

OHIO E.P.A.  
DEC 30 2004  
BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY  
DIRECTOR'S JOURNAL

**In the matter of:**

J.B. Hayes Excavating & Pipeline, Inc. :  
756 W. Union Street :  
Athens, Ohio 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 J.B. Hayes Excavating & Pipeline, 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 its successors in interest liable under Ohio law. No change in ownership of the Respondent or any of the Sites (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:

**A. Columbus Road Project**

1. Respondent developed a Site located on Columbus Road in Athens County, Athens, Ohio. The Columbus Road Project Site is approximately fifteen (15) acres in size.

2. Storm water from the Columbus Road Project Site discharges directly to the Hocking River, which constitutes "waters of the state" under ORC § 6111.01(H). Sediment contained in said 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. As the Columbus Road Project Site is a construction site which disturbed more than five (5) acres of land (the standard at the time of the commencement of construction at the Site), Respondent was required to submit a Notice of Intent (NOI) to obtain coverage under the Ohio EPA National Pollutant Discharge Elimination System (NPDES) general permit for storm water discharges associated with construction activity (Storm Water General Permit) pursuant to Ohio Administrative Code (OAC) Chapter 3745-38 (formally OAC Chapter 3745-33 at the time of commencement of construction at the Site).
4. Part II.A. of the Storm Water General Permit requires that individuals who intend to obtain coverage for a storm water discharge associated with construction activity under the general permit shall submit a NOI application form at least forty-five (45) days prior to the commencement of a new construction activity. Respondent began construction activity at the Columbus Road Project Site prior to filing a NOI, in violation of ORC §§ 6111.04 and 6111.07.
5. On February 5, 1996, Ohio EPA conducted an inspection of the Site. On February 9, 1996, Ohio EPA provided Respondent with an inspection letter indicating that construction at the Site had been initiated prior to filing a NOI and prior to receiving coverage under the Storm Water General Permit, in addition to numerous other violations of ORC Chapter 6111.
6. On March 6, 1996, Ohio EPA conducted an inspection of the Site. On March 13, 1996, Ohio EPA provided Respondent with a notice of violation (NOV) letter regarding the initiation of construction at the Site prior to filing a NOI and prior to receiving coverage under the Storm Water General Permit, in addition to numerous other violations of ORC Chapter 6111.
7. Subsequently, on or about May 8, 1996, Respondent submitted a NOI for the Site to obtain coverage under the Storm Water General Permit. Ohio EPA granted coverage for Respondent under a permit effective June 19, 1996, permit number OHR104610. Respondent was required to comply with the terms and conditions of the Storm Water General Permit as of the effective date of such permit.
8. On June 11, 1996, Ohio EPA conducted an inspection of the Site. On June 13, 1996, Ohio EPA provided Respondent with a NOV letter which listed violations of ORC Chapter 6111 which were observed at the Site.

9. Part III.C.1. of the Storm Water General Permit requires that a Storm Water Pollution Prevention Plan (SWPPP) be completed prior to the timely submittal of a NOI. Respondent was reminded of the SWPPP requirement in Ohio EPA inspection letters dated February 9, 1996 and March 13, 1996. Respondent failed to submit an acceptable and sufficient SWPPP for the Columbus Road Project Site, in violation of ORC §§ 6111.04 and 6111.07.
10. Part III.C.2. of the Storm Water General Permit requires that a copy of the SWPPP shall be posted at the site which is generating the storm water discharge. Respondent failed to post a SWPPP at the Site, in violation of ORC §§ 6111.04 and 6111.07.
11. Part III.C.5.b.i.(A) of the Storm Water General Permit requires the permittee to initiate appropriate vegetative practices on all disturbed areas within seven (7) days if the areas are to remain dormant (undisturbed) for more than forty-five (45) days. From on or about February 5, 1996, until the date the Site reached final stabilization, disturbed areas at the Site remained dormant for more than forty-five (45) days without vegetative practices initiated, in violation of ORC §§ 6111.04 and 6111.07.
12. Part III.C.5.b.i.(B)(2) of the Storm Water General Permit requires that concentrated storm water runoff from disturbed areas flowing at rates which exceed the design capacity of sediment barriers must pass through a sediment settling pond. From on or about February 5, 1996, until the date the Site reached final stabilization, the Site contained concentrated storm water runoff from disturbed areas flowing at rates which exceeded the design capacity of sediment barriers and Respondent failed to implement a settling pond to pass the storm water runoff through, in violation of ORC §§ 6111.04 and 6111.07.
13. Part III.C.5.b.i.(B)(2) of the Storm Water General Permit requires that a sediment settling pond have a storage capacity of sixty-seven (67) cubic yards per acre of total drainage area. From on or about February 5, 1996, until the date the Site reached final stabilization, Respondent failed to construct the sediment settling pond at the Site to have a storage capacity of sixty-seven (67) cubic yards per acre of drainage area, in violation of ORC §§ 6111.04 and 6111.07.
14. Part III.C.5.b.i.(B)(1) of the Storm Water General Permit requires that sediment control structures be functional throughout earth disturbing activity. Sediment settling ponds shall be installed as the first step of grading and within seven (7) days from the start of grubbing and the controls shall continue to function until the upslope development area is restabilized. From on or about February 5, 1996, until the date the Site reached final stabilization, sediment settling ponds at the Site were not installed as the first step of grading and within seven (7) days from the start of

- grubbing and/or did not remained functional until the upslope development area was restabilized, in violation of ORC §§ 6111.04 and 6111.07.
15. Part III.C.5.b.i.(B)(1) of the Storm Water General Permit requires that sediment control structures shall be functional until the upslope development area is restabilized. Perimeter sediment barriers shall be implemented as the first step of grading and within seven (7) days from the start of grubbing. From on or about February 5, 1996, until the date the Site reached final stabilization, perimeter sediment barriers at the Site were not installed, and/ or were not installed at the first step of grading and within seven (7) days from the start of grubbing and/or did not remained functional until the upslope development area is restabilized, in violation of ORC §§ 6111.04 and 6111.07.
  16. Part III.C.5.b.i.(B)(3) of the Storm Water General Permit requires that sheet flow runoff from denuded areas be intercepted by sediment barriers. The sediment barriers shall protect adjacent properties and water resources from sediment transported by sheet flow. From on or about February 5, 1996, until the date the Site reached final stabilization, Respondent failed to intercept sheet flow runoff at the Site from denuded areas by installing sediment barriers at the Site to protect adjacent properties and/or water resources, in violation of ORC §§ 6111.04 and 6111.07.
  17. Part III.C.5.b.i.(B)(5) of the Storm Water General Permit requires that erosion control practices shall be installed to stabilize channels and outfalls from erosive flows. From on or about February 5, 1996, until the date the Site reached final stabilization, Respondent failed to install erosion control practices at the Site to stabilize channels and outfalls from erosive flows, in violation of ORC §§ 6111.04 and 6111.07.
  18. Part III.C.5.c. of the Storm Water General Permit requires that all erosion and sediment control practices used to satisfy the conditions of the permit meet the standards and specifications in the current edition of ***Rainwater and Land Development, Ohio's Standards for Storm water Management, Land Development and Urban Stream Protection***. From on or about February 5, 1996, until the date the Site reached final stabilization, Respondent's erosion and sediment control practices at the Site failed to meet the standards and specifications in the current edition of ***Rainwater and Land Development, Ohio's Standards for Storm water Management, Land Development and Urban Stream Protection***, in violation of ORC § 6111.07.
  19. Part IV.A. of the Storm Water General Permit requires that a Notice of Termination (NOT) form shall be submitted by the permittee within forty-five (45) days after the site has achieved "final stabilization" as defined in Part VII of the Storm Water

General Permit. A NOT was submitted by Respondent for the Columbus Road Project Site on August 19, 2002.

**B. East State Street Project**

20. Respondent developed a Site located along the south side of East State Street, East of U.S. Route 50, in Athens County, Athens, Ohio. The East State Street Project Site is approximately twenty (20) acres in size.
21. Storm water from the East State Street Site discharges directly to the Hocking River, which constitutes "waters of the state" under ORC § 6111.01(H). Sediment contained in said 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).
22. As the East State Street Project Site is a construction site which disturbed more than five (5) acres of land (the standard at the time of the commencement of construction at the Site), Respondent was required to submit a NOI to obtain coverage under the Storm Water General Permit pursuant to OAC Chapter 3745-38 (formally OAC Chapter 3745-33 at the time of commencement of construction at the Site).
23. Part II.A. of the Storm Water General Permit requires that individuals who intend to obtain coverage for a storm water discharge associated with construction activity under the general permit shall submit a NOI application form at least forty-five (45) days prior to the commencement of a new construction activity. Respondent began construction activity at the East State Street Project Site prior to filing a NOI, in violation of ORC §§ 6111.04 and 6111.07.
24. On July 19, 2000, Ohio EPA conducted an inspection of the Site. On August 1, 2000, Ohio EPA provided Respondent with an inspection letter indicating that construction at the Site had been initiated prior to filing a NOI and prior to receiving a Storm Water General Permit, in addition to numerous other violations of ORC Chapter 6111.
25. Subsequently, on or about August 21, 2000, Respondent submitted a NOI for the Site to obtain coverage under the Storm Water General Permit. Ohio EPA granted coverage for Respondent under a permit effective August 23, 2000, permit number OHR109472. Respondent was required to comply with the terms and conditions of the Storm Water General Permit as of the effective date of such permit.
26. Part III.C.1. of the Ohio EPA Storm Water General Permit requires that a SWPPP be completed prior to the timely submittal of the NOI. Respondent failed to timely

submit a SWPPP for the Site, in violation of ORC §§ 6111.04 and 6111.07. An unacceptable and insufficient SWPPP was subsequently submitted to Ohio EPA on August 24, 2000.

27. Part III.C.5.b.i.(A) of the Storm Water General Permit requires the permittee to initiate appropriate vegetative practices on all disturbed areas within seven (7) days if the areas are to remain dormant (undisturbed) for more than forty-five (45) days. Until the date the Site reached final stabilization, disturbed areas at the Site were left dormant for more than forty-five (45) days without vegetative practices initiated, in violation of ORC §§ 6111.04 and 6111.07.
28. Part III.C.5.b.i.(A) of Storm Water General Permit requires that for areas within fifty (50) feet of any stream, first order or larger, soil stabilization practices shall be initiated within two (2) days on all inactive, disturbed areas. Until the date the Site reached final stabilization, Respondent failed to initiate soil stabilization practices within two (2) days on inactive, disturbed areas at the Site which are within fifty (50) feet of a stream, in violation of ORC §§ 6111.04 and 6111.07.
29. Part III.C.5.b.i.(A) of the Storm Water General Permit requires that permanent or temporary soil stabilization be applied to disturbed areas within seven (7) days after final grade is reached on any portion of the Site. Until the date the Site reached final stabilization, disturbed areas at the Site reached final grade and were not stabilized within seven (7) days, in violation of ORC §§ 6111.04 and 6111.07.
30. Part III.C.5.b.i.(B)(2) of the Storm Water General Permit requires that concentrated storm water runoff from disturbed areas flowing at rates which exceed the design capacity of sediment barriers must pass through a sediment settling pond. Until the date the Site reached final stabilization, the Site contains concentrated storm water runoff from disturbed areas flowing at rates which exceed the design capacity of sediment barriers and Respondent failed to implement a settling pond to pass the storm water runoff through, in violation of ORC §§ 6111.04 and 6111.07.
31. Part III.C.5.b.i.(B)(2) of the Storm Water General Permit requires that a sediment settling pond have a storage capacity of sixty-seven (67) cubic yards per acre of total drainage area. Until the date the Site reached final stabilization, Respondent failed to construct the sediment settling pond at the Site to have a storage capacity of sixty-seven (67) cubic yards per acre of drainage area, in violation of ORC §§ 6111.04 and 6111.07.
32. Part III.C.5.b.i.(B)(1) of the Storm Water General Permit requires that sediment control structures be functional throughout earth disturbing activity. Sediment settling ponds shall be installed as the first step of grading and within seven (7) days from the start of grubbing and the controls shall continue to function until the

upslope development area is restabilized. Until the date the Site reached final stabilization, sediment settling ponds at the Site were not installed as the first step of grading and within seven (7) days from the start of grubbing and/or did not remain functional until the upslope development area was restabilized, in violation of ORC §§ 6111.04 and 6111.07.

33. Part III.C.5.b.i.(B)(1) of the Storm Water General Permit requires that sediment control structures shall be functional until the upslope development area is restabilized. Perimeter sediment barriers shall be implemented as the first step of grading and within seven (7) days from the start of grubbing. Until the date the Site reached final stabilization, perimeter sediment barriers at the Site were not installed, and were not installed at the first step of grading and within seven (7) days from the start of grubbing and/or did not remain functional until the upslope development area was restabilized, in violation of ORC §§ 6111.04 and 6111.07.
34. Part III.C.5.b.i.(B)(3) of the Storm Water General Permit requires that sheet flow runoff from denuded areas be intercepted by sediment barriers. The sediment barriers shall protect adjacent properties and water resources from sediment transported by sheet flow. Until the date the Site reached final stabilization, Respondent failed to intercept sheet flow runoff at the Site from denuded areas by installing sediment barriers at the Site to protect adjacent properties and/or water resources, in violation of ORC §§ 6111.04 and 6111.07.
35. Part III.C.5.b.i.(B)(5) of the Storm Water General Permit requires that structural controls divert runoff from disturbed areas and steep slopes where practicable. Until the date the Site reached final stabilization, Respondent failed to divert runoff from disturbed areas and steep slopes at the Site, in violation of ORC §§ 6111.04 and 6111.07.
36. Part III.C.5.b.i.(B)(5) of the Storm Water General Permit requires that erosion control practices shall be installed to stabilize channels and outfalls from erosive flows. Until the date the Site reached final stabilization, Respondent failed to install erosion control practices at the Site to stabilize channels and outfalls from erosive flows, in violation of ORC §§ 6111.04 and 6111.07.
37. Part III.C.5.b.iv.(A) of the Storm Water General Permit requires that no solid (other than sediment) or liquid waste be discharged in storm water runoff. Until the date the Site reached final stabilization, Respondent failed to prevent such waste, particularly oil and grease, from discharging from the Site in storm water, and failed to remove and dispose of petroleum contaminated soil in violation of ORC §§ 6111.04 and 6111.07.

38. Part III.C.5.b.vi. of the Storm Water General Permit requires that Respondent have qualified inspection personnel conduct a weekly inspection of the Site to identify areas contributing to storm water discharges associated with construction activity and evaluate whether measures to prevent erosion and control pollutant loadings identified in the SWPPP are adequate and properly implemented in accordance with the schedule proposed in Part III.C.5.a.v. of the Storm Water General Permit, or whether additional control measures are required. Until the date the Site reached final stabilization, Respondent failed to have qualified inspection personnel conduct these required weekly inspections, in violation of ORC §§ 6111.04 and 6111.07.
39. Part III.C.5.c. of the Storm Water General Permit requires that all erosion and sediment control practices used to satisfy the conditions of the permit meet the standards and specifications in the current edition of *Rainwater and Land Development, Ohio's Standards for Storm water Management, Land Development and Urban Stream Protection*. Until the date the Site reached final stabilization, Respondent's erosion and sediment control practices at the Site failed to meet the standards and specifications in the current edition of *Rainwater and Land Development, Ohio's Standards for Storm water Management, Land Development and Urban Stream Protection*, in violation of ORC § 6111.07.
40. Part IV.A. of the Storm Water General Permit requires that a NOT form shall be submitted by the permittee within forty-five (45) days after the Site has achieved "final stabilization" as defined in Part VII of the permit. As of date of issuance of these Orders, Respondent has failed to submit a NOT to Ohio EPA, and the Site has achieved final stabilization for more than forty-five (45) days, in violation of ORC §§ 6111.04 and 6111.07.

**C. J.B. Hayes Project**

41. Respondent developed a Site located along the south side of East State Street, east of the U.S. Route 50 underpass, in Athens County, Athens, Ohio. The J.B. Hayes Project Site is approximately fifty-eight (58) acres in size.
42. Storm water from the J.B. Hayes Project Site discharges directly to the Hocking River and an unnamed tributary to the Hocking River, which constitute "waters of the state" under ORC § 6111.01(H). Sediment contained in said 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).
43. As the J.B. Hayes Project Site is a construction site which disturbed more than five (5) acres of land (the standard at the time of the commencement of construction at the Site), Respondent was required to submit a NOI to obtain coverage under the



Storm Water General Permit pursuant to OAC Chapter 3745-38 (formally OAC Chapter 3745-33 at the time of commencement of construction at the Site).

44. Part II.A. of the Storm Water General Permit requires that individuals who intend to obtain coverage for a storm water discharge associated with construction activity under the general permit shall submit a NOI application form at least forty-five (45) days prior to the commencement of a new construction activity. Respondent began construction activity at the J.B. Hayes Project Site prior to filing a NOI, in violation of ORC §§ 6111.04 and 6111.07.
45. On July 7, 1998, Ohio EPA provided Respondent with correspondence outlining the Storm Water General Permit requirements and requested Respondent submit a NOI for the planned construction on the Site.
46. On July 14, 1998, Ohio EPA conducted an inspection of the Site. On July 21, 1998, Ohio EPA provided Respondent with an inspection letter indicating that construction at the Site had been initiated prior to filing a NOI and prior to receiving a Storm Water General Permit, in addition to numerous other violations of ORC Chapter 6111.
47. Subsequently, on or about August 5, 1998, Respondent submitted a NOI for the Site to obtain coverage under the Storm Water General Permit. Ohio EPA granted coverage for Respondent under a permit effective August 24, 1998, permit number OHR107244. Respondent is required to comply with the terms and conditions of the Storm Water General Permit as of the effective date of such permit.
48. On November 17, 1999 and December 10, 1999, Ohio EPA conducted inspections of the Site. On February 2, 2000, Ohio EPA provided Respondent with a NOV letter which listed violations of ORC Chapter 6111 which were observed at the Site.
49. Part III.C.1. of the Storm Water General Permit requires that a SWPPP be completed prior to the timely submittal of the NOI. Respondent failed to timely submit its SWPPP for the Site, in violation of ORC §§ 6111.04 and 6111.07. An unacceptable and insufficient SWPPP was subsequently submitted to Ohio EPA on or about August 4, 1998.
50. Part III.C.5.b.i.(A) of the Storm Water General Permit requires the permittee initiate appropriate vegetative practices on all disturbed areas within seven (7) days if the areas are to remain dormant (undisturbed) for more than forty-five (45) days. Until the date the Site reached final stabilization, disturbed areas at the Site were left dormant for more than forty-five (45) days without vegetative practices initiated, in violation of ORC §§ 6111.04 and 6111.07.

51. Part III.C.5.b.i.(A) of the Storm Water General Permit requires that for areas within fifty (50) feet of any stream, first order or larger, soil stabilization practices shall be initiated within two (2) days on all inactive, disturbed areas. Until the date the Site reached final stabilization, Respondent failed to initiate soil stabilization practices within two (2) days on inactive, disturbed areas at the Site which are within fifty (50) feet of a stream, in violation of ORC §§ 6111.04 and 6111.07.
52. Part III.C.5.b.i.(A) of the Storm Water General Permit requires that permanent or temporary soil stabilization be applied to disturbed areas within seven (7) days after final grade is reached on any portion of the Site. Until the date the Site reached final stabilization, disturbed areas at the Site reached final grade and were not stabilized within seven (7) days, in violation of ORC §§ 6111.04 and 6111.07.
53. Part III.C.5.b.i.(B)(2) of the Storm Water General Permit requires that concentrated storm water runoff from disturbed areas flowing at rates which exceed the design capacity of sediment barriers must pass through a sediment settling pond. Until the date the Site reached final stabilization, the Site contained concentrated storm water runoff from disturbed areas flowing at rates which exceed the design capacity of sediment barriers and Respondent failed to implement a settling pond to pass the storm water runoff through, in violation of ORC §§ 6111.04 and 6111.07.
54. Part III.C.5.b.i.(B)(2) of the Storm Water General Permit requires that a sediment settling pond have a storage capacity of sixty-seven (67) cubic yards per acre of total drainage area. Until the date the Site reached final stabilization, Respondent failed to construct the sediment settling pond at the Site to have a storage capacity of sixty-seven (67) cubic yards per acre of drainage area, in violation of ORC §§ 6111.04 and 6111.07.
55. Part III.C.5.b.i.(B)(1) of the Storm Water General Permit requires that sediment control structures be functional throughout earth disturbing activity. Sediment settling ponds shall be installed as the first step of grading and within seven (7) days from the start of grubbing and the controls shall continue to function until the upslope development area is restabilized. Until the date the Site reached final stabilization, sediment settling ponds at the Site were not installed as the first step of grading and within seven (7) days from the start of grubbing and/or did not remain functional until the upslope development area was restabilized, in violation of ORC §§ 6111.04 and 6111.07.
56. Part III.C.5.b.i.(B)(1) of the Storm Water General Permit requires that sediment control structures shall be functional until the upslope development area is restabilized. Perimeter sediment barriers shall be implemented as the first step of grading and within seven (7) days from the start of grubbing. Until the date the Site reached final stabilization, perimeter sediment barriers at the Site were not

installed, and were not installed at the first step of grading and within seven (7) days from the start of grubbing and/or did not remain functional until the upslope development area is restabilized, in violation of ORC §§ 6111.04 and 6111.07.

57. Part III.C.5.b.i.(B)(3) of the Storm Water General Permit requires that sheet flow runoff from denuded areas be intercepted by sediment barriers. The sediment barriers shall protect adjacent properties and water resources from sediment transported by sheet flow. Until the date the Site reached final stabilization, Respondent failed to intercept sheet flow runoff at the Site from denuded areas by installing sediment barriers at the Site to protect adjacent properties and/or water resources, in violation of ORC §§ 6111.04 and 6111.07.
58. Part III.C.5.b.i.(B)(5) of the Storm Water General Permit requires that structural controls divert runoff from disturbed areas and steep slopes where practicable. Until the date the Site reached final stabilization, Respondent failed to divert runoff from disturbed areas and steep slopes at the Site, in violation of ORC §§ 6111.04 and 6111.07.
59. Part III.C.5.b.i.(B)(5) of the Storm Water General Permit requires that erosion control practices shall be installed to stabilize channels and outfalls from erosive flows. Until the date the Site reached final stabilization, Respondent failed to install erosion control practices at the Site to stabilize channels and outfalls from erosive flows, in violation of ORC §§ 6111.04 and 6111.07.
60. Part III.C.5.b.iv.(A) of the Storm Water General Permit requires that no solid (other than sediment) or liquid waste be discharged in storm water runoff. Until the date the Site reached final stabilization, Respondent failed to prevent such waste, particularly oil and grease, from discharging from the Site in storm water runoff and failed to properly remove and dispose of contaminated soils in violation of ORC §§ 6111.04 and 6111.07.
61. Part III.C.5.b.vi. of the Storm Water General Permit requires that Respondent have qualified inspection personnel conduct a weekly inspection of the Site to identify areas contributing to storm water discharges associated with construction activity and evaluate whether measures to prevent erosion and control pollutant loadings identified in the SWPPP are adequate and properly implemented in accordance with the schedule proposed in Part III.C.5.a.v. of the Storm Water General Permit, or whether additional control measures are required. Until the date the Site reached final stabilization, Respondent failed to have qualified inspection personnel conduct these required weekly inspections, in violation of ORC §§ 6111.04 and 6111.07.
62. Part III.C.5.c. of the Storm Water General Permit requires that all erosion and sediment control practices used to satisfy the conditions of the permit meet the

standards and specifications in the current edition of ***Rainwater and Land Development, Ohio's Standards for Storm water Management, Land Development and Urban Stream Protection***. Until the date the Site reached final stabilization, Respondent's erosion and sediment control practices at the Site failed to meet the standards and specifications in the current edition of ***Rainwater and Land Development, Ohio's Standards for Storm water Management, Land Development and Urban Stream Protection***, in violation of ORC § 6111.07.

63. Part IV.A. of the Storm Water General Permit requires that a NOT form shall be submitted by the permittee within forty-five (45) days after the Site has achieved "final stabilization" as defined in Part VII of the permit. As of date of issuance of these Orders, Respondent has failed to submit a NOT to Ohio EPA, and the Site has achieved final stabilization for more than forty-five (45) days, in violation of ORC §§ 6111.04 and 6111.07.

**D. Oakmont Phase III**

64. Respondent developed a Site located on Dove Drive in Athens County, Athens, Ohio. The Oakmont Phase III Site is approximately thirteen (13) acres in size.
65. Storm water from the Oakmont Phase III Site discharges directly to an unnamed tributary of Middle Branch Shade River, which constitutes "waters of the state" under ORC § 6111.01(H). Sediment contained in said 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).
66. As the Oakmont Phase III Site is a construction site which disturbed more than five (5) acres of land (the standard at the time of the commencement of construction at the Site), Respondent was required to submit a NOI to obtain coverage under the Storm Water General Permit pursuant to OAC Chapter 3745-38 (formally OAC Chapter 3745-33 at the time of commencement of construction at the Site).
67. Part II.A. of the Storm Water General Permit requires that individuals who intend to obtain coverage for a storm water discharge associated with construction activity under the general permit shall submit a NOI application form at least forty-five (45) days prior to the commencement of a new construction activity. Respondent began construction activity at the Oakmont Phase III Site prior to filing a NOI, in violation of ORC §§ 6111.04 and 6111.07.
68. On April 27, 1999, Ohio EPA conducted an inspection of the Site. On May 24, 1999, Ohio EPA sent Respondent with a NOV letter indicating that construction at the Site had been initiated prior to filing a NOI and prior to receiving a Storm Water General Permit, in addition to numerous other violations of ORC Chapter 6111.

69. Subsequently, on or about June 3, 1999, Respondent submitted a NOI for the Site to obtain coverage under the Storm Water General Permit. Ohio EPA granted coverage for Respondent under a permit effective June 7, 1999, permit number OHR108118. Respondent was required to comply with the terms and conditions of the Storm Water General Permit as of the effective date of such permit.
70. Part III.C.1. of the Storm Water General Permit requires that a SWPPP be completed prior to the timely submittal of the NOI. Respondent was reminded of the SWPPP requirement in the May 24, 1999 NOV letter. Respondent failed to timely submit its SWPPP for the Site, in violation of ORC §§ 6111.04 and 6111.07. An unacceptable and insufficient SWPPP was subsequently submitted to Ohio EPA on or about June 2, 1999 .
71. Part III.C.2. of the Storm Water General Permit requires that changes be made to a SWPPP after the permittee is notified of deficiencies in the SWPPP by Ohio EPA. On July 7, 1999, Ohio EPA provided Respondent with a SWPPP notice of deficiency letter which requested a revised SWPPP be submitted within fourteen (14) days. Until the date the Site reached final stabilization, Respondent failed to make the required and necessary changes to the SWPPP and/ or submit to the Director's authorized representative a written certification that the requested changes had been made, in violation of ORC §§ 6111.04 and 6111.07.
72. On July 7, 1999, Ohio EPA conducted an inspection of the Site. On July 21, 1999, Ohio EPA provided Respondent with a NOV letter listing violations of ORC Chapter 6111 which were observed at the Site.
73. On December 10, 1999, Ohio EPA conducted an inspection of the Site. On February 2, 2000, Ohio EPA provided Respondent with a NOV letter listing violations of ORC Chapter 6111 which were observed at the Site.
74. Part III.C.5.b.i.(A) of the Storm Water General Permit requires the permittee initiate appropriate vegetative practices on all disturbed areas within seven (7) days if the areas are to remain dormant (undisturbed) for more than forty-five (45) days. From on or about April 27, 1999, until the date the Site reached final stabilization, disturbed areas at the Site were left dormant for more than forty-five (45) days without vegetative practices initiated, in violation of ORC §§ 6111.04 and 6111.07.
75. Part III.C.5.b.i.(B)(2) of the Storm Water General Permit requires that concentrated storm water runoff from disturbed areas flowing at rates which exceed the design capacity of sediment barriers must pass through a sediment settling pond. From on or about April 27, 1999, until the date the Site reached final stabilization, the Site contained concentrated storm water runoff from disturbed areas flowing at rates which exceeded the design capacity of sediment barriers and Respondent failed to

implement a settling pond to pass the storm water runoff through, in violation of ORC §§ 6111.04 and 6111.07.

76. Part III.C.5.b.i.(B)(2) of the Storm Water General Permit requires that a sediment settling pond have a storage capacity of sixty-seven (67) cubic yards per acre of total drainage area. From on or about April 27, 1999, until the date the Site reached final stabilization, Respondent failed to construct the sediment settling pond at the Site to have a storage capacity of sixty-seven (67) cubic yards per acre of drainage area, in violation of ORC §§ 6111.04 and 6111.07.
77. Part III.C.5.b.i.(B)(1) of the Storm Water General Permit requires that sediment control structures be functional throughout earth disturbing activity. Sediment settling ponds shall be installed as the first step of grading and within seven (7) days from the start of grubbing and the controls shall continue to function until the upslope development area is restabilized. From on or about April 27, 1999, until the date the Site reached final stabilization, sediment settling ponds at the Site were not installed as the first step of grading and within seven (7) days from the start of grubbing, and/or did not remained functional until the upslope development area was restabilized, in violation of ORC §§ 6111.04 and 6111.07.
78. Part III.C.5.b.i.(B)(1) of the Storm Water General Permit requires that sediment control structures shall be functional until the upslope development area is restabilized. Perimeter sediment barriers shall be implemented as the first step of grading and within seven (7) days from the start of grubbing. From on or about April 27, 1999, until the date the Site reached final stabilization, perimeter sediment barriers at the Site had not been installed, and/or were not installed at the first step of grading and within seven (7) days from the start of grubbing, and/or did not remained functional until the upslope development area was restabilized, in violation of ORC §§ 6111.04 and 6111.07.
79. Part III.C.5.b.i.(B)(3) of the Storm Water General Permit requires that sheet flow runoff from denuded areas be intercepted by sediment barriers. The sediment barriers shall protect adjacent properties and water resources from sediment transported by sheet flow. From on or about April 27, 1999, until the date the Site reached final stabilization, Respondent failed to intercept sheet flow runoff from denuded areas by installing sediment barriers at the Site to protect adjacent properties and/or water resources, in violation of ORC §§ 6111.04 and 6111.07.
80. Part III.C.5.b.i.(B)(5) of the Storm Water General Permit requires erosion control practices shall be installed to stabilize channels and outfalls from erosive flows. From on or about April 27, 1999, until the date the Site reached final stabilization, Respondent failed to install erosion control practices at the Site to stabilize channels and outfalls from erosive flows, in violation of ORC §§ 6111.04 and 6111.07.

81. Part III.C.5.c. of the Storm Water General Permit requires that all erosion and sediment control practices used to satisfy the conditions of the permit meet the standards and specifications in the current edition of *Rainwater and Land Development, Ohio's Standards for Storm water Management, Land Development and Urban Stream Protection*. Until the date the Site reached final stabilization, Respondent's erosion and sediment control practices at the Site fail to meet the standards and specifications in the current edition of *Rainwater and Land Development, Ohio's Standards for Storm water Management, Land Development and Urban Stream Protection*, in violation of ORC § 6111.07.
82. Part IV.A. of the Storm Water General Permit requires that a NOT form shall be submitted by the permittee within forty-five (45) days after the Site has achieved "final stabilization" as defined in Part VII of the permit. A NOT was submitted by Respondent for the Oakmont Phase III Site on August 19, 2002.

**E. General**

83. Each violation cited in the Findings above represents a separate violation of ORC Chapter 6111.
84. 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 proceed with any new construction activity in Ohio that is subject to the requirement to obtain coverage under the Storm Water General Permit prior to a NOI application being submitted to Ohio EPA. If required, a NOI application must be submitted at least twenty-one (21) days prior to the commencement of such construction activity.
2. To the extent the Storm Water General Permit is applicable, Respondent shall comply with all provisions of the Storm Water General Permit with regard to any new construction sites and/ or areas on the East State Street, J.B. Hayes Project, and Oakmont Phase III Sites upon which any future construction activity commences.
3. In accordance with the provisions of Orders 4 through 7, below, Respondent shall pay to Ohio EPA sixty-two thousand five hundred dollars (\$62,500.00) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111.

4. Within thirty (30) days of the effective date of these Orders, Respondent shall pay to the Ohio EPA ten thousand dollars (\$10,000.00) of the total civil penalty by tendering a check payable to the "**Treasurer, State of Ohio**," to the following address: Office of Fiscal Administration, Ohio EPA, P. O. Box 1049, Columbus, Ohio, 43216-1049. A photo copy of the check shall be sent to Ohio EPA's Division of Surface Water (DSW), Attn: Mark Mann, at the address referenced in the previous sentence.
5. In lieu of payment to Ohio EPA of the remaining fifty-two thousand and five hundred dollars (\$52,500.00) of the total civil penalty, within ninety (90) days of the effective date of these Orders, Respondent shall enter into and record a Conservation Easement, identical in substance to Attachment A, which is attached hereto and incorporated as if fully rewritten herein, with a qualified easement holder as defined in ORC § 5301.38. This Conservation Easement shall place a perpetual, total fifteen hundred linear feet easement (which will be in at least two segments, separated by, at most, a seventy-five foot segment) along the bank of the stream which runs adjacent to the Oakmont Phase III Site, at a width of fifty (50) feet from the top of the stream bank on each side of the stream, in the same manner as described in Attachment A. The legal description for the certain real property situated in Athens County, Ohio, which will be incorporated as Exhibit A of Attachment A, and the specified portion of the real property which will be subject to the Conservation Easement, which will be incorporated as Exhibit B of Attachment A (Property), shall be submitted to Ohio EPA for approval within twenty-one (21) of the effective date of these Orders.
6. Within one hundred and twenty (120) days of the effective date of these Orders, Respondent shall submit to Ohio EPA a copy of the recorded Conservation Easement described in Order No. 5.
7. Should Respondent fail to timely or fully complete the SEP outlined in Order No. 5 within ninety (90) days of the effective date of these Orders, Respondent shall pay to Ohio EPA the remaining fifty-two thousand five hundred dollars (\$52,500.00) of the total civil penalty by an official check as outlined in Order No. 4, within thirty (30) days of receipt of notification from Ohio EPA.

## **VI. TERMINATION**

Respondent's obligations under these Orders shall be satisfied and terminated when the Respondent demonstrates in writing and certifies to the satisfaction of the Ohio EPA that it has satisfied all of its obligations under these Orders and the Chief of Ohio EPA's DSW acknowledges the termination of these Orders in writing.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."



The certification shall be signed by a responsible official if Respondent. A responsible official is as defined in OAC Rule 3745-33-03(D)(1) for a corporation.

#### **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 any of the Sites.

#### **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**

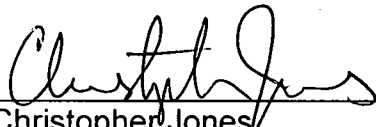
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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:**

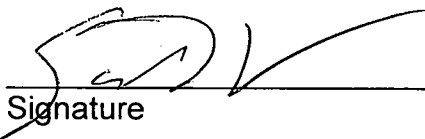
**Ohio Environmental Protection Agency**

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

12-28-04  
Date

**IT IS SO AGREED:**

**J.B. Hayes Excavating & Pipeline, Inc.**

  
\_\_\_\_\_  
Signature

12/3/04  
Date

  
\_\_\_\_\_  
Printed or Typed Name and Title

## ATTACHMENT A

### DEED AND AGREEMENT OF CONSERVATION EASEMENT

This Deed and Agreement of Conservation Easement is made this \_\_\_ day of \_\_\_\_\_, 2004, by and between \_\_\_\_\_, (the "Grantor"), having an address at \_\_\_\_\_ and \_\_\_\_\_ (the "Grantee"), having an address at \_\_\_\_\_.

**WHEREAS**, the Grantor is the owner in fee of certain real property situated in Athens County, Ohio which is more particularly identified and described on Exhibit A attached hereto and incorporated by reference herein; and

**WHEREAS**, in order to protect the quality of the surface waters located on the real property, the Ohio EPA and the Grantor have agreed, pursuant to the settlement of a Division of Surface Water administrative enforcement action, that the Grantor shall grant a conservation easement in and to a portion of the Grantor's real property, which is more specifically identified on Exhibit B attached hereto and incorporated by reference herein (the "Property"); and

**WHEREAS**, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect the conservation values of the Property for the benefit of this generation and generations to come.

**NOW THEREFORE**, in consideration of the foregoing premises and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. **Grant of Easement**: Grantor hereby grants and conveys to Grantee, its successors and assigns, an estate, interest, easement and servitude in and to the Property of the nature and character and to the extent hereinafter expressed, to be and to constitute a servitude upon the Property, which estate, interest, easement and servitude will result from the covenants and restrictions set forth herein and hereby imposed upon the use of the Property by Grantor, and, to that end and for the purpose of accomplishing the intent of the parties hereto, the Grantor covenants on behalf of himself, his heirs, successors and assigns with the Grantee its successors and assigns to do and refrain from doing, severally and collectively, upon the Property, the various acts hereinafter described, it being hereby agreed and expressed that the doing and the refraining from said acts, and each thereof, is and will be for the benefit of Grantee.

2. **Term of Easement**: The easement granted hereunder shall be perpetual and shall have no expiration date.

3. **Conservation Values**: The Property possesses substantial value in conserving and protecting the physical, biological and chemical integrity of the stream that is identified in Exhibit B, and is important in the protection of the existing or designated use of the waters of the state pursuant to §303 of the Clean Water Act, 33 U.S.C. §1313 and §6111.041 of the Ohio Water Pollution Control Act.

4. **Prohibited Actions:** Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement or detrimental to the conservation values expressed herein is expressly prohibited. By way of example, and not of limitation, the following activities and uses are explicitly prohibited:

- a. **Division:** Any division or subdivision of the Property is prohibited;
- b. **Commercial Activities:** Commercial development or industrial activity is prohibited;
- c. **Construction:** The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots is prohibited;
- d. **Cutting Vegetation:** Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides is prohibited;
- e. **Land Surface Alteration:** The removal of soil, sand, gravel, rock, minerals or other materials from the Property, or doing any act that would alter the topography of the Property shall be prohibited.
- f. **Dumping:** Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Property;
- g. **Water Courses:** Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered;
- h. **Utilities:** Transmission lines for electric power, natural gas or petroleum products on the Property shall be prohibited with the only exception being the permissible installation of one utility crossing somewhere along the Property.
- i. **Other Activities:** Each and every other activity or construction project which might endanger the natural, scenic, biological, ecological integrity of the Property shall be prohibited.

As set forth in Exhibit B, there is a seventy-five foot section, which includes a stream/ road crossing, that exists as of the effective date of this easement, that has been excluded from the Property and, therefore, is not subject to this Conservation Easement or the above-referenced prohibitions. Provided that the Grantor complies with all applicable permitting and other regulatory requirements, including any applicable requirements under Sections 401 and 404 of the federal Clean Water Act, this Conservation Easement does not prohibit Grantor from extending the width of the existing stream/ road crossing along the entire seventy-five foot segment that has been excluded from the Property.

5. **Rights of Grantee:** The Grantor confers the following rights upon the Grantee to perpetually maintain the conservation values of the Property:

- a. **Right to Enter:** The Grantee has the right to enter the Property at reasonable times to monitor or to enforce compliance with this Conservation Easement; provided that such entry shall be upon prior reasonable notice to Grantor. The Grantee may not, however, unreasonably interfere with the Grantor's use and quiet enjoyment of the Property. The Grantee has no right to permit others to enter the Property. The general public is not granted access to the Property under this Conservation Easement.
- b. **Right to Preserve:** The Grantee has the right to prevent any activity on or use of the Property that is inconsistent with the terms or purposes of this Conservation Easement.
- c. **Right to Require Restoration:** The Grantee shall have the right to require the restoration of the areas or features of the Property which are damaged by any activity inconsistent with this Conservation Easement.
- d. **Signs:** The Grantee shall have the right to place signs on the Property which identify the land as being protected by this Conservation Easement. The number and content of any such signs are subject to the Grantor's prior approval.

6. **Permitted Uses:** Grantor reserves to himself, and to his personal representatives, heirs, successors and assigns, all rights accruing from his ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a. **Right to Convey:** The Grantor retains the right to sell, mortgage, bequeath, donate or otherwise convey the Property. Any conveyance shall remain subject to the terms and conditions of this Conservation Easement and the subsequent interest holder shall be bound by the terms and conditions hereof.
- b. **Right to Maintain:** The Grantor retains the right to maintain, renovate and replace any existing structure(s), if any, on the Property in substantially the same location and size. Any expansion or replacement may not substantially alter the character or function of the structure, and requires the Grantee's prior written approval.
- c. **Right to Access:** The Grantor shall retain the right of unimpeded access to the Property.

7. **Grantee's Remedies:** In the event of a breach of this Conservation Easement, the Grantee shall have the following remedies and shall be subject to the following limitations:

- a. **Delay in Enforcement:** A delay in enforcement shall not be construed as a waiver of the Grantee's right to enforce the terms of this Conservation Easement.
- b. **Acts Beyond Grantor's Control:** The Grantee may not bring an action against the Grantor for modifications occurring to the Property which result from causes beyond the Grantor's control. Examples include, without limitation: unintentional fires, storms, natural earth movement, trespassers or the Grantor's well-intentioned actions in response to an emergency which result in changes to the Property. The Grantor has no responsibility under this Conservation Easement for such unintended modifications. The Grantee may, however, bring an action against another party for modifications that impair the conservation values identified in this Conservation Easement.
- c. **Notice and Demand:** If the Grantee determines that Grantor is in violation of this Conservation Easement, or that a violation is threatened, Grantee shall provide written notice to Grantor unless the violation constitutes immediate and irreparable harm. The written notice shall identify the violation and request corrective action to cure the violation or restore the Property.
- d. **Failure to Act:** If, for a twenty-eight (28) day period after the date of written notice provided pursuant to subparagraph c., above, the Grantor continues violating this Conservation Easement, or if the Grantor does not abate the violation begin to implement corrective measures within the foregoing twenty-eight (28) day period requested by the Grantee, or fail to continue diligently to cure such violation until finally cured, the Grantee may bring an action in law or in equity to enforce the terms of the Conservation Easement and recover any damages for the loss of the conservation values protected hereunder. The Grantee is also entitled to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Property. If a court determines that the Grantor has failed to comply with this Conservation Easement, then the Grantor also agrees to reimburse all reasonable costs and attorneys fees incurred by the Grantee in compelling such compliance.
- e. **Unreasonable Litigation:** If the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and attorneys fees incurred in defending the action.

- f. **Grantor's Absence:** If the Grantee determines that this Conservation Easement is, or is expected to be, violated, the Grantee will make a good faith effort to notify the Grantor. If, through reasonable efforts, the Grantor cannot be notified, and if the Grantee determines that circumstances justify prompt action to mitigate or prevent impairment of the Conservation Easement, then the Grantee may pursue its lawful remedies without prior notice and without awaiting the Grantor's opportunity to cure.
- g. **Actual or Threatened Non-Compliance:** Grantor acknowledges that actual or threatened events of non-compliance under this Conservation Easement constitute immediate and irreparable harm. The Grantor acknowledges that Grantee's remedies at law for any violation of the terms hereof are inadequate and Grantee is entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or inadequacy of otherwise available legal remedies.
- h. **Cumulative Remedies:** The preceding remedies of the Grantee are cumulative. Any, or all, of the remedies may be invoked by the Grantee if there is an actual or threatened violation of this Conservation Easement.

8. **Ownership Costs and Liabilities:** In accepting this Conservation Easement, the Grantee shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Property. The Grantee and its trustees, officers, employees, agents and members have no liability arising from injury or death to any person or from physical damage to any other property located on the Property or otherwise. The Grantor agrees to defend the Grantee against such claims and to indemnify the Grantee against all costs and liabilities relating to such claims during the tenure of the Grantor's ownership of the Property. The Grantor is responsible for posting the Property's boundaries and for discouraging any form of trespass that may occur.

9. **Cessation of Existence:** If the Grantee shall cease to be authorized to acquire and hold conservation easements, then this Conservation Easement shall become vested in another qualified entity that is eligible to acquire and hold a conservation easement under Ohio law, upon the mutual consent of Grantor and Ohio EPA.

10. **Termination:** This Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain.

- a. **Unexpected Change in Conditions:** If subsequent circumstances render the purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. The Grantee will then be entitled to compensation in accordance with applicable laws and in proportion to the Grantee's interest in the Property at the effective date of this Conservation Easement.

- b. **Eminent Domain**: If the Property is taken, in whole or in part, by power of eminent domain, then the Grantee will be entitled to compensation in accordance with applicable laws and in proportion to the Grantee's interest in the Property at the effective date of this Conservation Easement.

11. **Recordation**: Grantee shall record this instrument in a timely fashion in the official records of Athens County, Ohio and may re-record it at any time as may be required to preserve its rights in this Easement.

12. **Assignment**: This Conservation Easement is transferable, but Grantee may assign its rights and obligations hereunder only to an organization or entity that is qualified to hold conservation easements under Ohio law, and any applicable federal tax law, at the time of transfer. As a condition of such transfer, the Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

13. **Liberal Construction**: This Conservation Easement shall be liberally construed in favor of maintaining the conservation values of the Property. The section headings and subheadings identified herein are for reference purposes only and shall not be used to interpret the meaning of any provision hereof.

14. **Notices**: For purposes of this Conservation Easement, notices may be provided to either party, by personal delivery or by mailing a written notice to that party at the address shown at the outset of this agreement, or at the last known address of a party, by first class mail, postage prepaid. Delivery will be complete upon depositing the properly addressed notice with the U.S. Postal Service.

15. **Severability**: If any portion of this Conservation Easement is determined to be invalid or unenforceable, the remaining provisions of this agreement will remain in full force and effect.

16. **Subsequent Transfers**: This Conservation Easement shall be a covenant running with the land and shall constitute a burden on the Property and shall run to the benefit of the parties hereto and their successors in interest. All subsequent owners of the Property shall be bound to all provisions of this Conservation Easement to the same extent as the current parties. Grantor shall incorporate the terms of this Conservation Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer.

17. **Termination of Rights and Obligations**: A party's future rights and obligations under this Conservation Easement shall terminate upon the transfer of that party's interest in the Property. Liability for acts or omissions occurring prior to transfer shall survive any such transfer.

18. **Applicable Law**: This agreement shall be governed by, and construed in accordance with the substantive law of the State of Ohio, irrespective of its conflicts of laws rules.



19. **Entire Agreement:** This Conservation Easement sets forth the entire agreement of the parties and supersedes all prior discussions and understandings.

IN WITNESS WHEREOF, the Grantor and Grantee have set their hands on the day and year first above written.

**WITNESSES:**  
(print/type names under signature)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**GRANTOR:**

\_\_\_\_\_

**GRANTEE:**

\_\_\_\_\_

STATE OF OHIO )  
COUNTY OF \_\_\_\_\_ )

Acknowledged before me by \_\_\_\_\_ this \_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public

STATE OF OHIO )  
COUNTY OF \_\_\_\_\_ )

Acknowledged before me by \_\_\_\_\_ this \_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public