



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

5/31/2019

Wood Ridge 3, LLC
Attn: Robert Abernathy
PO Box 757
Springboro, Ohio 45066

RE: Director's Final Findings & Orders
NPDES
Greene County
1GC06272

Ladies and Gentlemen:

Transmitted herewith is one copy of the Director's Final Findings & Orders in the referenced matter.

Sincerely,

Kevin J. Fowler, Supervisor
Permit Processing Unit
Division of Surface Water

KJF/dks

Enclosure

CERTIFIED MAIL

cc: L. Reeder, DSW
R. Demuth, DSW
L. Kaldy, DSW
B. Palmer, DSW
J. Martin, DSW
Fiscal
J. Miller, SWDO/DSW
M. McCarron, PIC
H. Griesmer, PIC
J. Lee, PIC
B. Fischbein, Legal
J. Dragovich, DEFA
Journal Room
File

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Wood Ridge 3, LLC	:	<u>Director's Final Findings</u>
P.O. Box 757	:	<u>and Orders</u>
Springboro, Ohio 45066	:	
	:	
Respondent	:	

PREAMBLE

The parties hereto agree as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Wood Ridge 3, LLC ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in the ownership or composition of Respondent or the ownership of the development described below 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 6111 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Pursuant to Sections 401 and 404 of the federal Clean Water Act, anyone who wishes to discharge dredge or fill material into waters of the United States, must obtain a Section 404 permit from the U.S. Army Corps of Engineers ("USACE") and a Section 401 water quality certification from Ohio EPA. Respondent has caused pollution by discharging or placing or causing to be placed other wastes into waters of the state. Respondent has violated ORC §§ 6111.04 and 6111.07.

2. Pursuant to ORC § 6111.04, no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.
3. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
4. Respondent was the developer and owner of the Wood Ridge Subdivision, Section 3 located off of Hickory Knoll Drive in Beavercreek Township, Ohio, Greene County ("the Site").
5. Respondent had authorization to discharge stormwater from the Site under the National Pollutant Discharge Elimination System ("NPDES") Construction Site Stormwater General Permit OHC000004 from May 31, 2017 to April 20, 2018 (Permit No. 1GC06272*AG).
6. During December 2017, Greene County Soil and Water Conservation District ("SWCD") exchanged email correspondence with Ohio EPA regarding potential permitting requirements at the Site as the National Wetlands Inventory Map indicates the presence of a wetland. Ohio EPA recommended that USACE be contacted to complete a jurisdictional determination at the Site to establish permitting requirements. Greene County SWCD transmitted this information to Respondent and the Site engineer on December 21, 2017.
7. Ohio EPA conducted an inspection at the Site on February 21, 2018, subsequently issuing Respondent a Notice of Violation ("NOV") on March 7, 2018 for failing to install a sediment basin in accordance with the terms and conditions of the Construction Site Stormwater General Permit. The Site engineer responded to the NOV and provided a tentative timeframe for completion of the sediment basin.
8. On April 24, 2018, Ohio EPA 401 staff conducted a complaint/compliance inspection at the Site and observed a newly constructed sediment basin to the east/northeast of Hidden Forest Court. The fill material used for the sediment basin was placed within a wetland area located at latitude 39.684097, longitude -84.011708. A jurisdictional determination had not been completed at the Site and Respondent does not possess a valid permit to discharge fill materials into a wetland from Ohio EPA.
9. On April 27, 2018, Ohio EPA held a conference call with Respondent, stating that impacts to a suspected Category 3 wetland had occurred at the Site.

10. On May 1, 2018, a 401 Wetlands NOV was sent to Respondent, documenting the findings from the April 24, 2018 inspection. The NOV cited fill material for a newly constructed sediment basin to the east/northeast of Hidden Forest Court had been placed within a wetland area without the necessary authorizations by means of a Section 404 permit from USACE and a Section 401 Water Quality Certification from Ohio EPA.
11. On June 15, 2018, Ohio EPA met Respondent's consultant at the Site to collect information on wetland plants and make a wetland category determination.
12. On June 27, 2018, Ohio EPA sent Respondent and updated Ohio Rapid Assessment Method for Wetlands ("ORAM") form, confirming the impacted wetland as a forested, Category 3 wetland.
13. On July 12, 2018, Respondent's consultant responded to the May 1, 2018 NOV, stating that remediation options would be considered for the Site.
14. Respondent's consultant sends a second response letter dated September 7, 2018, requesting a meeting with Ohio EPA to discuss a resolution for the violation.
15. On October 26, 2018, Ohio EPA had a meeting with Respondent, Respondent's consultant, and the Site engineer to discuss resolution options for the violation. The meeting concluded with a consensus that Respondent would go through the expedited enforcement process and compensatory mitigation would be required to resolve the violation.
16. From November 19, 2018 to December 11, 2018, discussions were held between Ohio EPA and Respondent's consultant to reach an agreement regarding the total acreage of impacted wetland.
17. On December 14, 2018, Ohio EPA and Respondent's consultant visited the Site to delineate the extent of wetland impacts.
18. On January 3, 2019, Ohio EPA received an updated figure from the Site engineer showing the extent of wetland impacts. Ohio EPA agreed with the area represented in the figure, totaling 0.42 acres of wetland impacted at the Site.
19. The Director has given consideration to, and based her determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

1. Respondent shall not cause pollution to waters of the state, alter, fill, dredge or otherwise degrade the uses and/or existing functions or values of any portion of any waters of the state at any location in Ohio, without first receiving prior approval from the Director as required by law.
2. Within thirty (30) days from the effective date of these Orders, Respondent shall compensate for the 0.42 acres of forested, Category 3 wetland impacts by completing compensatory mitigation for 1.10 acres of Category 3 wetland pursuant to the requirements in OAC Rule 3745-1-54(E). The compensatory mitigation type and location shall be provided in the following preferred order, pursuant to OAC Rule 3745-1-54(E)(1):
 - (a) At a mitigation bank, approved in accordance with 33 Code of Federal Regulations ("C.F.R.") Part 332.8, with a service area including the same watershed as the location of the proposed wetland impacts that provides credits for the appropriate wetland category and type.
 - (b) Through an in-lieu-fee program, approved in accordance with 33 C.F.R. Part 332.8, with a service area including the same watershed as the location of the proposed wetland impacts that provides credits for the appropriate wetland category and type.
3. Within seven (7) days of the purchase of such mitigation credits, as set forth in Order No. 2, Respondent shall provide written notification to Ohio EPA, together with a copy of said receipt in accordance with Section X. of these Orders.
4. Respondent shall pay the amount of five thousand dollars (\$5,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio". The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondent, to:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to Larry Reeder, Environmental Manager, Enforcement Section, or his successor, at the following address:

Division of Surface Water
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

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 Division of Surface Water 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 the Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(F).

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 activities occurring on or at the site.

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.

XIII. EFFECTIVE DATE

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

XIV. 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



Laurie A. Stevenson, Director

MAY 31 2019

Date

IT IS SO AGREED:

Wood Ridge 3, LLC



Signature

5-28-19

Date

ROBERT D. ABERNATHY

Printed or Typed Name

AGENT

Title