OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

Effective Date AUG 2 6 2004

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Kowalski LTD :
d.b.a. Saunders North :
1495 Catawba :
Put-In-Bay, Ohio 43456 :

Respondent,

## I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Kowalski LTD (Respondent) d.b.a. Saunders North 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 Saunders North as defined by ORC § 6109.01 and a "transient non-community water system" as defined by Ohio Administrative Code (OAC) Rule 3745-81-01.

2. Respondent's PWS (PWS ID: 6245512) serves a population of at least 25 people and is located at 1495 Catawba, Put-In-Bay, (Ottawa County), Ohio.

By: Joel Ashmore 8/26/04

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 public water systems 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 public water system 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 public water system, or make a substantial change in a public water system, until plans therefor have been approved by the Director of Ohio EPA. In violation of ORC § 6109.07(A) and OAC Rule 3745-91-02(A), Respondent did not obtain plan approval prior to installing its public water system.

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 24, 2004, Ohio EPA inspected the public water system and took samples for total coliform bacteria and Campylobacter. Results showed positive results for total coliform bacteria.

## V. ORDERS

1. Respondent shall issue a no use advisory attached hereto immediately. Respondent shall post the advisory in conspicuous places and submit verification to Ohio EPA on a monthly basis. Respondent shall continue the advisory until all the terms of advisory set forth in Orders 1.a through 1.f are met:

   a. Respondent shall initiate an investigation, by hiring a registered well driller, of the well components and casing to determine possible causes of the bacteriological contamination. Within thirty days of initiation, Respondent shall submit a written report of the findings and recommendations to the Ohio Environmental Protection Agency (Ohio EPA), Division of Drinking and Groundwater, Northwest District Office (NWDO). Upon consultation with Ohio EPA, Respondent shall correct any deficiencies noted in the report;

   b. Respondent shall initiate an investigation, by hiring a licensed plumber, on the interior plumbing to determine possible causes of the bacteriological contamination. Within thirty days of initiation, submit a written report of findings and recommendations to the Ohio Environmental Protection Agency (Ohio EPA), Division of Drinking and Groundwater, Northwest District Office (NWDO). Upon consultation with Ohio EPA, Respondent shall correct any deficiencies noted in the report;

   c. Respondent shall install a raw water tap;

   d. Respondent shall submit as built plans for its PWS noting any modifications made to address deficiencies;

   e. Upon completion of all investigations and corrections of deficincies required by Orders 1.a through 1.d, Respondent shall obtain two consecutive sets of total coliform negative samples from the distribution system and two consecutive total coliform negative samples from the raw water tap; and

   f. Upon completion of Orders 1.a. through 1.e., the Respondent shall notify the Director of Ohio EPA. The Director may require the analysis of additional samples for determining the presence of other pathogens prior to terminating the no use advisory. If additional sampling is required, the Director will notify Respondent when the no use advisory may be terminated.

2. Upon completion of the requirements of Order No. 1, Respondent shall conduct the following sampling of its PWS:

   a. Sample with one total coliform sample from the distribution system weekly and submit sample results to Ohio EPA;

b. Conduct repeat sampling for any total coliform positive sample in accordance with OAC Rule 3745-81-21; and

c. Conduct raw water sampling with one total coliform sample per week.

3. If Respondent has a chlorinator, Respondent shall maintain a minimum chlorine residual of at least two-tenths milligram per liter free chlorine, or one milligram per liter combined chlorine throughout Respondent's representative points throughout the distribution system.

4. Respondent shall issue public notification in accordance with OAC Rule 3745-81-32 for any total coliform maximum contaminant level (MCL) violation as set forth in OAC Rule 3745-81-14. Respondent shall submit verification of posting to Ohio EPA.

## 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**

Christopher Jones
Director

8-26-04
Date

OTTAWA

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 Kowalski LTD d.b.a. Saunders North. This final action was effective on August 26, 2004, 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