accordance with OAC Rule 3745-81-23. Respondent shall monitor for nitrate annually thereafter in accordance with OAC Rule 3745-81-23.
3. From the effective date of these Orders, Respondent shall comply with all chemical contaminant monitoring schedules issued by Ohio EPA.
4. 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 Findings Nos. 18, 19, 21, and 22, and shall submit to Ohio EPA, Division of Drinking and Ground Waters (DDAGW) copies of all public notices and verification forms.
5. Within thirty (30) days of the effective date of these Orders, Respondent shall submit to Ohio EPA, Division of Surface Water (DSW) a complete and approvable individual NPDES permit application, with Antidegradation Addendum, for Respondent's WWTP.
6. Should Ohio EPA, DSW require any revisions to the NPDES permit application, Respondent shall respond to Ohio EPA within fourteen (14) days of receiving a comment letter from Ohio EPA.
7. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of nine thousand five hundred dollars (\$6,500.00) in administrative penalties pursuant to ORC Chapter 6109., which will 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 \$6,500.00. 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 and Cook's Market

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 Chiefs of Ohio EPA's DDAGW and DSW acknowledge, 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)(3) for a sole proprietorship.

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 or WWTP.

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 (with the exception of the penalty payment referenced in Order No. 7) shall be addressed as indicated in each Order to:

Ohio Environmental Protection Agency
Northeast District Office
DDAGW or DSW
2110 East Aurora Road
Twinsburg, Ohio 44087

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

X. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for the ORC Chapter 6111. violations specifically cited in these Orders.

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 6111. or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any

