

OHIO E.P.A.

NOV - 1 2005

ENTERED DIRECTOR'S JOURNAL

Effective Date NOV 1 2005

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:  
Ohio Department of  
Transportation  
1980 West Broad Street  
Columbus, Ohio 43223

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

Respondent,

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Ohio Department of Transportation (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 systems (PWSs) 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:

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

By: Donna Adams date: 11-1-05

1. Respondent owns and operates a PWS at Rest Area 1-25, which is also a transient noncommunity water system as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01. Respondent's PWS is a major noncommunity water system as defined by OAC Rule 3745-83-01(B)(1).
2. Respondent owns and operates a PWS at Rest Area 1-26, which is also a transient noncommunity water system as defined by ORC § 6109.01 and OAC Rule 3745-81-01. Respondent's PWS is a major noncommunity water system as defined by OAC Rule 3745-83-01(B)(1).
3. Respondent owns and operates a PWS at Rest Area 4-35, which is also a transient noncommunity water system as defined by ORC § 6109.01 and OAC Rule 3745-81-01. Respondent's PWS is a noncommunity water system as defined by OAC Rule 3745-81-01.
4. Respondent's PWSs at Rest Areas 1-25 and 1-26 (PWSID# 3243812 and # 3244012) are located northbound and southbound, respectively, on I-75, in Hancock County, Ohio.
5. Respondent's PWS at Rest Area 4-35 (PWSID# 6767612) is located southbound on State Route 76 in Portage County, Ohio.
6. Respondent closed both PWSs at Rest Areas 1-25 and 1-26 and stopped serving water to the public on September 12, 2000. The PWS at Rest Area 1-25 was reopened on November 19, 2002, and the PWS at Rest Area 1-26 was reopened on December 21, 2002.
7. In accordance with OAC Rule 3745-81-21(A)(2)(b), a noncommunity water system using only ground water and serving a population of more than one thousand persons during any month shall collect two total coliform routine samples per month as specified in paragraph (A)(1)(a) of this rule.
8. In violation of OAC Rule 3745-81-21(A)(2)(b), Respondent failed to monitor at Rest Area 1-25 with a minimum of two routine total coliform samples during the months of January 2000, February 2000, March 2000, April 2000, May 2000, June 2000, July 2000, June 2003, November 2003, May 2004, October 2004, and November 2004.
9. In violation of OAC Rule 3745-81-21(A)(2)(b), Respondent failed to monitor at Rest Area 1-26 with a minimum of two routine total coliform samples during the months of January 2000, February 2000, March 2000, April 2000, May 2000, June 2000, July 2000, December 2003, May 2004, July 2004, and November 2004.

10. 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 monthly maximum contaminant level (MCL) for total coliform when no more than one sample during a month is total coliform-positive.
11. In violation of OAC Rule 3745-81-14(B), Respondent exceeded the monthly MCL for total coliform at Rest Area 1-25 during the months of May 2003, June 2003, September 2003, October 2003, June 2004, July 2004, September 2004, and October 2004, when more than one sample during the month was total coliform-positive.
12. In violation of OAC Rule 3745-81-14(B), Respondent exceeded the monthly MCL for total coliform at Rest Area 1-26 during the months of June 2004, July 2004, August 2004, and September 2004, when more than one sample during the month was total coliform-positive.
13. In violation of OAC Rule 3745-81-14(B), Respondent exceeded the monthly MCL for total coliform at Rest Area 4-35 during the months of May 2003, May 2004, August 2004, and April 2005, when more than one sample during the month was total coliform-positive.
14. 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.
15. 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 microbiological MCL).
16. In violation of OAC Rules 3745-81-21(B)(1) and 3745-81-14(D), Respondent received acute microbiological MCL violations due to the failure to monitor with a set of four repeat samples at Rest Area 1-25 within twenty-four (24) hours of being notified of a routine total coliform-positive sample result on May 29, 2003, June 19, 2003, September 30, 2003, October 7, 2003, October 28, 2003, October 30, 2003, July 28, 2004, July 29, 2004, and September 28, 2004.
17. In violation of OAC Rules 3745-81-21(B)(1) and 3745-81-14(D), Respondent received acute microbiological MCL violations due to the failure to monitor with a set of four repeat samples at Rest Area 1-26 within twenty-four (24) hours of being notified of a routine total coliform-positive sample result on July 30, 2003, August 31, 2004, and September 29, 2004.
18. In violation of OAC Rules 3745-81-21(B)(1) and 3745-81-14(D), Respondent received acute microbiological MCL violations due to the failure to monitor with a set of four repeat samples at Rest Area 4-35 within twenty-four (24) hours of being notified of a routine total coliform-positive sample result on October 14, 2004.

19. In accordance with OAC Rule 3745-81-14(C), any repeat sample which is *Escherichia coli*-positive (*E. coli*-positive) following a total coliform-positive routine sample result constitutes a violation of the MCL for total coliforms. This is an acute microbiological MCL violation.
20. In violation of OAC Rule 3745-81-14(C), Respondent received an acute microbiological MCL violation at Rest Area 1-25 when four repeat samples taken on June 28, 2004 were *E. coli*-positive.
21. In accordance with OAC Rule 3745-81-21(B)(6), when a PWS monitors with fewer than five samples a month and one or more samples are total coliform-positive, the PWS is required to monitor with at least five samples during the next month that the PWS provides water to the public.
22. In violation of OAC Rule 3745-81-21(B)(6), Respondent failed to monitor at Rest Area 1-25 with at least five samples in the months of June 2003, October 2003, and October 2004 following total coliform-positive sample results in the preceding months.
23. In violation of OAC Rule 3745-81-21(B)(6), Respondent failed to monitor at Rest Area 1-26 with at least five samples in the month of October 2004 following total coliform-positive sample results in the preceding month.
24. In violation of OAC Rule 3745-81-21(B)(6), Respondent failed to monitor at Rest Area 4-35 with at least five samples in the month of July 2004 following total coliform-positive sample results in the preceding month.
25. In accordance with OAC Rule 3745-81-32, the owner or operator of a PWS shall provide public notification for violations.
26. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification at Rest Area 1-25 for the failure to perform the required total coliform monitoring during February 2000, April 2000, May 2000, June 2000, July 2000, June 2003, May 2004, and October 2004.
27. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification at Rest Area 1-26 for the failure to perform the required total coliform monitoring during January 2000, February 2000, March 2000, April 2000, May 2000, June 2000, July 2000, December 2003, May 2004, July 2004, and November 2004.
28. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification at Rest Area 1-25 for exceeding the monthly microbiological MCL for total coliform during the months of May 2003, September 2003, June 2004, July 2004, September 2004, and October 2004.

29. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification at Rest Area 1-26 for exceeding the monthly microbiological MCL for total coliform during the months of June 2004, July 2004, August 2004, and September 2004.
30. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification at Rest Area 4-35 for exceeding the monthly microbiological MCL for total coliform during the months of May 2003, May 2004, August 2004, and April 2005.
31. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification at Rest Area 1-25 for exceeding the acute microbiological MCL by failing to perform the required repeat monitoring within twenty-four (24) hours of being notified of the positive result on May 29, 2003, June 19, 2003, September 30, 2003, October 7, 2003, October 28, 2003, October 30, 2003, July 28, 2004, July 29, 2004, and September 28, 2004.
32. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification at Rest Area 1-26 for exceeding the acute microbiological MCL by failing to perform the required repeat monitoring within twenty-four (24) hours of being notified of the positive result on August 31, 2004 and September 29, 2004.
33. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification at Rest Area 4-35 for exceeding the acute microbiological MCL by failing to perform the required repeat monitoring within twenty-four (24) hours of being notified of the positive result on October 14, 2004.
34. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification at Rest Area 1-25 for exceeding the acute microbiological MCL when four repeat samples were *E. coli*-positive on June 28, 2004.
35. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification at Rest Area 1-25 for the failure to perform the required total coliform monitoring with at least five samples during the months of October 2003 and October 2004 following total coliform-positive sample results in the preceding months.
36. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification at Rest Area 1-26 for the failure to perform the required total coliform monitoring with at least five samples during the month of October 2004 following a total coliform-positive sample results in the preceding month.
37. In violation of OAC Rule 3745-81-32, Respondent failed to issue public notification at Rest Area 4-35 for the failure to perform the required total coliform monitoring with at least five samples during the month of July 2004 following a total coliform-positive sample results in the preceding month.

38. In accordance with OAC Rule 3745-83-01(B)(2), a major noncommunity PWS shall maintain a minimum chlorine residual of at least two-tenths milligram per liter free chlorine, or one milligram per liter combined chlorine measured at representative points throughout the distribution system.
39. In violation of OAC Rule 3745-83-01(B)(2), Respondent failed to maintain a minimum chlorine residual at Rest Area 1-25 of at least two-tenths milligram per liter free chlorine or one milligram per liter combined chlorine measured at representative points throughout the distribution system during the month of June 2003.
40. In violation of OAC Rule 3745-83-01(B)(2), Respondent failed to maintain a minimum chlorine residual at Rest Area 1-26 of at least two-tenths milligram per liter free chlorine or one milligram per liter combined chlorine measured at representative points throughout the distribution system during the month of June 2003.
41. In accordance with OAC Rule 3745-83-01(E)(2), version effective from April 21, 2001 to August 2, 2004, the Director required Respondent to prepare and file operation reports on a monthly basis for both Rest Area 1-25 and Rest Area 1-26. These operation reports are required to be submitted to the district office with jurisdiction no later than the tenth of the month following the end of the period for which the report was prepared.
42. In violation of OAC Rule 3745-83-01(E)(2), version effective from April 21, 2001 to August 2, 2004, Respondent failed to submit timely operation reports for Rest Area 1-25 for months of January 2003, February 2003, March 2003, April 2003, May 2003, July 2003, August 2003, September 2003, October 2003, November 2003, December 2003, January 2004, February 2004, March 2004, April 2004, May 2004, June 2004, and July 2004.
43. In violation of OAC Rule 3745-83-01(E)(2), version effective from April 21, 2001 to August 2, 2004, Respondent failed to submit timely operation reports for Rest Area 1-26 for the months of January 2003, February 2003, March 2003, April 2003, May 2003, July 2003, August 2003, September 2003, October 2003, November 2003, December 2003, January 2004, February 2004, March 2004, April 2004, May 2004, June 2004, and July 2004.
44. In accordance with OAC Rule 3745-83-01(F)(2), version effective August 3, 2004 to present, the Director required Respondent to prepare and file operation reports on a monthly basis for both Rest Area 1-25 and Rest Area 1-26. These operation reports are required to be submitted to the district office with jurisdiction no later than the tenth of the month following the end of the period for which the report was prepared.
45. In violation of OAC Rule 3745-83-01(F)(2), version effective August 3, 2004 to present, Respondent failed to submit timely operation reports for Rest Area 1-25 for the months of August 2004 and September 2004.

46. In violation of OAC Rule 3745-83-01(F)(2), version effective August 3, 2004 to present, Respondent failed to submit timely operation reports for Rest Area 1-26 for the months of August 2004 and September 2004.
47. Each violation cited above represents a separate violation of ORC § 6109.31.

#### **V. ORDERS**

1. Respondent shall immediately comply with all MCL requirements for total coliform bacteria at Rest Areas 1-25, 1-26, and 4-35 in accordance with OAC Rule 3745-81-14.
2. Respondent shall monitor for total coliform bacteria at Rest Areas 1-25 and 1-26 with a minimum of two routine samples per month from the distribution system and perform any required repeat monitoring, in accordance with OAC Rule 3745-81-21.
3. Respondent shall monitor for total coliform bacteria at Rest Area 4-35 with a minimum of one routine sample per month from the distribution system and perform any required repeat monitoring, in accordance with OAC Rule 3745-81-21.
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 past violations at Rest Area 1-25 identified in the public notice provided (copy attached). Respondent shall provide copies of all public notices and verification forms to Ohio EPA, Northwest District Office (NWDO), Division of Drinking and Ground Waters (DDAGW).
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 past violations at Rest Area 1-26 identified in the public notice provided (copy attached). Respondent shall provide copies of all public notices and verification forms to Ohio EPA, NWDO, DDAGW.
6. 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 past violations at Rest Area 4-35 identified in the public notice provided (copy attached). Respondent shall provide copies of all public notices and verification forms to Ohio EPA, NWDO, DDAGW.
7. Within thirty (30) days of the effective date of these Orders, Respondent shall submit complete monthly operation reports to the Director for Rest Areas 1-25 and 1-26 no later than the tenth of the month following the end of the month for which the report was prepared, in accordance with OAC Rule 3745-83-01(F)(2).

8. Respondent shall immediately address the violations at ODOT Rest Areas 9-23, 4-10, 1-32, US 24, 11-17, 4-36, and the District 5 Office and Garage. Within thirty (30) days of the effective date of these Orders, Respondent shall submit reports to Ohio EPA, CO, with actions to be taken to bring these Rest Area PWSs into compliance with OAC Rules 3745-81-14, 3745-81-21, 3745-81-23, and 3745-81-24. Corrective actions outlined in the reports shall be done in a timely manner.

9. Respondent shall pay the amount of one hundred ten thousand four hundred dollars (\$110,400.00) in settlement of Ohio EPA's claim for civil penalties which may be assessed pursuant to ORC Chapter 6109, for the violations cited herein. Within ninety (90) days of the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for twenty seven thousand six hundred dollars (\$27,600.00) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
P. O. Box 1049  
Columbus, Ohio 43216-1049.

10. In lieu of paying twenty two thousand and eighty dollars (\$22,080.00) of civil penalty, Respondent shall within ninety (90) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of \$22,080.00 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for twenty two thousand eighty dollars. 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

A copy of each check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, OH 43216-1049

11. Should Respondent fail to fund the SEP within the required timeframe set forth in Order No. 10, Respondent shall pay to Ohio EPA \$22,080.00 of the civil penalty in accordance with the procedures in Order No. 9.

12. In lieu of paying two thousand four hundred dollars (\$2,400.00) of civil penalty, Respondent shall within ninety (90) days of the effective date of these Orders, fund a SEP by contributing \$2,400.00 to the Local Technical Assistance Program (LTAP) for four (4) Water Quality Courses for Respondent's employees.
13. In lieu of paying fifty eight thousand three hundred and twenty dollars (\$58,320.00) of civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, initiate the bidding process for a daily monitoring contract for as long as Respondent operates Rest Areas 1-25 and 1-26 at a total cost of not less than \$58,320.00.
14. Within seven (7) days after the deadlines given in Order Nos. 12 and 13, Respondent shall send written notification of compliance with the requirements of each Order to Ohio EPA, NWDO, DDAGW.
15. Should Respondent fail to fund or complete the SEPs outlined in Order Nos. 12 and 13 within the required timeframes set forth in such Orders, Respondent shall pay to Ohio EPA sixty thousand seven hundred and twenty dollars (\$60,720.00) of the civil penalty in accordance with the procedures in Order No. 9.

#### **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)(4) for a state facility.

#### **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 PWSs.

### **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 (with the exception of the penalty payments referenced in Order Nos. 9 - 13) shall be addressed to:

Ohio Environmental Protection Agency  
Northwest District Office  
Division of Drinking and Ground Waters  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
Att: Enforcement Supervisor

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

### **VI. 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**

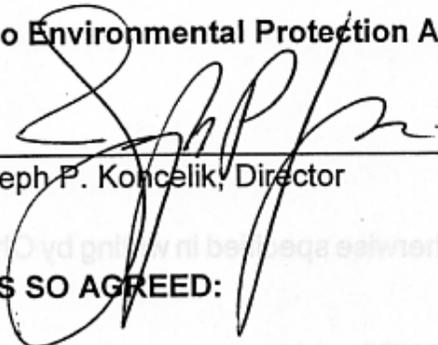
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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

Date

11/1/05

**IT IS SO AGREED:**

**Ohio Department of Transportation**

  
\_\_\_\_\_  
Signature

Date

10/20/05

Gordon Procter, Director  
Printed or Typed Name and Title