



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

2/20/2015

RTB Holdings of Walnut Creek Ltd
PO Box 206
Walnut Creek, OH 44687

RE: Directors Final Findings & Orders
Stormwater
Holmes County
3GC06187

Ladies and Gentlemen:

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

Sincerely,

A handwritten signature in black ink that reads "Ed Swindall". The signature is fluid and cursive.

Ed Swindall, Supervisor
Permit Processing Unit
Division of Surface Water

ERS/dks

Enclosure

CERTIFIED MAIL

cc: M. Mann, DSW
R. DeMuth, DSW
B. Schuch, DSW
L. Reeder, DSW
A. Ward, DSW
J. Martin, DSW
Fiscal
D. Stoll, NEDO/DSW
Compliance Section
B. Fischbein, Legal
M. Horvitz, Legal
Journal Room
File

1. Respondent is the developer of property more than one acre in size located at 2870 Cove Lane, Millersburg, Holmes County, Ohio, on which a hotel has been constructed ("Site").
2. Storm water from the Site discharges to an unnamed tributary of Walnut Creek. Walnut Creek and the unnamed tributary constitute "waters of the state," as defined in ORC § 6111.01(H). Sediment contained in the storm water constitutes "other wastes," as defined in ORC § 6111.01(D). Placement of this waste into waters of the state constitutes "pollution," as defined in ORC § 6111.01(A).
3. Ohio Administrative Code (OAC) Rule 3745-38-02 provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without either applying for and obtaining an Ohio National Pollutant Discharge Elimination System ("NPDES") individual permit in accordance with requirements of OAC Chapter 3745-33, complying with the indirect discharge permit program pursuant to OAC Chapter 3745-36 or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of OAC Chapter 3745-38.
4. ORC § 6111.03(J)(1) authorizes the Director to set the terms and conditions of the permit. That section further provides that any permit terms and conditions set by the director shall be designed to achieve and maintain full compliance with mandatory requirements of the Federal Water Pollution Control Act that are imposed by regulation of the Administrator of the United States Environmental Protection Agency. Pursuant to Section 402(p) of the federal act, the Administrator of USEPA imposed by regulation requirements to regulate storm water discharges. Under 40 C.F.R. 122.26, dischargers of storm water associated with construction activity that disturbs more than one (1) acre of land are required to obtain an individual NPDES permit or coverage under a storm water general permit.
5. Because the Site is a construction site which disturbs more than one (1) acres of land, Respondent was required to submit a Notice of Intent ("NOI") to obtain coverage under the Ohio EPA NPDES General Permit for Storm Water Discharges Associated with Construction Activity ("Storm Water General Permit") and to develop and implement a Storm Water Pollution Prevention Plan ("SWP3") specific to the Site at least twenty-one (21) days prior to initiating construction activity.
6. Respondent is an "operator" as defined in the Storm Water General Permit.
7. On September 12, 2012, Ohio EPA conducted an inspection at the Site and

determined that construction activities, which under the Storm Water General Permit include "the initial disturbance of soils associated with clearing, grubbing, grading, placement of fill, or excavating activities or other construction activities," at the Site, which appeared to be greater than one acre, had commenced prior to the submission of an NOI, in violation of OAC § 3745-38-06 and ORC § 6111.07.

8. Ohio EPA sent a Notice of Violation ("NOV") dated October 4, 2012 to Respondent notifying Respondent that the construction activities occurring at the Site were in violation of storm water permitting requirements. The NOV requested that Respondent submit an NOI and the Site's SWP3 within ten (10) days of receipt of the NOV. The NOV also detailed post-construction storm water management requirements.
9. On October 12, 2012, Respondent submitted an NOI to obtain coverage under the Storm Water General Permit. Ohio EPA granted Respondent coverage under Storm Water General Permit No. 3GC06187*AG on October 22, 2012.
10. Part III of the Storm Water General Permit requires an SWP3 to be developed for the Site in accordance with the requirements set out in the Storm Water General Permit prior to the initiation of construction activities. Respondent did not have an SWP3 for the Site prior to initiating construction activities.
11. Following an inspection on October 18, 2012, Ohio EPA sent a letter dated November 15, 2012 to Respondent, again requesting that Respondent submit a copy of the Site's SWP3 within ten (10) days of receipt of the letter, and again emphasizing post-construction management requirements. The letter did note improvements in storm water best management practices (BMPs) installed at the Site.
12. Ohio EPA received the Site's SWP3 on December 3, 2012.
13. In a letter dated December 17, 2012, Ohio EPA listed deficiencies in the SWP3 and requested that Respondent submit a revised SWP3 within ten (10) days of receipt of the letter.
14. Respondent submitted a revised SWP3 on January 23, 2013.
15. By email dated March 5, 2013, Ohio EPA requested additional information to address deficiencies in the SWP3 relating to post-construction storm water management.
16. A March 9, 2013 email from Respondent's consulting engineer to Ohio EPA provided answers to Ohio EPA's comments of

March 5, 2103.

17. By email dated April 22, 2013, Ohio EPA again requested additional information on the SWP3's design for post-construction management.
18. Respondent did not respond to Ohio EPA's April 22, 2013 email.
19. Ohio EPA inspected the Site on October 2, 2013. In a letter dated October 11, 2013 following the inspection, Ohio EPA noted that construction activities had terminated and the Site had been permanently stabilized. However, the letter noted that the Site's post-construction storm water management practices had changed from that described in the SWP3. The letter requested that the design details and post-construction storm water management calculations for the post-construction storm water management BMPs be submitted to Ohio EPA for review.
20. On October 28, 2013, Respondent responded to Ohio EPA's October 11, 2013 letter stating that the requested information would be provided.
21. On July 29, 2014, Ohio EPA received some of the information that was previously requested to address the post-construction storm water management BMPs and a partially revised SWP3 from Respondent.
22. Failure to provide the requested information concerning post-construction storm water management BMPs in a revised SWP3 is a violation of Part III.G.2.e. of the Storm Water General Permit and ORC § 6111.07.
23. On November 12, 2014, Respondent submitted drawings and calculations for the post-construction BMPs and an Operation and Maintenance plan for the post-construction BMPs to Ohio EPA. On December 18, 2014, Ohio EPA notified RTB that these submissions were acceptable to Ohio EPA.
24. Storm water passed over all or part of the disturbed portions of this construction site and picked up dirt and soil which was discharged off site to waters of the state. The discharge, at least in part, was from piles of earth formed by earthmoving equipment and earthmoving activity and/or left the site in discrete conveyances such as drains, ditches, fissures, rills or gullies and/or trenches.
25. 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, and 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 in excess of the permissive discharges specified under an existing permit.

26. 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.
27. By way of storm water discharges Respondent was discharging wastes and pollutants into waters of the state without an appropriate permit or authorization in violation of ORC §§ 6111.04 and 6111.07, OAC § 3745-38-02(A), and 40 C.F.R. 122.26.
27. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
28. The Director has given consideration to, and based his 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 purpose of ORC Chapter 6111.

ORDERS

1. Respondent shall not initiate or continue construction activities that disturb more than one acre of land without having first submitted an NOI and obtained coverage under an Storm Water General Permit and developed and implemented an SWP3 that satisfies all minimum criteria listed in Part III of the Storm Water General Permit.
2. Respondent shall comply with all terms and conditions of Storm Water General Permit No. 3GC06187*AG and any renewals thereof.
3. Respondent shall implement the operation and maintenance plan for the post-construction BMPs or provide the operation and maintenance plan to the post-construction operator of the Site if Respondent is not the post-construction operator.
4. Respondent shall pay to the Ohio EPA the amount of five thousand dollars (\$5,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the amount of

five thousand dollars (\$5,000.00) within thirty (30) days of the effective date of these Orders. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondent, at the following address:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Ohio EPA, in accordance with Section X. of these Orders.

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 as defined in OAC Rule 3745-33-03(E).

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 or the Site.

IX. MODIFICATIONS

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

X. NOTICE

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

Ohio Environmental Protection Agency
Northeast District Office
Division of Surface Water
Attn: DSW Enforcement Unit Supervisor
2110 East Aurora Road
Twinsburg, Ohio 44087

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
Attn: Manager, Stormwater and Enforcement Section
50 West Town Street, Suite 700
[P.O. Box 1049]
Columbus, Ohio 43215 [43216-1049]

[For mailings use the post office box number and zip code in brackets]

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

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

XII. 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. 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.

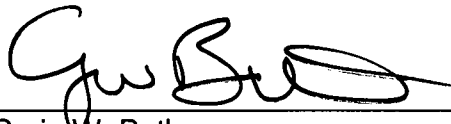
XIII. EFFECTIVE DATE

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**

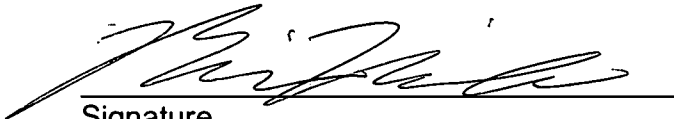


Craig W. Butler
Director

2-19-15

Date

**IT IS SO AGREED:
RTB Holdings of Walnut Creek, Ltd.**



Signature

1/15/15

Date

Brian Miller
Printed or Typed Name

Owning Partner
Title