



State of Ohio Environmental Protection Agency

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Columbus, OH 43216-1049

August 21, 2009

Mr. James V. Bates  
30222 Carey Road  
Salem, OH 44460

CERTIFIED MAIL  
9171082133393109723448

RE: Final Findings and Orders

Dear Mr. Bates:

I have enclosed a certified copy of the journalized Director's Orders. This document is a final action of the Director and will be public noticed as required by Rule 3745-47-07(A) of the Ohio Administrative Code. We have received your request to withdraw your application for Class IV certification and pursuant to your request the application has been withdrawn.

If you have any questions concerning compliance with these Findings and Orders, please feel free to contact me at (614) 728-1216.

Sincerely,

Andrew Barienbrock  
Environmental Supervisor  
Operator Certification Unit

Enclosures

cc: Beth Messer, DDAGW-CO (w/enclosure)  
Nancy Rice, DDAGW-NEDO (w/enclosure)  
Kim Rhoads, Legal (w/enclosure)

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director



OHIO E.P.A.

Effective Date AUG 21 2009

AUG 21 2009

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: :  
James V. Bates :  
30222 Carey Road :  
Salem, OH 44460 :

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

Respondent, ,

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.

PREAMBLE

It is agreed by the Parties hereto as follows:

By: [Signature] Date: 8.21.2009

I. JURISDICTION

These Director's Findings and Orders (Orders) are issued to James V. Bates (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.

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 holds a Class III Water Supply Certificate, number WS3-1013830-90.
2. Respondent is the operator of record for the Village of Sebring and Village of Malvern public water systems. Respondent is also the Village Administrator for the Village of Malvern.

3. In accordance with ORC § 6109.07(A) and Ohio Administrative Code (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.
4. In accordance with ORC § 6109.07(B) and OAC Rule 3745-91-08(G)(1), no person shall construct or install a public water system, or make any substantial change in a public water system, that is not in accordance with plans approved by the Director.
5. In violation of ORC § 6109.07(A), ORC § 6109.07(B), OAC Rule 3745-91-02(A) and OAC Rule 3745-91-08(G)(1), Respondent installed a caustic soda feed system at the Village of Sebring public water system in August of 2003 without plans approved by the Director. Ohio EPA letters to the Village in February of 2004 and January of 2005 requested the submission of detailed plans. An Ohio EPA notice of violation was issued on June 24, 2005 requiring the Village to submit detailed plans for the caustic soda feed system. On November 23, 2005, detailed plans were approved for a new caustic soda feed system.
6. In violation of ORC § 6109.07(A), ORC § 6109.07(B), OAC Rule 3745-91-02(A) and OAC Rule 3745-91-08(G)(1), Respondent installed a potassium permanganate feed system at the Village of Sebring public water system in July of 2005 without plans approved by the Director. Ohio EPA letters in August of 2005 and May of 2006 requested the submittal of detailed plans. On December 14, 2007, information was submitted documenting the removal of the potassium permanganate feed system.
7. In violation of ORC § 6109.07(A), ORC § 6109.07(B), OAC Rule 3745-91-02(A) and OAC Rule 3745-91-08(G)(1), Respondent replaced a section of piping conveying chlorinated water to the filters at the Village of Malvern public water system with schedule 40 PVC piping rather than the schedule 80 PVC that was originally used. The replacement occurred at some time prior to an Ohio EPA inspection on June 19, 2008. The schedule 80 PVC piping was used because a portion of the line is under pressure. Respondent provided documentation on October 28, 2008 that the schedule 40 PVC was replaced with schedule 80 PVC.
8. In violation of ORC § 6109.07(A), ORC § 6109.07(B), OAC Rule 3745-91-02(A) and OAC Rule 3745-91-08(G)(1), Respondent installed untreated wood to increase the height of the filter troughs by nine inches at the Village of Sebring public water system without plan approval in May of 2008. An Ohio EPA letter dated July 15, 2008, informed the Respondent of the need to submit detailed plans prior to making a substantial change

to a public water system. The boards were removed prior to an Ohio EPA inspection on March 13, 2009.

9. In accordance with OAC Rule 3745-7-09(A)(3)(b), operation and maintenance records shall at a minimum contain: "date and times of arrival and departure for the operator of record and any other operator required by this chapter."
10. In violation of OAC Rule 3745-7-09(A)(3)(b), Respondent failed to document his date and time of arrival and departure at both the Village of Sebring and Village of Malvern public water systems. Records obtained by Ohio EPA during a limited scope site visit at the Village of Sebring public water system on June 10, 2008 and a sanitary survey at the Village of Malvern public water system on June 19, 2008 do not document Respondent's date and time of arrival or departure. A follow up inspection on March 13, 2009 indicated information regarding the Respondent's time at the Village of Sebring public water system for a portion of the month of February 2009 was missing; this information was later added by the Respondent.
11. In accordance with OAC Rule 3745-7-09(A)(1), operation and maintenance records, "shall be housed and maintained in such a manner as to be protected from weather damage and guarantee the authenticity and accuracy of the records contained within."
12. In violation of OAC Rule 3745-7-09(A)(1), Respondent has not maintained operation and maintenance records in a manner to guarantee authenticity and accuracy. During a March 13, 2009 inspection at the Village of Sebring public water system, information regarding the operator of record's arrival and departure times for a portion of the month of February 2009 was incomplete. Respondent was notified by the Ohio EPA in two separate letters in 2008 of the importance of record keeping and the need to ensure that his record keeping format was compliant with OAC Rules.
13. In accordance with OAC Rule 3745-7-09(A)(3)(c), operation and maintenance records shall at a minimum contain "specific operation and maintenance activities that affect or have the potential to affect the quality or quantity of sewage or water conveyed, effluent or water produced."
14. In violation of OAC Rule 3745-7-09(A)(3)(c), Respondent failed to document specific operation and maintenance activities that affect or have the potential to affect the quality or quantity of water produced at the Village of Sebring and the Village of Malvern public water systems. Records obtained during a limited scope site visit at the Village of Sebring on June 10, 2008 and a sanitary survey at the Village of Malvern on June

- 19, 2008 showed the Respondent was not documenting specific operation and maintenance activities.
15. In accordance with OAC Rule 3745-7-09(A)(3)(e), operation and maintenance records shall at a minimum contain "performance of preventative maintenance and repairs or requests for repair of the equipment that affect or have the potential to affect the quality or quantity of sewage or water conveyed, effluent or water produced."
  16. In violation of OAC Rule 3745-7-09(A)(3)(e), Respondent failed to document the performance of preventative maintenance and repairs or requests for repair of the equipment that affect or have the potential to affect the quality or quantity of water conveyed or water produced at the Village of Malvern public water system. A review of the operation and maintenance records during a June 19, 2008 sanitary survey of the Village of Malvern indicates there was no documentation of preventative maintenance prior to a June 2008 sanitary survey.
  17. Respondent has attended and received continuing education credit for participating in at least three presentations (8/06, 3/07 and 3/08) on the requirements of the operator certification rules in OAC Chapter 3745-7. Each of the Ohio EPA presentations included specific information on the record keeping requirements.
  18. In accordance with OAC Rule 3745-81-24(C)(2), each public water system required to monitor under this rule shall develop and implement a disinfection byproduct monitoring plan. The public water system shall maintain the plan and make it available for inspection by the Director and the general public no later than thirty days following the applicable compliance dates in this rule.
  19. In violation of OAC Rule 3745-81-24(C)(2), Respondent was unable to produce a disinfection byproduct sample monitoring plan during a sanitary survey conducted in June of 2008 at the Village of Malvern public water system. A disinfection byproduct sample monitoring plan was provided at a later date.
  20. In accordance with OAC Rule 3745-83-01(I)(2), the operation report shall be signed by the operator in responsible charge designated in accordance with OAC Rule 3745-7-02 and submitted to the district office no later than the tenth of the month following the month for which the report was prepared.
  21. In violation of OAC Rule 3745-83-01(I)(2), the January-March and April-June 2008 quarterly operating report forms for the Village of Malvern public water system were submitted without the signature and/or

certification number of the operator who has been designated as being in responsible charge. The April-June 2008 quarterly report form was re-submitted with the appropriate information.

22. In accordance with OAC Rule 3745-81-24(C)(3), public water systems shall take all samples during normal operating conditions.
23. In violation of OAC Rule 3745-81-24(C)(3), Respondent reported in his Class IV operator certification examination received by Ohio EPA in August of 2008, "We can have great settled and finished turbidity and chlorine and flush our hydrants before sampling, but we still fight to stay within the limits." Respondent also indicated in an Ohio EPA enforcement meeting that he would collect two TTHM and HAA<sub>5</sub> samples, one at the designated sampling location and one nearby. Respondent instructed the laboratory to run the nearby sample and call him with the results and if the levels were high the other sample would be discarded and compliance samples would be obtained at a later time. Respondent's actions constitute a deliberate attempt to collect samples that are not representative of the condition of the public water system during normal operations as well as an attempt to selectively sample his public water system and give the appearance of compliance.
24. In accordance with OAC Rule 3745-83-01(I)(1), in addition to any other reporting requirement of OAC Chapter 3745-81, the owner or operator of a public water system required to monitor under paragraphs (G) and (H) of this rule shall prepare an operation report for each month of operation on forms acceptable to the Director.
  - a. EPA Form 5002 is the Director approved form used to report information regarding the water quantity and quality of a public water system. Paragraph 3. (n) of the instructions for the form refer to Combined Chlorine (Plant). The instructions indicate "enter the result of the minimum plant tap Combined Chlorine residual to the nearest tenth milligram per liter (mg/l) for date sampled."
  - b. EPA Form 5002 is the Director approved form used to report information regarding the water quantity and quality of a public water system. Paragraphs 3. (o) and (p) of the instructions for the form refer to distribution system free and combined chlorine residuals. The instructions indicate "residual analyses are required daily from representative points on the distribution system. When more than one free and combined chlorine residual test is made per day, report the minimum free and combined chlorine residual to the nearest tenth milligram per liter (0.1 mg/l)."

25. In violation of OAC Rule 3745-83-01(I)(1) and information detailed in Paragraph 24a, Respondent is not reporting the minimum plant tap free and combined chlorine residuals for the date sampled. A review of the Village of Sebring's public water system Distribution Monthly Operating Reports and plant bench sheets for January (5 incidents), February (8 incidents) and March (4 incidents) of 2008 indicate the minimum combined chlorine residual was not reported by the Respondent.
26. In violation of OAC Rule 3745-83-01(I)(1) and information detailed in Paragraph 24b, Respondent is not accurately reporting the minimum distribution system free and combined chlorine residuals. A review of the Village of Sebring's public water system Distribution Monthly Operating Reports, plant bench sheets and monthly microbiological reports which include chlorine residual values for January (3 incidents), February (6 incidents), March (3 incidents) and April (4 incidents) of 2008 indicate that the minimum free and combined chlorine residuals in the distribution system were not accurately reported by the Respondent.
27. In violation of OAC Rule 3745-83-01(I)(1) and information detailed in Paragraph 24b, Respondent is not accurately reporting the minimum distribution system free and combined chlorine residuals. A review of the Village of Malvern's public water system Distribution Monthly Operating Reports, plant bench sheets and monthly microbiological reports which include chlorine residual values for January (1 incident), April (1 incident) and May (1 incident) of 2008 indicates the minimum free and combined chlorine residuals in the distribution system were not accurately reported by the Respondent. In one case a free chlorine residual value of 0.07 mg/l was reported by the Respondent on the April monthly microbiological operating report for a sample point in the distribution system, but was not reported on the April distribution monthly operating report. A free chlorine residual of 0.07 mg/l would be considered a violation of OAC Rule 3745-83-01(C)(1) which requires all community public water systems 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.
28. In accordance with OAC Rule 3745-7-09(B)(2), a certified operator shall, "operate and maintain public water systems, sewerage systems, treatment works, and appurtenances so as not to endanger the health or safety of persons working in or around the facility, the public at large, or the environment due to negligence or incompetence."
29. In accordance with OAC Rule 3745-95-05(A)(1), an approved air gap separation shall be installed where a public water system may be contaminated with substances that could cause a severe health hazard.

30. In violation of OAC Rules 3745-95-05(A)(1) and 3745-7-09(B)(2), Respondent installed inadequate backflow prevention on a cross connection between the potassium permanganate feed system and the water system at the Village of Malvern public water system. During a sanitary survey on June 19, 2008 Ohio EPA noted the Respondent installed an anti-siphon device, but not an approved air gap separation.
31. In accordance with OAC Rule 3745-7-09(A)(3)(d), the owner and operator of record of a public water system shall maintain and record the results of tests performed and samples taken, unless documented on a laboratory sheet.
32. In violation of OAC Rule 3745-7-09(A)(3)(d), Respondent has failed to maintain calibration records for the individual filter effluent turbidity meters. During a limited scope site visit on March 13, 2009, Ohio EPA personnel documented the lack of calibration records for the individual filter effluent turbidity meters.
33. In accordance with OAC Rule 3745-7-09(B)(1), a certified operator shall "perform their duties in a responsible and professional manner consistent with standard operating procedures and best management practices."
34. In violation of OAC Rule 3745-7-09(B)(1), Respondent has not performed his duties in accordance with standard operating procedures and best management practices. Finding numbers 5-8, 10, 12, 14, 16, 19, 21, 23, 25, 26, 27, 30 and 32 above, document the Respondent's failure to perform his duties in a responsible and professional manner.
35. In accordance with OAC Rule 3745-7-09(C)(1), a certified operator shall perform "responsible and effective on site management and supervision of the technical operation of the public water system, treatment works, or sewerage system."
36. In violation of OAC Rule 3745-7-09(C)(1), Respondent has not performed responsible and effective on site management and supervision of the technical operation of the public water systems where he is the operator of record. Finding numbers 5-8, 10, 12, 14, 16, 19, 21, 23, 25, 26, 27, 30 and 32 above, document the Respondent's failure to perform responsible and effective on site management of the technical operation of the public water systems where he is an operator of record.
37. In accordance with OAC Rule 3745-7-12(A)(2) the Director may suspend or revoke the certification of an operator upon finding that the operator has performed the duties of an operator in a negligent or incompetent manner.

38. Respondent's actions documented in Finding numbers 5-8, 10, 12, 14, 16, 19, 21, 23, 25, 26, 27, 30 and 32 above, constitute the performance of the duties of an operator in a negligent or incompetent manner. Respondent was aware Finding numbers 5 and 6 caused the Village of Sebring to have violations as one of these violations was included in Orders between the Ohio EPA and the Village of Sebring. Respondent has continued to create plan approval violations even after the Village of Sebring Orders were finalized in May 2008. Respondent has demonstrated a pattern of making substantial changes prior to requesting plan approval from the Director and failing to respond in a timely fashion when requested to submit detailed plans.
39. In accordance with OAC Rule 3745-7-12(A)(3), the Director may suspend or revoke the certification of an operator upon finding the operator knowingly or negligently submitted misleading, inaccurate or false reports.
40. Respondent's actions documented in Finding numbers 25, 26 and 27 of these Orders constitute the knowing or negligent submission of misleading, inaccurate, or false reports.
41. In accordance with OAC Rule 3745-7-12(A)(4), the Director may suspend or revoke the certification of an operator upon finding that the operator has operated in a manner endangering the public health or welfare.
42. Respondent's actions documented in these Findings demonstrate a pattern of operation which may constitute operation in a manner endangering the public health or welfare.
43. In accordance with OAC Rule 3745-7-12(A)(5), the Director may suspend or revoke the certification of an operator upon finding that the operator has operated in such a manner to have violated or caused to be violated any provisions of ORC Chapter 6109.
44. Respondent's actions documented in Finding numbers 5-8, 10, 12, 14, 16, 19, 21, 23, 25, 26, 27, 30 and 32 of these Orders constitute violations of ORC Chapter 6109.

## **V. ORDERS**

1. Within five (5) days of the effective date of these Orders, Respondent shall immediately withdraw his application for Class IV Water Supply certification.
2. Respondent agrees to never seek Class IV Water Supply certification.

## **VI. 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 Respondent's operations at the above-referenced public water system.

## **VII. 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.

## **VIII. MODIFICATIONS**

These Orders may be modified by agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

## **IX. NOTICE**

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

Ohio Environmental Protection Agency  
Operator Certification Unit  
Division of Drinking and Ground Waters  
PO Box 1049  
Columbus, Ohio 43216-1049  
Attn: Andrew Barienbrock, Environmental Supervisor, DDAGW

## **X. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

## **XI. 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. Except for the right to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders, which 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.

## XII. EFFECTIVE DATE

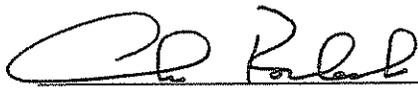
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

## XIII. 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:

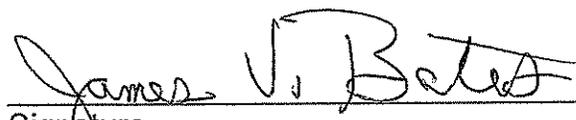
Ohio Environmental Protection Agency

  
\_\_\_\_\_  
Chris Korleski, Director

8/17/09  
Date

### IT IS SO AGREED:

James V. Bates

  
\_\_\_\_\_  
Signature

8-5-09  
Date