

OHIO E.P.A.

DEC - 6 2010

ENTERED DIRECTOR'S JOURNAL

Effective Date DEC - 6 2010

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Foxfire Golf Club, Inc. :
10799 State Route 104 :
Lockbourne, Ohio 43137 :

Respondent,

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Foxfire Golf Club, Inc. (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.

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: [Signature] Date: 12-6-10

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 "non-transient, non-community water system" as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01.
2. Respondent's PWS (PWS ID# OH6537612) is located at 10799 State Route 104, Lockbourne (Pickaway County), Ohio, 43137.
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 50 persons.
4. On January 15, 2003, Respondent's PWS was designated by the Director as a Class A PWS in accordance with OAC Rule 3745-7-03.
5. In accordance with OAC Rule 3745-81-21(A)(2)(a), a non-community water system using only ground water or purchased water and serving not more than one thousand persons shall monitor with at least one sample each calendar quarter that the non-community water system provides water to the public.
6. In violation of OAC Rule 3745-81-21(A)(2)(a), Respondent failed to monitor for total coliform during the July through September 2007 monitoring period.
7. In accordance with OAC Rule 3745-81-14(B), a PWS which monitors with fewer than forty samples per month is in compliance with the maximum contaminant level (MCL) for total coliform when no more than one sample during a month is total coliform-positive.
8. In violation of OAC Rule 3745-81-14(B), Respondent exceeded the total coliform MCL when more than one sample was total coliform-positive sample in September 2006.
9. In accordance with OAC Rule 3745-81-21(B)(6), version effective April 1, 1999 through December 31, 2007, when a PWS monitoring with fewer than five (5) samples per month has one or more total coliform-positive samples, the PWS shall monitor with at least five (5) routine samples during the next month that the PWS provides water to the public.
10. In violation of OAC Rule 3745-81-21(B)(6), version effective April 1, 1999 through December 31, 2007, Respondent failed to monitor with a minimum of five routine samples during September 2006, after being notified of a routine total coliform-positive sample result during August 2006.

11. 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 MCL and a design flow of less than 0.5 million gallons per day shall be classified as a Class I system.
12. In accordance with OAC Rule 3745-81-23(E)(9), a PWS that uses a new source of water shall monitor initially for arsenic in the first quarter of the next calendar year after beginning operation of the new source.
13. In accordance with OAC Rule 3745-81-23(E)(9), Respondent monitored for arsenic from Well #2 during the third quarter of 2007, after Respondent's original well (Well #1) went dry in May of 2007, and Respondent drilled a new well (Well #2). Arsenic samples taken by Respondent from Well #2 were 0.0326 mg/L on July 10, 2007, 0.0132 mg/L on July 25, 2007, and 0.0187 mg/L on August 8, 2007.
14. In accordance with OAC Rule 3745-81-11(B), the MCL for arsenic is 0.010 mg/L.
15. In accordance with OAC Rule 3745-81-23(E)(11), if during the initial sampling required in paragraph OAC Rule 3745-81-23(E)(9), any contaminant is reported as a concentration above eighty per cent of the MCLs listed in OAC Rule 3745-81-11, at any sampling point, the PWS shall monitor quarterly for that contaminant at that sampling point beginning in the next quarter after the result is reported.
16. On or about August 17, 2007, the Director issued a revised chemical contaminant monitoring schedule to Respondent, and pursuant to the revised schedule, Respondent was required to monitor for arsenic quarterly.
17. On or about January 1, 2008, the Director issued a chemical contaminant monitoring schedule to Respondent (2008 monitoring schedule) for the compliance period that began on January 1, 2008 and ended on December 31, 2008. Pursuant to the 2008 monitoring schedule, Respondent was required to monitor for arsenic quarterly.
18. In accordance with OAC Rule 3745-81-23(E)(11), and the 2008 monitoring schedule, Respondent monitored quarterly for arsenic in 2008. Arsenic samples taken by Respondent from Well #2 were 0.0160 mg/L on March 20, 2008; 0.0110 mg/L on May 12, 2008; 0.0070 mg/L on July 14, 2008; and 0.0220 mg/L on October 15, 2008.
19. On or about January 1, 2009, the Director issued a chemical contaminant monitoring schedule to Respondent (2009 monitoring schedule) for the compliance period that began on January 1, 2009 and ended on December 31, 2009. Pursuant to the 2009 monitoring schedule, Respondent was required to monitor for arsenic quarterly.

20. In accordance with OAC Rule 3745-81-23(E)(11), and the 2009 monitoring schedule, Respondent monitored quarterly for arsenic in 2009. Arsenic samples taken by Respondent from Well #2 were 0.0190 mg/L on February 24, 2009; 0.0181 mg/L on May 28, 2009; 0.0135 mg/L on September 23, 2009; and <0.0030 mg/L on December 14, 2009.
21. On December 17, 2009, the Director issued a chemical contaminant monitoring schedule to Respondent (2010 monitoring schedule) for the compliance period that began on January 1, 2010 and ends on December 31, 2010. Pursuant to the 2010 monitoring schedule, Respondent is required to monitor for arsenic quarterly.
22. In 2009, Respondent drilled another new well (Well #3), due to the sampling results from existing Well #2 evidencing elevated levels of arsenic. Well #3 was approved by the Director on January 13, 2010.
23. In accordance with OAC Rule 3745-81-23(E)(11), and the 2010 monitoring schedule, Respondent has been monitoring quarterly for arsenic in 2010. Arsenic samples taken by Respondent from Well #2 were 0.0180 mg/L on March 23, 2010; and 0.0270 mg/L on June 8, 2010.
24. 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 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.
25. In violation of OAC Rule 3745-81-11(B), Respondent exceeded the arsenic MCL with a running annual average of 0.0125 mg/L during the January 1 to March 31, 2008 monitoring period; of 0.0162 mg/L during the April 1 through June 30, 2008 monitoring period; of 0.0113 mg/L during the July 1 through September 30, 2008 monitoring period; of 0.0140 mg/L during the October 1 to December 31, 2008 monitoring period; of 0.0148 mg/L during the January 1 to March 31, 2009 monitoring period; of 0.0165 mg/L during the April 1 through June 30, 2009 monitoring period; of 0.0182 mg/L during the July 1 through September 30, 2009 monitoring period; of 0.0127 mg/L during the October 1 to December 31, 2009 monitoring period, and of 0.0130 mg/L during the January 1 to March 31, 2010 monitoring period.
26. In accordance with OAC Rule 3745-81-32, the owner or operator of a PWS having violations shall notify all persons served by the PWS of these violations.

27. In accordance with OAC Rule 3745-81-32(A)(3), within ten days of completing the public notification requirements under Rule 3745-81-32 for the initial public notice and any repeat notices, a PWS must submit to the Director a completed verification form indicating full compliance with the public notification regulations. The PWS must include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.
28. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification and submit copies of the required public notice and verification form for:
 - a) failing to monitor for total coliform during the July through September 2007 monitoring period;
 - b) failing to monitor with a minimum of five routine total coliform samples during September 2006; and
 - c) exceeding the arsenic MCL during the monitoring periods of January through March 2008, April through June 2008, January through March 2009, July through September 2009, and January through March 2010.
29. 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. 28 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 for total coliform during the July through September 2007 monitoring period;
 - b) failing to monitor with a minimum of five routine total coliform samples during September 2006; and
 - c) exceeding the arsenic MCL during the monitoring periods of January through March 2008, April through June 2008, January through March 2009; July through September 2009, and January through March 2010.
2. From the effective date of these Orders, Respondent shall issue public notice for all MCL violations in accordance with OAC Rule 3745-81-32.

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. Within ten (10) days of the effective date of these Orders, Respondent shall complete the connection of the PWS to Well #3; shall properly disconnect and discontinue the use of the existing drinking water Well #2, for potable water use; and shall commence operation of the connection to Well #3.
6. Within sixty (60) days of commencing operation of the connection to Well #3, Respondent shall properly abandon Well #2, in accordance with OAC Chapter 3745-9.
7. Within seven (7) days of completing the requirements specified by Order Nos. 5 and 6, Respondent shall send written notification of compliance with each Order, to Ohio EPA, CDO, DDAGW, DOCC, P.O. Box 1049, Columbus, Ohio 43216-1049.
8. Within twelve (12) months of completion of the connection of the PWS to Well #3, Respondent shall achieve compliance with the arsenic MCL
9. If Respondent's PWS should fail to achieve compliance with the arsenic MCL, within the time frame specified by Order No. 8, Respondent shall comply with Order Nos. 10 – 16.
10. Within ninety (90) days of failing to achieve compliance with the arsenic MCL as specified in Order No. 8, Respondent shall hire an engineer and submit plans for arsenic removal treatment in accordance with the best available technology recommendations in OAC Rule 3745-81-11(E).
11. Within ninety (90) days 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 treatment for arsenic removal.
12. Prior to commencing operation of the treatment for arsenic removal, Respondent shall hire and retain at minimum a Class I certified operator, in accordance with OAC Rule 3745-7-03, ensure the Class 1 certified operator is physically present at Respondent's PWS, to oversee the technical operation of the PWS, for at least three days per week for a minimum of 1.5 hours per week; and is maintaining an onsite record of the date and times of his/her arrival to and departure from Respondent's PWS, in compliance with OAC Chapter 3745-7.

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 seven (7) days after the deadlines in Orders No. 11, 12, and 13, Respondent shall send written notification of compliance with the requirements of each Order to Ohio EPA, CDO, DDAGW, DOCC, P.O. Box 1049, Columbus, Ohio 43216-1049.
15. Within twelve (12) months of completion of the installation and commencement of operation of the arsenic treatment system, Respondent shall achieve compliance with the arsenic MCL.
16. 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(E).

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 Environmental Protection Agency
Central District Office
Division of Drinking and Ground Waters
P.O. Box 1049, Columbus, OH 43216-1049
Attn: Susan Hampton, DOCC

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

XI. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. Ohio EPA and Respondent each reserve all other 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, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek civil or administrative penalties against Respondent for violations specifically cite in these orders, which right Ohio EPA does not waive, 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

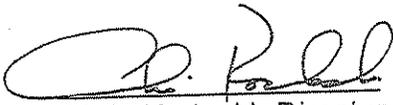
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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


Chris Korleski, Director

DEC - 6 2010
Date

IT IS SO AGREED:

Foxfire Golf Club, Inc.


Signature

11-15-2010
Date

Paul Kiddler Secretary
Printed or Typed Name and Title