

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.

JUL 14 2004

ENTERED DIRECTOR'S JOURNAL

**In the Matter of:**

**S & T Development, Inc.  
362 Richland Avenue  
Athens, OH 45701**

**Director's Final Findings  
and Orders**

**Respondent**

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to S & T Development, Inc. ("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 ownership of Respondent or the site (as hereinafter defined) 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 the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent, incorporated in the State of Ohio as a for profit corporation, is the developer of the Walnut Grove Subdivision, a 75-acre development consisting of single family residences, located north of Baker Road and south of Radford Road, in Athens Township, Athens County, Ohio, ("site").
2. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any rule adopted by the Director pursuant to those sections.

3. ORC § 6111.04 provides that no person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state unless the person holds a valid, unexpired permit, a renewal of a permit, or if the person's application for renewal of such a permit is pending.
4. During an October 1, 2003 inspection of the site, Ohio EPA observed storm water containing sediment discharging from the site to an unnamed tributary which flows an estimated 2000 feet to the West Branch of Margaret Creek. The West Branch of Margaret Creek and the unnamed tributary constitute "waters of the state," as defined by ORC § 6111.01(H). Sediment contained in the storm water constitutes "other wastes," as defined in ORC § 6111.01(D). Placement of said waste into waters of the state constitutes "pollution," as defined in ORC § 6111.01(A).
5. During a November 26, 2003 inspection of the site, Ohio EPA observed that road construction had commenced and that storm water runoff from a prospective wastewater treatment lagoon area had transported large quantities of sediment into the downstream segment of the unnamed tributary, which sediment was deposited on the stream bank and in the stream bed.
6. Since the site disturbs more than one (1) acre of land, Respondent was required to submit to Ohio EPA a Notice of Intent ("NOI") to obtain coverage under the Ohio EPA National Pollution Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity ("Construction General Permit").
7. By letter dated January 6, 2004, Respondent was notified that the site was in violation of ORC Chapter 6111. and the submission of a NOI was required.
8. On March 2, 2004, Ohio EPA inspected the site and observed that site preparation had taken place and that a lack of stabilization resulted in a continuation of heavy erosion.
9. Respondent submitted a NOI on March 4, 2004 to obtain coverage under the Construction General Permit. On March 8, 2004, Respondent received coverage under Construction General Permit OHC000002.
10. During an November 26, 2003 inspection of the site, Ohio EPA observed that the unnamed tributary had been relocated and a pond placed in its previous location. The location of the downstream end of the relocation was about 2000 feet from the West Branch of Margaret Creek. Approximately 300 to 350 feet of stream channel had been filled, with a new channel created for the relocated flow.

11. Using the Qualitative Habitat Evaluation Index ("QHEI"), the November 26, 2003 inspection revealed that the relocated and channelized section of the unnamed tributary had a significantly lower QHEI score of 23, when compared to an upstream QHEI score of 64 and a downstream QHEI score of 52.75. The lower downstream QHEI score was primarily a result of less substrate types, substrate embeddedness, narrower riparian corridor, and some apparent channelization. The impacts on substrate quality appeared to be due to sediment from the relocated stream section.
12. A Section 401 water quality certificate, or other authorization from Ohio EPA, is required to perform the activity described in Finding No. 10, above.
13. Respondent has not obtained a Section 401 water quality certificate or such other authorization, as would authorize the activity described in Finding No. 10, above.
14. 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.

#### **V. ORDERS**

1. Respondent shall immediately stabilize any area of the site that requires erosional control practices in accordance with Tables 1 and 2, in Part III.G.2.b.i of the Construction General Permit.
2. Respondent shall not cause, permit or allow the installation of a new disposal system without first obtaining a permit to install or plan approval from the Director.
3. Within thirty (30) days after the effective date of these Orders and until all disturbed areas at the site meet the criteria for final stabilization as set forth in the Construction General Permit, Respondent shall comply with the site's storm water pollution prevention plan and the Construction General Permit.
4. Within thirty (30) days after the effective date of these Orders, Respondent shall submit to Ohio EPA a complete and approvable Section 401 water quality certification or other authorization as Ohio EPA may require, for the relocated and channelized stream section of the unnamed tributary.
5. Within thirty (30) days after the effective date of these Orders, Respondent shall develop and submit to Ohio EPA for approval, a Stream Restoration Plan ("SRP") for the relocated and channelized stream section of the unnamed tributary to achieve a QHEI score of 64. The SRP shall, at a minimum, contain the following:

- a. Description of the location of the project site and impact site on a United States Geological Survey (USGS) quadrangle;
- b. A plan and section and specifications to illustrate the size, shape, and depth variation of the project;
- c. Description of the in-stream habitat restoration or enhancement proposed;
- d. A planting plan, including native Ohio woody species, for a minimum of fifty (50) feet on each side of the stream and planted at a rate of 2,400 plants per acre;
- e. A demonstration that there will be no elimination or substantial impairment of existing in-stream water uses as part of the project;
- f. Description of the best management practices and performance criteria to be used; and
- g. A five (5) year monitoring plan that will focus on the re-establishment of habitat and other water quality functions for the relocated stream section of the unnamed tributary of the West Branch of Margaret Creek.

Ohio EPA may approve the SRP with conditions and/or modify the SRP and approve it as modified.

6. Within thirty (30) days after the effective date of these Orders, Respondent shall develop and submit to Ohio EPA for approval, a Stream Mitigation Plan ("SMP") for an additional 300 feet of stream segment within the West Branch of Margaret Creek watershed and the stream segment or combination of stream segments required to address Order No. 8a, below. The SMP shall, at a minimum, include the following:
  - a. Description of the location of the project site and impact site on a USGS quadrangle;
  - b. A plan and section and specifications to illustrate the size, shape, and depth variation of the project;
  - c. Description of the in-stream habitat restoration or enhancement proposed;
  - d. If no trees are present, a planting plan, including native Ohio woody species, for a minimum of fifty (50) feet on each side of the stream and planted at a rate of 2,400 plants per acre;
  - e. A demonstration that there will be no elimination or substantial impairment of existing in-stream water uses as part of the project;

- f. Description of the best management practices and performance criteria to be used; and
- g. A five (5) year monitoring plan that will focus on the re-establishment of habitat and other water quality functions for project to be located within the West Branch of Margaret Creek watershed.

Ohio EPA may approve the SMP with conditions and/or modify the SMP and approve it as modified.

- 7. Respondent shall pay to Ohio EPA twenty-five thousand dollars (\$25,000.00) in settlement of Ohio EPA's claims for civil penalties as set forth in these Orders, which may be assessed pursuant to Chapter 6111. of the Ohio Revised Code. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of five thousand dollars (\$5,000.00) by tendering an official check made payable to "**Treasurer of State of Ohio,**" together with a letter identifying the Respondent and the site, to the following address:

Office of Fiscal Administration  
Ohio Environmental Protection Agency  
Post Office Box 1049  
Columbus, OH 43216-1049

A photo copy of the check and letter shall be sent to Ohio EPA's Southwest District Office at:

Ohio Environmental Protection Agency  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138  
ATTN: DSW Enforcement Group Leader

- 8. In lieu of payment of the remaining twenty thousand dollars (\$20,000.00) of the civil penalty assessed in Order No. 7, above, Respondent shall implement the following two Supplemental Environmental Projects ("SEPs") in accordance with the following schedule:
  - a. Within thirty (30) days after the effective date of these Orders, Respondent shall perform additional restoration activities on any impacted stream segment or combination of segments located within the West Branch of Margaret Creek watershed. The selected impacted stream segment or combination of segments shall not include the stream segment required in Order No. 5 or the 300 mitigation feet listed in Order No. 6. Respondent shall spend an amount not less than ten thousand dollars (\$10,000.00) towards the restoration activities.

- b. Within thirty (30) days after the effective date of these Orders, Respondent shall spend not less than ten thousand dollars (\$10,000.00) for the purchasing of conservation easement rights for non-impacted segments of streams located within the West Branch of Margaret Creek watershed to protect such stream segments from development. Respondent shall obtain Ohio EPA approval of the selected non-impacted stream segment or combination of segments prior to purchasing any conservation easement rights.
9. Should Respondent fail to fully complete either or both of the SEPs by the dates established in Order No. 8, above, Respondent shall pay to Ohio EPA the moneys allocated to the uncompleted SEP(s) within thirty (30) days after the completion dates established in Order No. 8, above, pursuant to the procedures set forth in Order No. 7, above.

#### **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(D)(1).

#### **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 Facility.

### **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.

### **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. RESERVATION OF RIGHTS**

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

### **XI. 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.

### **XII. EFFECTIVE DATE**

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

RECEIVED

**XII. EFFECTIVE DATE**

04 JUN 17 AM 9:25

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


OEPA / OEA  
DIVISION FISCAL SECTION

**XIII. 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 AGREED:**

Tim Shepard

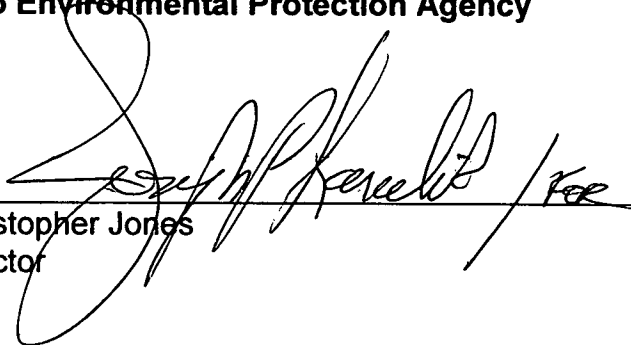
  
\_\_\_\_\_  
By

6/15/04  
\_\_\_\_\_  
Date

KEVIN SCHWARTZ  
\_\_\_\_\_  
Print Name

SECRETARY / TREASURER S+T  
\_\_\_\_\_  
Title

**IT IS SO ORDERED AND AGREED:**  
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Christopher Jones  
Director

7/14/04  
\_\_\_\_\_  
Date