

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

OCT 31 2001

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Geis Construction Company
10020 Aurora-Hudson Road
Streetsboro, OH 44241

Director's Final Findings
and Orders

JURISDICTION

Pursuant to Ohio Revised Code (ORC) Chapter 6111. and Ohio Administrative Code (OAC) Section 3745.01, the Director of the Ohio Environmental Protection Agency (Ohio EPA) hereby makes the following Findings and issues the following Orders.

PARTIES BOUND

These Orders shall apply to and be binding upon Geis Construction Company, hereinafter "Respondent", and its assigns and successors in interest. No change in ownership of the EG Building site, hereinafter the "Property" will in any way alter Respondent's responsibilities under these Orders. Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

FINDINGS

1. Respondent is the owner and developer of the Property which is located on the northeast corner of Mondial Parkway and Mopar Drive within the Interstate Commerce Industrial Park in the city of Streetsboro, Portage County, Ohio.
2. The Property is a construction site which disturbs 5 or more acres of land and is a part of a common plan of development that disturbs 5 or more acres of land. Therefore, Respondent is 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.
3. On or about June 2, 1998, Respondent submitted a Notice of Intent (NOI) for the Property to obtain coverage under the storm water general permit. Ohio EPA granted Respondent coverage for the Property under this permit effective June 18, 1998, as permit number OHR106948. Respondent was required to comply with the terms and conditions of the storm water general permit as of that date.

4. Storm water from the Property discharges to an unnamed tributary to Tinkers Creek. The unnamed tributary to Tinkers Creek 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). ORC Section 6111.04 prohibits the discharge of pollutants to waters of the state without receiving a permit from the Director.
5. On or about July 13, 1998, August 13, 1998, July 29, 1999, August 23, 1999 and September 21, 1999, Ohio EPA conducted inspections of the Property to determine compliance with the conditions of the storm water general permit. Ohio EPA communicated the results of these inspections to Respondent by transmitting Notice of Violation letters (NOVs) to Respondent on July 24, 1998, August 20, 1998, August 3, 1999, August 25, 1999, and October 1, 1999. The NOVs document and communicate to Respondent the specific violations of the permit found at the Property and the corrective actions necessary at the Property to achieve compliance with the storm water general permit. Ohio EPA storm water staff also communicated violations and corrective actions to Respondent personally on July 13, 1998, and by telephone on October 1, 1999. Respondent failed to meet the conditions as set forth in the storm water general permit, in violation of the permit and ORC Sections 6111.04 and 6111.07.
6. Part III. C. 3. of the Ohio EPA storm water general permit requires that the permittee amend the Storm Water Pollution Prevention Plan (SWP3) whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for discharge of pollutants, or if the SWP3 of a Property proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity. The SWP3 for the Property has been ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity, and has not been amended, in violation of the permit and ORC Sections 6111.04 and 6111.07.
7. Part III.C.5.b.i.(A) of the Ohio EPA storm water general permit requires that the operator initiate appropriate vegetative practices on all disturbed areas within seven (7) days which are to remain dormant (undisturbed) for more than forty-five (45) days. There are disturbed areas at the Property which have been left dormant for more than forty-five (45) days without vegetative practices initiated, in violation of the permit and ORC Sections 6111.04 and 6111.07.
8. Part III.C.5.b.i.(B)(2) of the Ohio EPA storm water general permit requires that concentrated storm water runoff from disturbed areas flowing at rates that exceed

the design capacity of sediment barriers pass through a sediment settling pond. The Property had concentrated storm water runoff from disturbed areas flowing at rates that exceed the design capacity of sediment barriers, and Respondent failed to implement a sediment settling pond to pass the storm water runoff through, in violation of the permit and ORC Sections 6111.04 and 6111.07.

9. Part III.C.5.b.i.(B)(1) of the Ohio EPA storm water general permit requires that sediment control structures be functional throughout earth disturbing activity, that sediment settling ponds shall be installed as the first step of grading and within seven (7) days from the start of grubbing, and that the controls shall continue to function until the up slope development area is restabilized. Sediment settling ponds at the Property were not installed as the first step of grading and within 7 days from the start of grubbing and/or did not remain functional until the up slope development area was restabilized, in violation of the permit and ORC Sections 6111.04 and 6111.07.
10. Part III.C.5.b.v. of the Ohio EPA storm water general permit requires that all temporary and permanent control practices be maintained and repaired as needed to ensure continued performance of their intended function. Respondent failed to maintain and repair sediment barriers at the Property as needed to ensure continued performance of their intended function, in violation of the permit and ORC Sections 6111.04 and 6111.07.
11. Part III.C.5.b.vi. of the Ohio EPA storm water general permit requires that procedures in a plan provide that all erosion and sediment controls on the site are inspected at least once every seven (7) calendar days and within 24 hours after any storm event greater than 0.5 inch of rain per 24 hour period. Respondent failed to inspect all erosion and sediment controls at the Property at least once every seven (7) calendar days and/or within 24 hours after any storm event greater than 0.5 inch of rain per 24 hour period, in violation of the permit and ORC Sections 6111.04 and 6111.07.

ORDERS

1. Within fourteen (14) days of the effective date of these Findings and Orders, Respondent shall develop and submit to Ohio EPA, Northeast District Office (Attn. DSW Enforcement Group Leader), a revised and current SWP3 for the Property that requires Respondent to complete final site stabilization as defined under the Ohio EPA storm water general permit. Ohio EPA, DSW, may require changes to the SWP3 prior to the implementation.
2. Respondent shall implement the revised SWP3 consistent with any changes

required by Ohio EPA and complete final site stabilization within forty-five (45) days after the effective date of these Orders.

3. Respondent shall submit a Notice of Termination pursuant to Part IV. of the Ohio EPA storm water general permit to Ohio EPA seven (7) days after final site stabilization has been achieved.
4. After complying with Order Nos. 1 through 3 of these Orders, Respondent shall submit a Notice of Intent or an application for an individual storm water permit, as required by the Ohio Revised Code and the Ohio Administrative Code, prior to commencing any construction activities on the Property.
5. Respondent shall comply with all terms and conditions of any storm water general permit or individual permit issued for the Property, including the applicable Storm Water Pollution Prevention Plan (SWP3) for the Property.
6. Respondent shall pay to the Ohio EPA the amount of twenty thousand (\$20,000) dollars in settlement of 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 certified checks made payable to "Treasurer, State of Ohio" for fifteen thousand (\$15,000) dollars within thirty (30) days, and five thousand (\$5,000) dollars within one hundred and eighty (180) days, after the effective date of these Findings and Orders to the following address:

Vicki Galilei, Office of Fiscal Administration
Ohio Environmental Protection Agency
Lazarus Government Center
P. O. Box 1049
Columbus, Ohio 43215-1049

A photocopy of the check shall be sent to Ohio EPA Northeast District Office (Attn. DSW Enforcement Group Leader).

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. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Respondent.

RESERVATION OF RIGHTS

These Orders do not prevent Ohio EPA from enforcing the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders. These Orders do not prevent Ohio EPA from exercising its authority to require Respondent to perform additional activities pursuant to Chapter 6111. of the Ohio Revised Code or any other applicable law in the future. These Orders do not restrict the right of Respondent to raise any administrative, legal or equitable claim or defense for any additional activities that Ohio EPA may seek to require of Respondent. These Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

TERMINATION

Respondent's obligations under these Orders shall be satisfied and terminate when Respondent demonstrates in writing and certifies to the satisfaction of the Ohio EPA that all obligations under these Orders have been performed and the Chief of Ohio EPA, Division of Surface Water acknowledges in writing the termination of these Orders.

This certification shall be submitted by Respondent to the Northeast District Office (Attn. DSW Enforcement Group Leader) and shall be signed by a responsible official of Respondent. A responsible official is as defined in OAC Rule 3745-33-03(D)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, and OAC Rule 3745-33-03(D)(3) for a sole proprietorship. The certification shall contain the following attestation:

"I certify under the penalty of law that I have personally examined and am familiar with the information contained in or accompanying this certification, and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

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 agrees to comply with these Orders, and Respondent agrees that these Orders are lawful and reasonable, and that the times provided for compliance herein are reasonable. Compliance with these Orders shall be full accord and satisfaction of Respondent's liability for the violations specifically cited herein. Ohio EPA specifically

does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph of these Orders.

Respondent hereby waives the right to appeal the issuance, terms and service of these Orders, and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that 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 agrees to continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO AGREED:

Geis Construction Company

Katherine Geis
By

8-24-01
Date

SECRETARY
Title

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones
Christopher Jones
Director

10-2-01
Date