

OHIO E.P.A.

BEFORE THE

JUN -3 2015

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:	:	<u>Director's Final Findings of</u>
	:	<u>Fact, Conclusions</u>
Donald Daley	:	<u>of Law and Orders</u>
	:	
Respondent.	:	

I. JURISDICTION

This matter is before the Director of Environmental Protection ("Director") and these Director's Final Findings of Fact, Conclusions of Law and Orders, ("Orders"), are issued to Donald Daley ("Respondent"), pursuant to the authority vested in the Director under Ohio Revised Code ("ORC") Chapters 119, 3745, and 6109 and the rules adopted thereunder.

II. DEFINITIONS

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

III. FINDINGS OF FACT

The Director, after review and consideration of the entire record of this proceeding, determines the following findings of fact:

1. On January 10, 2015, Respondent was an operator of record at the City of Vermilion Public Water System ("PWS") plant. Mr. Daley visited the Vermilion plant that day and recorded an entry in the operator of record logbook.
2. Part of the January 10, 2015 operator of record logbook entry stated as follows: "Don Daley in at - 1:30 PM ... out at 2:30 PM."
3. Mr. Daley testified that "I wrote in the time, but did I fulfill that time? No, because I became ill and I left."
4. Video and photographic evidence admitted at the adjudication hearing indicated that Mr. Daley was at the plant for approximately seven (7) minutes.

5. Another part of Respondent's January 10, 2015 operator of record logbook entry stated as follows: "Ron D having difficulty with NTU. – Plant is coming back around."
6. Despite making the entry stating that the plant was coming back around, Respondent left the plant without actually knowing if the plant would "come back around" and without actually knowing if the turbidity would decrease to a safe level.
7. When Respondent was told that there was a turbidity (NTU) problem at the City of Vermilion plant, Mr. Daley did not independently investigate and personally respond to the problem.
8. Shortly after he arrived at the Vermilion plant on Saturday, January 10, 2015, Respondent left the facility. After Respondent left the facility, the turbidity level continued to rise resulting in an emergency situation.
9. On January 10, 2015, after Respondent left the Vermilion plant sometime between 1:30 and 2:30 p.m., he did not return to the facility and he did not contact the facility to check on the status of the turbidity issue.
10. At one point, Respondent contended that the turbidity was high because Mr. Daerr was backwashing the filters. However, Respondent testified that Mr. Daerr told him that he was backwashing the filters because he was having turbidity issues prior to the initial backwashing.
11. On January 10, 2015, the high turbidity in the finished water at the Vermilion water treatment plant created an imminent and substantial danger to the health and welfare of more than 10,000 customers of the Vermilion plant.
12. Respondent was the operator of record present at the plant who was responsible for the technical operation of the Vermilion plant on January 10, 2015.
13. To address the emergency brought about by Respondent's actions and/or inaction, the Director of the Ohio EPA issued a February 11, 2015 emergency order to Respondent personally. Respondent was ordered to:
 1. Not function or serve as Operator of Record at any PWS after fourteen (14) days from the effective date of these orders;
 2. Immediately not to interfere with others serving as an Operator of Record at a PWS; and
 3. To immediately comply with all requirements of ORC Chapter 6109. and the rules adopted thereunder.

14. The emergency order was for ninety (90) days and became effective immediately.
15. On February 20, 2015, Respondent, by and through his counsel, filed a request for an adjudication hearing.
16. On March 12, 2015 and March 13, 2015, an adjudication hearing was held in this matter.
17. On March 23, 2015, the parties submitted post-hearing briefs in this case.
18. On March 30, 2015, the original hearing transcript was filed in this matter with the Ohio Environmental Protection Agency ("Ohio EPA").
19. On April 14, the hearing examiner issued a Report and Recommendation concluding that Respondent's actions and/or inaction endangered the public health and welfare and that the Director's February 11, 2015 emergency order should continue through the duration of the ninety day period.

IV. CONCLUSIONS OF LAW

The Director, after review and consideration of the entire record of this proceeding, makes the following conclusions of law:

1. The burden of proof in this proceeding is upon the Staff with the standard of proof being the preponderance of the evidence.
2. "Preponderance of the evidence" means evidence that is more probable, more persuasive or of greater probative value. *In re N.F.* (2009), 2009 WL 1798146, 2 (Ohio App. 10 Dist.).
3. Pursuant to ORC 3745.01, the Director of the Ohio EPA has the authority to take such action as may be necessary to comply with the requirements of the laws and regulations pertaining to the public water supply.
4. Pursuant to ORC 3745.011(B), the Director of the Ohio EPA has the authority to take such action as may be necessary to prevent and abate pollution of the environment for the protection and preservation of the health, safety, welfare, and property of the people of the state.

5. Pursuant to ORC 3745.011(F), the Director of the Ohio EPA has the authority to take such action to provide for enforcement of the right of the people to environmental quality consistent with human health and welfare.
6. Pursuant to ORC 6109.05(B), whenever the Director of the Ohio EPA determines that a water supply emergency exists requiring immediate action to protect the public health or welfare and the owner or operator of a public water system has not taken such action, he shall issue an order reciting the existence of the emergency and requiring that such action be taken as is necessary to meet the emergency.
7. As set forth in Ohio Administrative Code ("OAC") 3745-7-09(C)(1), Respondent's duties as the operator of record at the Vermilion PWS plant on January 10, 2015 included the responsible and effective onsite management and supervision of the technical operation of the public water system. Additionally, pursuant to OAC 3745-7-09(B)(1), Respondent was required to perform his duties in a responsible and professional manner consistent with standard operating procedures and best management practices.
8. As set forth in O.A.C. 3745-7-09(B)(2), as the operator of record at the Vermilion PWS plant on January 10, 2015, Respondent was required to operate and maintain the public water system so as not to endanger the health or safety of the public at large or the environment due to negligence or incompetence.
9. Pursuant to OAC 3745-81-75(E), Respondent was required to notify the Director as soon as practical, but no later than twenty-four hours, if at any time the turbidity in representative samples of filtered water in accordance with paragraph (A) of rule 3745-81-74 of the Administrative Code exceeds one NTU, for conventional or direct filtration or alternative filtration surface water systems. Furthermore, pursuant to OAC 3745-81-32, Respondent was required to notify persons served by the PWS of an exceedance of the turbidity level in representative samples of filtered water as specified in paragraph (E) of rule 3745-81-75 of the Administrative Code if the public water system fails to consult with the director within twenty-four hours after learning of the violation.
10. Respondent did not notify the Director of the turbidity exceedance nor persons served by the PWS of the turbidity exceedance.
11. By failing to independently evaluate the situation at the Vermilion plant on January 10, 2015, by failing to personally address that situation, by failing to contact the Ohio EPA or make sure that the Ohio EPA was contacted within 24 hours, and by failing to issue or to make sure that a public notice was issued within 24 hours, Respondent was at the very least negligent in fulfilling his duties as the Vermilion plant operator of record.

12. Because Respondent's actions and/or inaction caused or contributed to the occurrence of the emergency situation at the Vermilion PWS plant on January 10, 2015 and the days following, the Director was authorized by ORC 3745.01, ORC 3745.011(B) and (F), and ORC 6109.05(B) to issue the emergency order for the ninety day period to ensure that Respondent was capable of acting as an operator of record in compliance with the applicable statutes, rules, and regulations.

V. ORDERS

1. The recommendation of the Hearing Officer as set forth in the April 14, 2015 Report and Recommendation is lawful and reasonable and is hereby adopted.
2. The February 11, 2015 Emergency Order is effective through the duration of the original ninety day period pursuant to ORC 6109.05(B).
3. These Orders shall be entered into the Director's Journal and served upon the parties to the proceeding and public noticed as is required by law.

VI. APPEAL RIGHTS

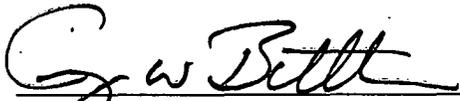
You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC § 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00 made payable to "Ohio Treasurer Josh Mandel", which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, Ohio 43215

VII. 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



Craig W. Butler
Director of Environmental Protection

6/2/15
Date

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

**Case Nos. 15-EO-02-2
Hearing Officer Wilson**

DONALD DALEY,

REPORT AND RECOMMENDATION

Respondent.

Attached hereto is a copy of the Hearing Officer's Report and Recommendation in this matter. Pursuant to Ohio Revised Code Section 119.09 and Ohio Administrative Code Rule 3745-47-16, any party to this matter may file written objections to the Report and Recommendation. Such objections must be filed with the Director of Environmental Protection within ten (10) days of the receipt of the Report and Recommendation. Written objections should be filed with:

Ohio Environmental Protection Agency
Hearing Clerk - Legal Section
50 West Town Street, Suite 700
P. O. Box 1049
Columbus, Ohio 43216-1049

If objections are filed, an original plus two (2) copies are required.

OHIO EPA
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LEGAL RECORDS
SECTION

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO EPA
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LEGAL RECORDS
SECTION

In the Matter of:

Case No. 15-EO-02-2
Hearing Officer Wilson

DONALD DALEY,

REPORT AND RECOMMENDATION

Respondent.

STATEMENT OF CASE

On February 11, 2015, the Director of the Ohio Environmental Protection Agency (Director) issued an emergency order that ordered Mr. Donald Daley to "1. Not function or serve as Operator of Record at any PWS after fourteen (14) days from the effective date of these orders; 2. Immediately not to interfere with others serving as an Operator of Record at a PWS; and 3. To immediately comply with all requirements of ORC Chapter 6109. and the rules adopted thereunder." On February 20, 2015, Respondent, by and through his counsel, filed a request for an adjudication hearing.

On March 12, 2015 and March 13, 2015, an adjudication hearing was held in this matter. On March 23, 2015, the parties filed post-hearing briefs in this case. On March 30, 2015, the original transcript was filed in this matter with the Ohio Environmental Protection Agency (Ohio EPA).

FACTS

On January 10, 2015, Donald Daley was an operator of record at the City of Vermilion Public Water System (PWS) plant. (See Hearing Transcript, Page 343, Line 23 thru Page 344, Line 2.) (See Tr., Pg. 343, L. 23 – Pg. 344, L. 2.) On January 10, 2015, Mr. Daley visited the Vermilion PWS plant and recorded an entry in the operator of record logbook. (See Tr., Pg 363, Ls. 2-4.)

Part of the January 10, 2015 operator of record logbook entry stated as follows: "Don Daley in at – 1:30 PM ... out at 2:30 PM." (See the bottom left of the second page of Ohio EPA DD&GW Exhibit S-4A.) Mr. Daley testified that "I wrote in the time, but did I fulfill that time? No, because I became ill and I left." (See Tr., Pg. 365, L. 17 – Pg. 366, L. 6.) Video and photographic evidence admitted at the hearing indicated that Mr. Daley was at the plant for approximately seven (7) minutes. (See Exhibit S-7; and Exhibits S-7A, S-7B, S-7C, and S-7D.)

Another part of Mr. Daley's January 10, 2015 operator of record logbook entry stated as follows: "Ron D having difficulty with NTU. – Plant is coming back around." (Ron D is Ron Daerr, City of Vermilion employee. NTU is a measure of turbidity. See the bottom left of the second page of Ohio EPA DD&GW Exhibit S-4A.) Despite making the entry stating that the plant is coming back around, Mr. Daley left the plant

without actually knowing if the plant would "come back around" and without actually knowing if the turbidity would decrease to a safe level. (See Tr., Pg. 437, L. 19 – Pg. 438, L. 10.) When Mr. Donald Daley was told that there was a turbidity (NTU) problem at the Vermilion water treatment plant, Mr. Daley did not investigate and respond to the problem. Shortly after he arrived at the Vermilion water treatment plant on Saturday, January 10, 2015, Mr. Daley left the facility. After Mr. Daley left the facility, the turbidity level continued to rise resulting in an emergency situation. On January 10, 2015, after Mr. Daley left sometime between 1:30 and 2:30 p.m., he did not return to the facility and he did not contact the facility to check on the status of the turbidity issue.

At one point, Mr. Daley contended that the turbidity was high because Mr. Daerr was backwashing the filters. However, Mr. Daley testified that Mr. Daerr told him that he was backwashing the filters because he was having turbidity issues prior to the initial backwashing. (See Tr., Pg. 417, L. 32 – Pg. 418, L. 4.)

On January 10, 2015, the high turbidity in the finished water at the Vermilion water treatment plant threatened the health and welfare of more than 10,000 customers of the Vermilion plant. Donald Daley was the operator of record present at the plant who was responsible for the technical operation of the Vermilion plant on January 10, 2015. In order to address the emergency brought about by Mr. Daley's actions and/or inaction, the Director of the Ohio EPA issued the February 11, 2015 emergency order. The order was for ninety (90) days and became effective immediately. The order was directed to Donald Daley personally.

APPLICABLE LAW

ORC 3745.01 Environmental protection agency created – powers-duties states in pertinent part as follows:

"There is hereby created the environmental protection agency, headed by the director of environmental protection. The agency, under the supervision of the director, shall administer the laws pertaining to ... public water supply ... The director may do all of the following:

(A) Provide such methods of administration, appoint such personnel, make such reports, and take such other action as may be necessary to comply with the requirements of the federal laws and regulations pertaining to ... public water supply ..." (Underline emphasis added.)

ORC 3745.011 Legislative intent states in pertinent part as follows:

"It is the intent of the general assembly that the environmental protection agency shall: ...

(B) Prevent and abate pollution of the environment for the protection and preservation of the health, safety, welfare, and property of the people of the state ...

(F) Provide for enforcement of the right of the people to environmental quality consistent with human health and welfare." ...

ORC 6109.05 **Plan for the provision of safe drinking water in emergencies** states in pertinent part as follows:

"(A) The director of environmental protection shall adopt a plan for the provision of safe drinking water in emergencies. For purposes of this section, "emergency" means an imminent and substantial danger to human health.

(B) Whenever the director determines that a water supply emergency exists requiring immediate action to protect the public health or welfare and the owner or operator of a public water system has not taken such action, he shall issue an order reciting the existence of the emergency and requiring that such action be taken as is necessary to meet the emergency." ...

Ohio Administrative Code (OAC) 3746-7-01 **Definitions** states in pertinent part as follows:

"(C) "Available" means able to be contacted as needed twenty-four hours a day, seven days a week to make operational decisions in a timely manner. ...

(Q) "Operator of record" means an individual identified as being the on-site certified operator or one of the on-site certified operators responsible for the technical operation of:

(1) A public water system;" ...

OAC 3745-7-02 **Certified operators required** states in pertinent part as follows:

"(A) Responsibilities.

(1) Each person owning or operating a public water system, except as provided for in paragraph (B) of this rule, shall designate one or more operator of record to oversee the technical operation of the public water system or each water treatment plant and distribution system within the public water system. Each operator of record shall have a valid certification of a class equal to or greater than the classification of the public water system, distribution system or water treatment plant except as provided for in paragraphs (E) to (G) of this rule.

(a) The owner and operator of record of a public water system shall notify the director of the identity of an operator of record upon initiation or termination of service or upon request by the director.

(C) The certified operator required by paragraph (A) or (B) of this rule shall be an employee of the person owning or operating the public water system, treatment works, or sewerage system, except as provided in paragraph (D) of this rule.

(D) Owners of public water systems, sewerage systems, or treatment works may enter into a contract for the services of one or more appropriately certified operators to serve as the operator of record provided the following:

(1) The contract requires that the certified operator be available to respond to emergencies, and provide the services necessary to maintain the reliable operation of the system, and the contract is consistent with the staffing requirements of paragraphs (C) to (E) of rule 3745-7-03 of the Administrative Code and paragraphs (C) to (D) of rule 3745-7-04 of the Administrative Code."

Ohio Administrative Code 3745-7-09(B) Recordkeeping requirements and responsibilities of a certified operator states:

"(B) A certified operator shall:

(1) Perform their duties in a responsible and professional manner consistent with standard operating procedures and best management practices;

(2) 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; and

(3) Report all instances of noncompliance with applicable regulations to the operator of record or facility supervisor."

Ohio Administrative Code 3745-7-09(C)(1) Recordkeeping requirements and responsibilities of a certified operator states:

"(C) The duties of an operator of record shall include, but not be limited to, those outlined in paragraphs (B)(1) to (B)(3) of this rule and the following additional duties and responsibilities:

(1) Responsible and effective on site management and supervision of the technical operation of the public water system, treatment works, or sewerage system;"

O.A.C. 3745-7-12(A) **Suspension or revocation of certification** states in pertinent part as follows:

"(A) The Director may suspend or revoke the certificate of an operator, issued under this chapter, upon finding that the operator has: ...

(2) Performed the duties of an operator in a negligent or incompetent manner, or ...

(4) Operated in a manner endangering the public health or welfare, or

(5) Operated in such a manner to have violated or caused to be violated any provisions of Chapter 6109. or 6111. of the Revised Code, or" ...

OAC 3745-81-32 **Public notification** states in pertinent part as follows:

"(B) Tier 1 public notification requirements.

(1) The owner or operator of a public water system with any of the following violations or situations that may pose an acute risk to human health, shall notify the persons served by the public water system in accordance with paragraph (B)(3) of this rule:

(g) Exceedance of the turbidity level in representative samples of filtered water as specified in paragraph (E) of rule 3745-81-75 of the Administrative Code and one or more of the following occurs:

(i) The public water system fails to consult with the director within twenty-four hours of learning of the violation;

(B)(3) Public water systems shall:

(a) Provide a public notice as soon as practical but no later than twenty-four hours after the system learns of the violation or situation" ...

OAC 3745-81-75 **Recordkeeping reporting and actionable requirements** states in pertinent part as follows:

"(E) If at any time the turbidity in representative samples of filtered water in accordance with paragraph (A) of rule 3745-81-74 of the Administrative Code exceeds one NTU, for conventional or direct filtration or alternative filtration surface water systems, the public water system shall notify the director as soon as practical, but no later than twenty-four hours after the exceedance is known."

DISCUSSION

On January 10, 2015, Donald Daley was an operator of record at the City of Vermilion PWS plant. (See Hearing Transcript, Page 343, Line 23 thru Page 344, Line 2.) (See Tr., Pg. 343, L. 23 – Pg. 344, L. 2.) On January 10, 2015, Mr. Daley visited the Vermilion plant and recorded an entry in the operator of record logbook. (See Tr., Pg 363, Ls. 2-4.)

Part of the January 10, 2015 operator of record logbook entry stated as follows: "Don Daley in at – 1:30 PM ... out at 2:30 PM." (See the bottom left of the second page of Ohio EPA DD&GW Exhibit S-4A.) Mr. Daley testified that "I wrote in the time, but did I fulfill that time? No, because I became ill and I left." (See Tr., Pg. 365, L. 17 – Pg. 366, L. 6.) Video and photographic evidence admitted at the hearing indicated that Mr. Daley was at the plant for approximately seven (7) minutes. (See Exhibit S-7; and Exhibits S-7A, S-7B, S-7C, and S-7D.)

Another part of Mr. Daley's January 10, 2015 operator of record logbook entry stated as follows: "Ron D having difficulty with NTU. – Plant is coming back around." (Ron D is Ron Daerr, City of Vermilion employee. NTU is a measure of turbidity. See the bottom left of the second page of Ohio EPA DD&GW Exhibit S-4A.) Despite making the entry stating that the plant is coming back around, Mr. Daley left the plant without actually knowing if the plant would "come back around" and without actually knowing if the turbidity would decrease to a safe level. (See Tr., Pg. 437, L. 19 – Pg. 438, L. 10.) When Mr. Donald Daley was told that there was a turbidity (NTU) problem at the Vermilion PWS plant, Mr. Daley did not independently investigate and respond to the problem. Shortly after he arrived at the Vermilion plant on Saturday, January 10, 2015, Mr. Daley left the facility. After Mr. Daley left the facility, the turbidity level continued to rise resulting in an emergency situation. On January 10, 2015, after Mr. Daley left sometime between 1:30 and 2:30 p.m., he did not return to the facility and he did not contact the facility to check on the status of the turbidity issue.

At one point, Mr. Daley contended that the turbidity was high because Mr. Daerr was backwashing the filters. However, Mr. Daley testified that Mr. Daerr told him that he was backwashing the filters because he was having turbidity issues prior to the initial backwashing. (See Tr., Pg. 417, L. 32 – Pg. 418, L. 4.) This is important because it leads to the conclusion that Mr. Daley knew or should have known that the initial turbidity problem was not caused by the backwashing. Mr. Daley knew or should have known that the backwashing was being done to combat a turbidity problem and was not the initial cause of the turbidity problem. Given what he knew or should have known, Mr. Daley should have factored in that the backwashing was not the cause of the high turbidity and Mr. Daley should have checked the plant for other causes of the high turbidity. Even if Mr. Daley did not know that the backwashing was not the cause of the high turbidity, he still should have investigated and evaluated the problem and the possible solution or solutions to the problem. He should never have just walked away. If he was ill, he should have contacted another operator of record and instructed him/her to get to the plant immediately.

On January 10, 2015, the high turbidity in the finished water at the Vermilion plant threatened the health and welfare of more than 10,000 customers of the Vermilion plant. Donald Daley was the operator of record present at the plant who was responsible for the technical operation of the Vermilion plant on January 10, 2015. In order to address the emergency brought about by Mr. Daley's actions and/or inaction, the Director of the Ohio EPA issued the February 11, 2015 emergency order. The order was for ninety (90) days and became effective immediately. The Director's order was issued pursuant to Ohio Revised Code Section 3745.01 (ORC 3745.01), ORC 3745.011, and ORC 6109.05. While the specific incident that triggered the emergency order appears to have been the January 10, 2015 Vermilion incident, Mr. Daley's action/inaction caused or contributed to the emergency and the emergency order was issued to Mr. Daley personally.

The question presented is did Donald Daley's actions or inaction demonstrate that Mr. Daley is not fit to serve as a certified operator/operator of record for a ninety (90) day period. I am concerned with Mr. Daley's evaluation of and response to the emergency situation that occurred at the Vermilion plant on January 10, 2015, and Mr. Daley's actions in the days that followed the incident.

Based upon Mr. Daley's actions and/or inaction, it is my conclusion that Mr. Daley's total failure to independently evaluate the situation at the Vermilion plant on January 10, 2015, his failure to personally address that situation, his failure to contact the Ohio EPA or make sure that the Ohio EPA was contacted within 24 hours, and his failure to issue or to make sure that a public notice was issued within 24 hours constitutes a willful or negligent failure to fulfill his duties as the Vermilion plant operator of record and that such actions/inaction merits a 90 day suspension of his water supply operator certificate. I certainly cannot conclude that the Director's emergency order was unreasonable or unlawful. My conclusion is limited to the February 11, 2015 emergency order and I draw no conclusion regarding any extension of the emergency order or any future issuance of any subsequent emergency orders. I want to make it clear that my conclusion and my recommendation are based solely upon Mr. Daley's actions and/or inaction on January 10, 2015 and the days immediately following and are not based upon any actions and/or inactions taken at the Poplar Village public water system, the Pleasant Acres public water system, or at any other public water system Mr. Daley served as an operator of record.

CONCLUSION

Based upon the foregoing, the attached Findings of Fact, Conclusions of Law, and Recommendation are hereby submitted to the Director for his consideration.

Sam Wilson
W. SAMUEL WILSON, ESQ.
Presiding Hearing Officer

4/14/15
Date

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

**Case No. 15-EO-02-2
Hearing Officer Wilson**

DONALD DALEY,

REPORT AND RECOMMENDATION

Respondent.

FINDINGS OF FACT

1. On February 11, 2015, the Director of the Ohio Environmental Protection Agency (Director) issued an emergency order that ordered Mr. Donald Daley to "1. Not function or serve as Operator of Record at any PWS after fourteen (14) days from the effective date of these orders; 2. Immediately not to interfere with others serving as an Operator of Record at a PWS; and 3. To immediately comply with all requirements of ORC Chapter 6109. and the rules adopted thereunder."
2. On February 20, 2015, Respondent, by and through his counsel, filed a request for an adjudication hearing.
3. On March 12, 2015 and March 13, 2015, an adjudication hearing was held in this matter.
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9. Mr. Daley testified that "I wrote in the time, but did I fulfill that time? No, because I became ill and I left." (See Tr., Pg. 365, L. 17 – Pg. 366, L. 6.)

10. Video and photographic evidence admitted at the hearing indicated that Mr. Daley was at the plant for approximately seven (7) minutes. (See Exhibit S-7; and Exhibits S-7A, S-7B, S-7C, and S-7D.)
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15. After Mr. Daley left the facility, the turbidity level continued to rise resulting in an emergency situation.
16. On January 10, 2015, after Mr. Daley left the Vermilion plant sometime between 1:30 and 2:30 p.m., he did not return to the facility and he did not contact the facility to check on the status of the turbidity issue.
17. At one point, Mr. Daley contended that the turbidity was high because Mr. Daerr was backwashing the filters.
18. However, Mr. Daley testified that Mr. Daerr told him that he was backwashing the filters because he was having turbidity issues prior to the initial backwashing. (See Tr., Pg. 417, L. 32 – Pg. 418, L. 4.)
19. On January 10, 2015, the high turbidity in the finished water at the Vermilion water treatment plant created an imminent and substantial danger to the health and welfare of more than 10,000 customers of the Vermilion plant.
20. Donald Daley was the operator of record present at the plant who was responsible for the technical operation of the Vermilion plant on January 10, 2015.
21. To address the emergency brought about by Mr. Daley's actions and/or inaction, the Director of the Ohio EPA issued the February 11, 2015 emergency order.

22. The emergency order was for ninety (90) days and became effective immediately.

23. The emergency order was directed to Donald Daley personally.

CONCLUSIONS OF LAW

1. The Director of the Ohio EPA has the authority to take such action as may be necessary to comply with the requirements of the laws and regulations pertaining to the public water supply. (See ORC 3745.01.)

2. The Director of the Ohio EPA has the authority to take such action as may be necessary to prevent and abate pollution of the environment for the protection and preservation of the health, safety, welfare, and property of the people of the state. (See ORC 3745.011(B).)

3. The Director of the Ohio EPA has the authority to take such action as may be necessary to prevent and abate pollution of the environment for the protection and preservation of the health, safety, welfare, and property of the people of the state. (See ORC 3745.011(F).)

4. Whenever the director of environmental protection determines that a water supply emergency exists requiring immediate action to protect the public health or welfare and the owner or operator of a public water system has not taken such action, he shall issue an order reciting the existence of the emergency and requiring that such action be taken as is necessary to meet the emergency. (See ORC 6109.05(B).)

5. As the operator of record at the Vermilion PWS plant on January 10, 2015, Donald Daley's duties included the responsible and effective on site management and supervision of the technical operation of the public water system. (See O.A.C. 3745-7-09(C)(1).)

6. As the operator of record at the Vermilion PWS plant on January 10, 2015, Donald Daley was required to perform his duties in a responsible and professional manner consistent with standard operating procedures and best management practices. (See O.A.C. 3745-7-09(B)(1).)

7. As the operator of record at the Vermilion PWS plant on January 10, 2015, Donald Daley was required to operate and maintain the public water system so as not to endanger the health or safety of the public at large, or the environment due to negligence or incompetence. (See O.A.C. 3745-7-09(B)(2).)

8. By failing to independently evaluate the situation at the Vermilion plant on January 10, 2015, by failing to personally address that situation, by failing to contact the Ohio EPA or make sure that the Ohio EPA was contacted within 24 hours, and by failing to issue or to make sure that a public notice was issued within 24 hours, Donald Daley

was at the very least negligent in fulfilling his duties as the Vermilion plant operator of record.

9. Because Donald Daley's actions and/or inaction caused or contributed to the occurrence of the emergency situation at the Vermilion PWS plant on January 10, 2015 and the days following, the Director was authorized by ORC 3745.01, ORC 3745.011(B) and (F), and ORC 6109.05(B) to issue the emergency order for the ninety day period to ensure that Donald Daley was capable of acting as an operator of record in compliance with the applicable statutes, rules, and regulations. (See ORC 3745.01, ORC 3745.011(B) and (F), and ORC 6109.05(B). See also OAC 3745-7-12(A).)

RECOMMENDATION

1. Based upon the foregoing, and because Mr. Daley totally failed to independently evaluate the situation at the Vermilion plant on January 10, 2015, failed to personally address that situation, failed to contact the Ohio EPA or make sure that the Ohio EPA was contacted within 24 hours, and failed to issue or to make sure that a public notice was issued within 24 hours, and because Mr. Daley's actions and/or inaction endangered the public health and welfare, the Director should continue the emergency order through the duration of the ninety day period.

Sam Wilson

W. SAMUEL WILSON, ESQ.

Hearing Officer

4/14/15

Date

DONALD DALEY
Case No. 15-EO-2-2

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