

FILED

AUG 17 2011

STATE OF VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

Agency of Natural Resources,)
Petitioner,)
v.)
Nick Tsouknakis d/b/a Pizza Chef,)
Respondent.)

Docket # 111-8-11 Vtec

FINDINGS

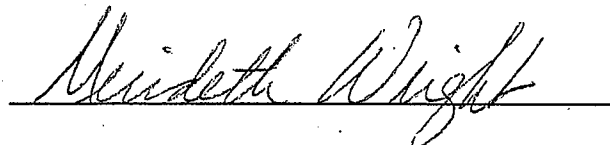
PURSUANT TO 10 V.S.A. §8008(d) THE COURT FINDS AS FOLLOWS:

1. The Administrative Order in this matter has been properly served on the Respondent(s) in accordance with 10 V.S.A. §8008(a).
2. The Respondent has not timely requested a hearing in this matter in accordance with 10 V.S.A. §8008(b).
3. The order otherwise meets the requirements of 10 V.S.A. Chapter 201.

ORDER

By the Court's signature below, the Administrative Order in this matter, filed with the Superior Court, Environmental Division, on August 4, 2011, has become a final Judicial Order pursuant to 10 V.S.A. §8008(d)(2).

Dated this 17th day of August, 2011.



Merideth Wright,
Environmental Judge

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

NICK TSOUKNAKIS d/b/a
PIZZA CHEF
Respondent

ADMINISTRATIVE ORDER

Having found that Nick Tsouknakis d/b/a Pizza Chef (Respondent) has committed a violation as defined in 10 V.S.A. §8002(9), the Secretary (Secretary) of the Agency of Natural Resources (Agency), pursuant to the authority set forth in 10 V.S.A. §8008, hereby issues the following Administrative Order:

VIOLATIONS¹

1. Vermont Water Supply Rule (VWSR) Subchapter 21-6, §6.6 and 40 CFR §141.21: Failure to conduct water quality monitoring for coliform
2. VWSR Subchapter 21-6, §6.8 and 40 CFR §141.23: Failure to conduct water quality monitoring for nitrate
3. VWSR Subchapter 21-9, §9.1 and 40 CFR §141.31: Failure to report monitoring results
4. VWSR Subchapter 21-6, §6.1 and 40 CFR §141.63: Exceedence of Maximum Contaminant Level (MCL) for Total Coliform
5. VWSR Subchapter 21-10, §§10.1, 10.3, and 40 CFR §141, Subpart Q: Failure to issue boil water notice and public notice and submit copies
6. VWSR Subchapter 21-7, §7.2.2: Failure to install disinfection

STATEMENT OF FACTS

1. Respondent owns and operates a transient non-community water system (TNC) (WSID #20511) located in Hartford, Vermont for the restaurant known as Pizza Chef (the system).

¹ Citations to the Vermont Water Supply Rule refer to the Rules effective April 25, 2005. The Rules have been amended, effective December 1, 2010.

The system is served by a drilled well connected to two underground concrete storage tanks.

2. VWSR Subchapter 21-6 and 40 CFR Part 141 requires a TNC to collect coliform samples for each calendar quarter. VWSR Subchapter 21-9 and 40 CFR Part 141 requires the water supplier to report the results of any testing to the Water Supply Division (WSD) within the first ten days following the month in which the result is received or ten days following the end of the required monitoring period. Respondent failed to collect coliform samples and submit the results for the first, second, and third quarters in 2006; the third quarter of 2007; the first, second, and fourth quarters of 2008; the second quarter of 2009; the first quarter of 2010; and the first quarter of 2011 in violation of VWSR Subchapter 21-6, §6.6 and 40 CFR §141.21 VWSR Subchapter 21-9, §9.1 and 40 CFR §141.31.
3. Respondent submitted coliform sample results for the fourth quarter of 2006, due January 10, 2007, on February 13, 2007; and coliform sample results for the third quarter of 2008, due on October 10, 2008, on November 21, 2008; and therefore more than ten days after the end of the applicable monitoring period in violation of VWSR Subchapter 21-9, §9.1 and 40 CFR §141.31.
4. VWSR Subchapter 21-6 and 40 CFR Part 141 requires a TNC to collect a nitrate sample once per year and submit the results to the WSD. Respondent failed to collect a nitrate sample and submit the result for the 2006, 2007, 2008, and 2010 annual monitoring periods, in violation of VWSR Subchapter 21-6, §6.8 and 40 CFR §141.23 and VWSR Subchapter 21-9, §9.1 and 40 CFR §141.31.
5. VWSR Subchapter 21-10 and 40 CFR Part 141, Subpart Q requires systems that fail to complete water quality monitoring to issue public notice and submit copies of notice, along with a certification form, to the WSD. Respondent issued one public notice on January 23, 2007 for the failure to sample for coliform during the fourth quarter of 2006. Respondent failed to issue public notice and submit copies to the WSD for the failure to monitor for coliform and nitrate for all other applicable time periods referenced in paragraphs 2 and 4 above in violation of VWSR Subchapter 21-10, §§10.1, 10.3, and 40 CFR Part 141, Subpart Q.
6. VWSR Subchapter 21-6 and 40 CFR Parts 141 and 143 require systems to comply with the

MCLs for various chemicals and substances, including total coliform. Respondent exceeded the MCL for total coliform for the March 2007 reporting period in violation of VWSR Subchapter 21-6, §6.1 and 40 CFR §141.63.

7. On March 19, 2007, the WSD issued Respondent a Notice of Alleged Violation (NOAV) for the March exceedence with instructions to issue a boil water notice and submit a copy of the notice to the WSD. Respondent failed to issue notice and submit copies in violation of VWSR Subchapter 21-10, §§10.1, 10.3 and 40 CFR §141, Subpart Q.
8. Respondent exceeded the MCL for total coliform for October 2007 monitoring period in violation of VWSR Subchapter 21-6, §6.1 and 40 CFR §141.63.
9. On November 6, 2007, the WSD issued Respondent a NOAV for the October exceedence with instructions to issue public notice and submit a copy of the notice to the WSD. Respondent failed to issue notice and submit copies in violation of VWSR Subchapter 21-10, §§10.1, 10.3 and 40 CFR §141, Subpart Q.
10. On November 6, 2007, a contract engineer working for the WSD conducted an inspection of the system and observed that the system's well cap was cracked, there was an unsealed connection of the electrical conduit to the well, and cracks in the storage tank covers.
11. On January 30, 2008, the WSD instructed Respondent to install a disinfection system based on system deficiencies and monitoring results. Respondent failed to install disinfection in violation of VWSR Subchapter 21-7, §7.2.2.
12. On May 21, 2010, WSD personnel conducted a sanitary survey of the system. The survey revealed that the system's deficiencies had not been corrected in violation of VWSR Subchapter 21-7, §7.2.2. The WSD subsequently instructed Respondent to address the observed deficiencies.
13. Respondent exceeded the MCL for coliform for the October 2010 monitoring period in violation of VWSR Subchapter 21-6, §6.1 and 40 CFR §141.63. On October 8, 2010, the WSD issued a NOAV for the October exceedence with instructions to issue a boil water notice and obtain a construction permit to install disinfection.
14. On January 27, 2011, Agency personnel visited the restaurant and observed that Respondent had not posted any public notice or boil water notice in violation of VWSR Subchapter 21-

10, §§10.1, 10.3 and 40 CFR §141, Subpart Q.

15. To date Respondent has not addressed the system's deficiencies or addressed disinfection in violation of VWSR Subchapter 21-7, §7.2.2.

ORDER

Upon receipt of this Administrative Order, the Respondent shall:

A. Pay a penalty of \$12,750.00 no later than thirty (30) consecutive calendar days following the effective date of this Order. Payment shall be by check made payable to the "Treasurer, State of Vermont" and forwarded to:

Becky Buchanan, Administrative Assistant
Environmental Enforcement Division
Agency of Natural Resources
103 South Main Street/Old Cannery
Waterbury, VT 05671-4910

The Secretary reserves the right to augment the above stated penalty based upon the evidence adduced at the hearing in this matter. The penalty may be increased by the total costs incurred by the Secretary for the enforcement of this matter, by the total amount of economic benefit gained by the Respondent from the violation(s) and by further consideration of any other component of penalty found in 10 V.S.A. §8010, each according to proof at hearing.

B. No later than three (3) consecutive calendar days following the effective date of this Order, Respondent shall post Public Notice for the failure to monitor for coliform and nitrate and a Boil Water Notice in two (2) locations of the restaurant which are viewable by the public.

C. No later than seven (7) consecutive calendar days following the effective date of this Order, Respondent shall submit copies of the notices and completed public notice certification forms to the WSD.

D. No later than fifteen (15) consecutive calendar days following the effective date of this Order, Respondent shall conduct coliform monitoring for the system in accordance with the VWSR and submit the results to the WSD.

E. No later than fifteen (15) consecutive calendar days following the effective date of this Order,

Respondent shall conduct nitrate monitoring for the system in accordance with the VWSR and submit the results to the WSD.

- F. Respondent shall conduct routine quarterly monitoring for coliform and routine annual monitoring for nitrate commencing with the next applicable monitoring period and every period thereafter, and submit the results to the WSD in accordance with the VWSR while under the jurisdiction of the VWSR.
- G. No later than fifteen (15) consecutive calendar days following the effective date of this Order, Respondent shall hire a qualified engineer to either: prepare a permit application for the connection of the restaurant to the Hartford municipal water supply system and abandonment of the private water system currently serving the restaurant; or to assess the system currently serving the restaurant and prepare an application for a permit to construct to address system deficiencies and disinfection.
- H. No later than thirty (30) consecutive calendar days following the effective date of this Order, Respondent shall notify the WSD in writing whether he will pursue connection of the restaurant to the Hartford municipal water supply system and abandonment of the private water system currently serving the restaurant or will address system deficiencies and disinfection through a permit to construct.
- I. No later than forty-five (45) consecutive calendar days following the effective date of this Order, Respondent shall either: submit an administratively complete permit application to the Wastewater Management Division (WWMD) for review and approval for the construction of a connection of the restaurant to the Hartford municipal water supply system and abandonment of the private water system currently serving the restaurant; or submit an application to the WSD for a permit to construct to address system deficiencies and disinfection.
- J. No later than forty-five (45) consecutive calendar days following approval of the permit application identified in Paragraph I above, Respondent shall complete any and all repairs and construction in accordance with the applicable approved permit.

- K. In the event Respondent elects to address system deficiencies and disinfection of the system currently serving the restaurant through a WSD permit to construct, then no later than thirty (30) consecutive calendar days following completion of all work approved pursuant to that applicable permit, Respondent shall submit an application to the WSD for a permit to operate the system.
- L. In the event Respondent fails to comply with any applicable deadline identified in paragraphs B through K above, then Respondent shall immediately cease operation of the private water system currently serving the restaurant and close the restaurant to the public. In the event of closure Respondent shall not reopen the restaurant to the public until either the connection to the Hartford municipal water supply system is placed into operation or a permit to operate an approved water supply system is obtained from the WSD.
- M. Respondent shall comply with the WSD's requirements to boil water until notified by the WSD. Respondent shall comply with any other monitoring directives issued by the WSD while under the jurisdiction of the VWSR.

RESPONDENT'S RIGHT TO A HEARING
BEFORE THE ENVIRONMENTAL COURT

The Respondent has the right to request a hearing on this Administrative Order before the Environmental Court under 10 V.S.A. §8012 by filing a Notice of Request for Hearing within fifteen (15) days of the date the Respondent receives this Administrative Order. The Respondent must timely file a Notice of Request for Hearing with both the Secretary and the Environmental Court at the following addresses:

1. Secretary, Agency of Natural Resources
c/o: Enforcement Division,
103 South Main Street/Old Cannery
Waterbury, Vermont 05671-4910

2. Clerk, Environmental Court
2418 Airport Road, Suite 1
Barre, Vermont 05641

EFFECTIVE DATE OF THIS ADMINISTRATIVE ORDER

This Administrative Order shall become effective on the date it is received by the Respondent unless the Respondent files a Notice of Request for Hearing within fifteen (15) days of receipt as provided for in the previous section hereof. The timely filing of a Notice of Request for Hearing by the Respondents shall stay the provisions (including any penalty provisions) of this Administrative Order pending a hearing by the Environmental Court. If the Respondent does not make a timely filing of a Notice of Request for Hearing, this Administrative Order shall become a final Judicial Order when filed with and signed by the Environmental Court.

COMPLIANCE WITH THIS ADMINISTRATIVE ORDER

If the Respondent fails or refuses to comply with the conditions of a final Judicial Order, the Secretary shall have cause to initiate any further legal action against the Respondent including but not necessarily limited to, those available to the Secretary pursuant to the provisions of 10 V.S.A. Chapters 201 and 211.

Dated at Waterbury, Vermont this 17th day of June, 2011.

SECRETARY, VERMONT AGENCY OF NATURAL RESOURCES

By: 

David Mears, Commissioner
Department of Environmental Conservation

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION
Docket No.

SECRETARY, VERMONT
AGENCY OF NATURAL RESOURCES,
Plaintiff

v.

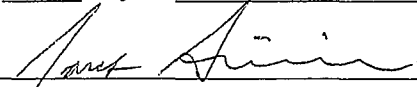
NICK TSOUKNAKIS d/b/a
PIZZA CHEF
Respondent

Affidavit of James Siriano

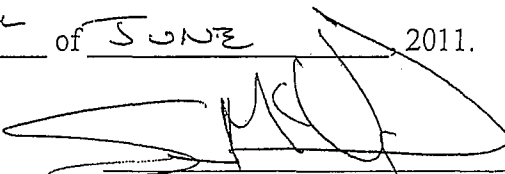
I, James Siriano, being duly sworn do attest:

1. I am of legal age and a resident of the State of Vermont.
2. I am employed as the Manager of the Transient Non-Community Water System Program for the Water Supply Division of the Agency of Natural Resources. My duties require me to be familiar with the compliance status of transient non-community water systems. In addition, I have reviewed the Public Water Supply System file, WSID #20511, relevant to this matter.
3. Based upon personal knowledge, file review, and conversations with Agency personnel, the violations described in the Statement of Facts section of the above-entitled Administrative Order occurred during the time periods set forth therein.

Dated at WATERBURY, Vermont this 7th day of JUNE, 2011.


James Siriano - Affiant

Subscribed and sworn before me on the 7th of JUNE, 2011.


Notary Public

My Commission Expires: 2-10-15