



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215
July 9, 2004

TELE: (614) 644-3020 FAX: (614) 644-3184

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

Re: Director's Final Findings and Orders
Facility Name: Groves at Newmans Crossing

NICO Development Company, LLC
2288 Crissinger Road
Marion, Ohio 43302

Ladies and Gentlemen:

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

Sincerely

Patti L. Smith, Supervisor
Permit Processing Unit
Division of Surface Water

PLS/dks

Enclosure

CERTIFIED MAIL

- cc: M. Mann, DSW
C. Moody, DSW
A. Smaili, NWDO/DSW
J. Martin, DSW
Fiscal
S. Willeke, PIC
H. Griesmer, PIC
P. Simcic, Legal
P. Fallah, DEFA
Journal Room
File

~~OHIO E.P.A.
JUL - 9 2004
ENTERED DIRECTOR'S JOURNAL~~

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

Ohio EPA Invoice/Receipt

Date Printed: July 09, 2004

Revenue ID: 442356

Please include this Revenue ID with all correspondence.

Organization ID: 77525

Information: NICO Development
2288 Crissinger Rd
Marion, OH 43302-

Due Date: August 09, 2004

Amount Due: \$3,500.00

Effective Date: July 09, 2004

Revenue Description: DSW- Findings and Orders
Program Name: NPDES General Permitting
Reason:

For some Revenues, Interest and/or Penalties may be charged for late payment.

Next Interest Date (if applicable):

Next Penalty Date (if applicable):

Remittance Advice

Detach Here - Please Return This Portion With Your Payment

Organization ID: 77525

Information: NICO Development
2288 Crissinger Rd
Marion, OH 43302-

Due Date: Aug 09, 2004

Amount Due: \$3,500.00

Secondary Type/Id: /

Revenue Type: FOSW

Amount Enclosed: \$ _____

Please write this number on your check. Revenue ID: 442356
Make check or money order payable to "Treasurer, State of Ohio"

Remit to: Ohio Environmental Protection Agency - OFA
Department L-2711
Columbus, OH 43260-2711

For Ohio EPA use only

Check ID: _____

Check Date: _____

Check Number: _____

Check Amount: \$ _____

77525	NICO Development	350000	FOSW	442356
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Ohio EPA Invoice/Receipt

Date Printed: July 09, 2004

Revenue ID: 442357

Please include this Revenue ID with all correspondence.

Organization ID: 77525
Information: NICO Development
2288 Crissinger Rd
Marion, OH 43302-

Due Date: September 07, 2004

Amount Due: \$3,500.00

Effective Date: July 09, 2004

Revenue Description: DSW- Findings and Orders
Program Name: NPDES General Permitting
Reason:

For some Revenues, Interest and/or Penalties may be charged for late payment.

Next Interest Date (if applicable):

Next Penalty Date (if applicable):

Remittance Advice Detach Here - Please Return This Portion With Your Payment

Organization ID: 77525
Information: NICO Development
2288 Crissinger Rd
Marion, OH 43302-

Due Date: Sep 07, 2004

Amount Due: \$3,500.00

Secondary Type/Id: /
Revenue Type: FOSW

Amount Enclosed: \$ _____

Please write this number on your check. Revenue ID: 442357
Make check or money order payable to "Treasurer, State of Ohio"

Remit to: Ohio Environmental Protection Agency - OFA
Department L-2711
Columbus, OH 43260-2711

For Ohio EPA use only

Check ID: _____
Check Date: _____
Check Number: _____
Check Amount: \$ _____

77525 NICO Development 350000 FOSW 442357

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JUL -9 2004

ENTERED DIRECTOR'S JOURNAL

In the Matter of:
NICO Development Company, LLC :
2288 Crissinger Road :
Marion, OH 43302 :

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 NICO Development Company ("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 its successors in interest liable under Ohio law. No change in ownership of the Groves at Newmans Crossing 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 is the developer of the Groves at Newmans Crossing, a proposed residential subdivision located at the northwest corner of Township Roads 151 and 123 (hereafter "the site"), in Pleasant Township, Marion County, Ohio.
2. Ohio Administrative Code (OAC) Rule 3745-31-02 (now codified in OAC Rule 3745-42-02 as of October, 2003) requires the Director's issuance of a permit to

- install (PTI) prior to the installation of a new "disposal system," as such term is defined in ORC § 6111.01 (G).
3. 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, including OAC Rule 3745-42-02.
 4. PTI Application 03-15921 and detailed plans were received by Ohio EPA, Northwest District Office, on August 5, 2003, for the installation of a sanitary sewer extension and a 22,000 gpd package wastewater treatment plant (WWTP) to serve the Groves at Newmans Crossing.
 5. The sanitary sewer extension/WWTP proposed in PTI Application 03-15921 is a "disposal system" as defined in ORC Section 6111.01(G).
 6. On December 16, 2003, Ohio EPA, Northwest District Office, conducted an inspection of the Groves at Newmans Crossing. The inspection confirmed that the installation of the sanitary sewers had been partially completed prior to approval of the plans and issuance of a PTI by Ohio EPA. Based on Ohio EPA's investigation, construction began in December 2003.
 7. Respondent installed a new disposal system without a plan approval or PTI in violation of OAC Chapter 3745-42 and ORC 6111.07.
 8. On December 22, 2003, Respondent was notified via U.S. Postal Mail that the sanitary sewer installation was in violation of ORC Chapter 6111, and OAC Chapter 3745-42.
 9. The Groves at Newmans Crossing is a construction site that disturbs more than one (1) acre of land, therefore, 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).
 10. Part II.A of the Ohio EPA Storm Water General Permit requires that an operator submit a complete and accurate NOI application form and appropriate fee at least 21 days prior to the commencement of construction activity. Pursuant to Part II.B, an operator who fails to notify the director of their intent to be covered and who discharges pollutants to surface waters of the state without an NPDES permit is in violation of ORC 6111.
 11. Pursuant to ORC Section 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.

12. On January 5 and 7, 2004, Respondent was notified by e-mail and U.S. Postal Mail, respectively, that they were in violation of ORC Chapter 6111 for failing to apply for a National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activities at least 21 days prior to the start of construction activities.
13. Respondent did not submit a Notice of Intent (NOI) to obtain coverage under the Storm Water General Permit until January 5, 2004. Permit coverage was issued on February 12, 2004.
14. Part III.G.2.d.ii of the Ohio EPA Storm Water General Permit requires that concentrated storm water runoff and runoff from drainage areas, which exceed the design capacity of silt fence or inlet protection, shall pass through a sediment settling pond. An inspection by Ohio EPA conducted on January 8, 2004, revealed that trenches were directed towards Qu Qua Ditch from low lying areas where standing water was present and that no sediment settling pond had been constructed, in violation of the Storm Water General Permit and ORC sections 6111.04 and 6111.07.
15. Part III.G.2.b.i of the Ohio EPA Storm Water General Permit requires that disturbed areas must be stabilized as specified in Tables 1 and 2 of that section. The inspection conducted on January 8, 2004, revealed idle, bare areas within 50 feet of Qu Qua Ditch that appeared to exceed the stabilization requirements set forth in this section, in violation of the Storm Water General Permit and ORC sections 6111.04 and 6111.07.
16. Storm water from the site discharges to Qu Qua Ditch. Qu Qua Ditch constitutes "waters of the state," as defined by ORC Section 6111.01(H). Sediment contained in said storm water constitutes "other wastes," as defined in ORC Section 6111.01(D). Placement of this waste into waters of the state constitutes "pollution" as defined in ORC Section 6111.01(A) and is prohibited in accordance with ORC Section 6111.04.
17. An approved, final PTI (#03-15921) was issued to Respondent on March 11, 2004, as well as NPDES permit 2PW00015*AD, effective April 11, 2004.
18. 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 purposes of ORC Chapter 6111.

V. ORDERS

1. Respondent shall not install sewerage or treatment works for sewage disposal or new disposal systems, including, but not limited to, sanitary sewers, at any location in Ohio without first receiving prior approval from the Director as required by law. Respondent may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondent has maintained compliance with this Order for a period of three hundred and sixty five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section VI. of these Orders.
2. Respondent shall stabilize all portions of the construction site which will be inactive for more than 21 days with temporary stabilization within seven days of the effective date of these Findings and Orders. Soil stabilization practices shall be initiated within two (2) days on any inactive, barren areas within 50 feet of a stream. Permanent stabilization is required within 7 days on any portion of the site that has reached final grade or will be idle for longer than 1 year.
3. Respondent shall pay to Ohio EPA the amount of Seven Thousand Dollars (\$7,000) in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to Chapter 6111 of the Ohio Revised Code. This payment shall be made by tendering a check payable to the "Treasurer, State of Ohio" for \$3,500 within thirty (30) days after the effective date of these Findings and Orders. The remaining \$3,500 shall be made by tendering a check payable to the "Treasurer, State of Ohio" within sixty (60) days after the effective date of these Findings and Orders. Payment shall be made to the following address:

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

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

Ohio Environmental Protection Agency
Northwest District Office
347 Dunbridge Road
Bowling Green, Ohio 43402

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) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole proprietorship, and OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility.

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 NICO 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.

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

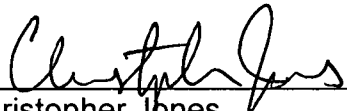
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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 ORDERED AND AGREED:

Ohio Environmental Protection Agency

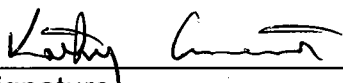


Christopher Jones
Director

7-2-04
Date

IT IS SO AGREED:

NICO Development Company, LLC



Signature

6/15/04
Date

KATHY AMENT
Printed or Typed Name

V.P.
Title