



State of Ohio Environmental Protection Agency

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November 7, 2003

Mr. Thomas J. Gallagher, Esq.
Maguire & Schneider, LLP
250 Civic Center Drive, Suite 200
Columbus, OH 43215

Re: Joseph L. Chaffin, Case No. 02-CT-001

Dear Mr. Gallagher:

I have enclosed a certified copy of the journalized, Final Findings and Orders (Orders) and a copy of the public notice that the Ohio EPA is required to publish.

If you have any questions concerning compliance with the Orders, please call me at (614) 644-2752.

Sincerely,

Andrew Barienbrock
Environmental Supervisor
Operator Certification Unit

Enclosure

Bob Taft, Governor
Jennette Bradley, Lieutenant Governor
Christopher Jones, Director

OHIO E.P.A.

BEFORE THE

NOV -7 2003

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Case No. 02-CT-001

JOSEPH L. CHAFFIN

DIRECTOR'S FINAL
FINDINGS, CONCLUSIONS
AND ORDERS

Respondent

Pursuant to Chapters 6109. and 6111. and sections 119.09 *et seq.* of the Ohio Revised Code, and the rules of the Ohio Environmental Protection Agency, the Director of Environmental Protection hereby makes the following Findings of Fact, and Conclusions of Law, and issues the following Orders:

FINDINGS AND CONCLUSIONS

1. This case arises out of Joseph L. Chaffin's request for an adjudication filed in response to the Director's December 27, 2001 proposed action to revoke Mr. Chaffin's Class III Wastewater Treatment Operator Certificate No. 3-83-021, and Mr. Chaffin's Class III Water Supply Operator Certificate No. 3-85-014. Both revocations were proposed for a period of five years.
2. An adjudication hearing in this matter was held before an Ohio EPA Hearing Examiner.
3. The Hearing Examiner has filed a Report recommending that the proposed revocation of Mr. Chaffin's Water Supply Operator Certificate be withdrawn, and that Mr. Chaffin's Wastewater Treatment Operator Certificate be revoked for a period of two, rather than five, years.
4. Both parties, the Respondent Mr. Chaffin and the Staff of the Ohio Environmental Protection Agency ("the Staff"), have submitted objections to the Hearing Examiner's recommendations.
5. The proposed revocation of Mr. Chaffin's Wastewater Treatment Operator

I certify this to be a true and correct copy of the official proceedings filed in the records of the Ohio Environmental Protection Agency.

By *Donna Jackson* on 11-7-03

Certificate is based upon certain actions and inactions of Mr. Chaffin during his association with the Clearview Mobile Home Park ("Clearview") in Clark County, Ohio. Mr. Chaffin was never a full-time employee of Clearview or the Park's owners. However, from late November 1997 to August 2000, Mr. Chaffin provided certain services to Clearview. Mr. Chaffin and Clearview's owner entered into a written contract for services in June 1999. Prior to that time, Mr. Chaffin's services were provided pursuant to an oral agreement with Clearview's owners.

6. It is the Staff's position that Mr. Chaffin served as the operator in responsible charge of the Clearview wastewater treatment system, as that term is defined in Rule 3745-7-01 of the Ohio Administrative Code. It is Mr. Chaffin's position that he did not. The Hearing Examiner concluded that Mr. Chaffin agreed to perform certain duties with respect to the Clearview wastewater treatment system, but did not serve as the operator in responsible charge.

The evidence is conflicting and ambiguous. The Director does not find that the Staff has proved by a preponderance of the evidence that Mr. Chaffin was the operator in responsible charge of the Clearview wastewater treatment system, and does not disagree with the Hearing Examiner's conclusion in this regard.

7. The Hearing Examiner concluded that although Mr. Chaffin was not the operator in responsible charge at Clearview, Mr. Chaffin had agreed to undertake certain duties and responsibilities at Clearview, and, to the extent such duties and responsibilities were not performed adequately, or at all, Mr. Chaffin as a certified operator should be held accountable.

8. Among the Findings of the Hearing Examiner are the following:

- A. On six occasions, Mr. Chaffin submitted misleading, inaccurate or false chain of custody reports. The reports indicated that Mr. Chaffin had taken composite samples when in fact Mr. Chaffin had taken grab samples. (Finding of Fact 81).
- B. Mr. Chaffin submitted ten misleading, inaccurate or false chain of custody reports indicating that Mr. Chaffin had not preserved ammonia samples with sulfuric acid when, in fact, the samples had been so preserved. (Finding of Fact 86).
- C. Mr. Chaffin submitted three misleading, inaccurate or false chain of custody reports indicating that Mr. Chaffin had added preservatives to fecal coliform samples, when, in fact, preservatives had not been added to the samples. (Finding of Fact 91).
- D. Mr. Chaffin submitted five misleading, inaccurate or false chain of custody reports indicating that Mr. Chaffin had added preservatives to CBOD, DO and TSS samples, when, in fact, preservatives had not been added to the

samples. (Finding of Fact 96).

- E. Mr. Chaffin submitted eleven misleading, inaccurate or false monthly operating reports. (Finding of Fact 98).
 - F. On sixteen occasions, Mr. Chaffin failed to obtain samples with the frequency required by the Clearview NPDES permit. (Finding of Fact 99).
 - G. During the period from December 1997 through August 15, 2000, Mr. Chaffin failed to timely submit monthly operating reports on nineteen occasions. (Finding of Fact 100).
 - H. During the period from December 1997 through August 15, 2000, Mr. Chaffin violated the Clearview NPDES permit holding time standard for fecal coliform samples on three occasions. (Finding of Fact 101).
9. The Hearing Examiner concluded that Mr. Chaffin had negligently submitted the misleading, inaccurate or false reports referenced in his Findings of Fact 81, 86, 91 and 96; that Mr. Chaffin had knowingly or negligently submitted the misleading, inaccurate or false reports referenced in his Finding of Fact 98; and that as a result of the actions or inactions referenced in his Findings of Fact 99, 100 and 101, Mr. Chaffin had operated in a manner endangering the public health or welfare. (Conclusions of Law 11, 12, 13, 14, 15, 16, 17 and 18).
10. The Hearing Examiner concluded that Rule 3745-7-12 of the Ohio Administrative Code gives the Director the authority to suspend or revoke operator certifications if it is found that the operator has knowingly or negligently submitted misleading, inaccurate or false reports to the Ohio EPA, or has operated in a manner endangering the public health or welfare.
11. The proposed revocation of Mr. Chaffin's Water Supply Operator Certificate is ultimately based upon a letter written by Mr. Chaffin in April 1995 in his capacity as water superintendent for the Sunshine Mobile Home Park ("Sunshine") in Miami County, Ohio. A March 1995 survey of the water distribution system at Sunshine by an Ohio EPA inspector had disclosed the existence of a hole in a well casing. The April 1995 response letter by Mr. Chaffin represented that the hole had been repaired. It, in fact, had not. Mr. Chaffin testified that it had been his understanding when he wrote the letter that the Sunshine maintenance supervisor had repaired the hole, and that the maintenance supervisor had always been reliable in his previous dealings with him. The Hearing Examiner concluded that although the April 1995 letter from Mr. Chaffin contained a misleading, inaccurate or false statement, the Staff had failed to prove by a preponderance of the evidence that Mr. Chaffin had knowingly or negligently submitted such statement.

12. The Director agrees with and adopts the findings and conclusions of the Hearing Examiner specifically referenced above in the Director's Findings and Conclusions 6 through 10.
13. For the reasons set forth below, the Director does not adopt the Hearing Examiner's recommendations that Mr. Chaffin's Wastewater Treatment Operator Certificate be revoked for a period of two years, and that Mr. Chaffin's Water Supply Operator Certificate not be revoked at all.
14. The reduced revocation period recommended with respect to Mr. Chaffin's Wastewater Treatment Operator Certificate presumably reflects the Hearing Examiner's conclusion that while Mr. Chaffin was personally responsible for certain actions and inactions at Clearview, he was not the operator in charge at Clearview, and therefore was not responsible for the entire universe of permit violations and operating problems raised by the Staff in support of the proposed five year revocation.
15. While on this record Mr. Chaffin may not be accountable as the operator in responsible charge at Clearview for all the permit violations and operating problems that occurred, as a certified operator, Mr. Chaffin has certain responsibilities and is subject to certain requirements set forth in the applicable provisions of the Ohio Administrative Code that exist whether or not he may be serving as an operator in charge at a given moment. Rule 3745-7-12 of the Ohio Administrative Code provides, in part, that the certification(s) of an operator may be suspended or revoked upon a finding that the operator has:

(A) . . .

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

(3) Knowingly or negligently submitted misleading, inaccurate, or false reports to the Ohio EPA,¹ or

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

It is not necessary that a certified operator be functioning as an operator in responsible charge of a wastewater works or a public water system for these provisions to apply to his or her conduct.

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It is noted that in his objections to the Hearing Examiner's Report and Recommendations, Mr. Chaffin asserts that the reports in question were not submitted to the Ohio EPA - they were submitted to a laboratory for analysis and then forwarded to the Ohio EPA - and therefore this rule could not have been violated by Mr. Chaffin. This hypertechnical and unreasonable reading of the Rule is rejected.

16. Whether or not Mr. Chaffin was the operator in responsible charge at Clearview, his actions and inactions reflected gross negligence or incompetence, and endangered the public health or welfare. While Mr. Chaffin was performing duties at Clearview, there were occasions on which the treatment system was not functioning properly, owing, for instance, to the degraded condition of sand filters or the fact that the lift station was out of service; untreated or inadequately treated sewage was being released; Mr. Chaffin was aware of these circumstances, and took little, if any, action to address the situation. (See testimony of Leibfritz, Tr. 224, 239-240, 277-280, 296-297, 407-408, 421-422; Chaffin, Tr. 831-832). With specific reference to a period of time during which the lift station at Clearview was out of service, Mr. Chaffin testified as follows:

Q. [By Mr. Gallagher] Okay. Why weren't there any samples taken in this month?

* * *

A. [By Mr. Chaffin] According to the notation at the bottom of the page, the lift station was out of service. There was no plant flow – no plant flow during sampling.

Q. And that means?

A. That means while I was doing my weekly visit, there wasn't any wastewater moving through the facility.

Q. So there was nothing to sample?

A. With the exception of just dipping water out of the clarifier. There was no flow going through the sand filter.

Q. And you attribute that to the lift station being out of service?

A. Yes, sir.

Q. So would that be an operation and maintenance problem?

A. Yes, sir.

Q. Which you weren't responsible for?

A. No, sir.

(Tr. 760-762).

* * *

Q. [By Mr. Martin] Why didn't you contact Ohio EPA to advise them of the lift station failure prior to just submitting the MOR?

A. [By Mr. Chaffin] I wasn't – I wasn't aware I was required to. (Tr. 817).

* * *

Q. You did believe that could create a health problem?

A. Yes

(Tr. 818).

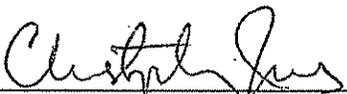
In other words, Mr. Chaffin was aware of a situation at Clearview that presented a health problem, but took no overt action to respond to it because he didn't believe it was his job, or that he was required to do so. This cavalier attitude toward the performance of a wastewater treatment system with which he was associated, whether or not he was serving as the operator in responsible charge, is not consistent with the responsibilities of a certified operator. Such conduct constitutes gross negligence and/or incompetence within the meaning of Rule 3745-7-12 of the Ohio Administrative Code.

17. Mr. Chaffin's conduct as described above, coupled with the negligent and /or knowing actions of Mr. Chaffin summarized in the Director's Finding and Conclusion 9., warrant the revocation of Mr. Chaffin's Wastewater Treatment Operator Certificate. The Director concludes that the five year period for revocation proposed in this matter is reasonable and appropriate and commensurate with the gravity of Mr. Chaffin's conduct.
18. With respect to the proposed revocation of Mr. Chaffin's Water Supply Operator Certificate, the Director would conclude that, given the circumstances testified to by Mr. Chaffin, the inaccurate statement set out in Mr. Chaffin's April 1995 letter, standing alone, would warrant a minimal, if any, suspension or revocation of the Certificate. Considered along with Mr. Chaffin's conduct at Clearview, however, the letter reflects a consistent and troubling pattern of behavior. The letter reflects the same indifference to Mr. Chaffin's responsibilities as a certified water supply operator as his conduct at Clearview demonstrated with respect to his responsibilities as a certified wastewater operator. The potential consequences of such indifference with respect to water supply system operation are no less significant than those attending wastewater systems. Therefore, the Director concludes that the revocation of Mr. Chaffin's Water Supply Operator Certificate for an identical five year period is appropriate.

ORDERS

1. Joseph Chaffin's Class III Water Supply Operator Certificate No. 3-85-014 is hereby revoked for a period of five years, commencing on the effective date of this Final Order.
2. Joseph Chaffin's Class III Wastewater Treatment Operator Certificate No. 3-83-021 is hereby revoked for a period of five years, commencing on the effective date of this Final Order.
3. The operator certificates referenced in Orders 1 and 2 shall be returned, by certified mail, to the Ohio Environmental Protection Agency Division of Drinking and Ground Waters, 122 South Front Street, P.O. Box 1049, Columbus, Ohio 43216-1049, within seven days of the effective date of these Final Orders.

IT IS SO ORDERED:



CHRISTOPHER JONES
Director

NOV 7 2003

Date

