

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
AUG 28 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Hutsenpiller Contractors, Inc.
7404 Liberty One Drive
Liberty Township, Ohio 45044

Respondent

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Director's Final Findings
I certify that this is a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

PREAMBLE

By: Michael A. Shapiro Date: 8/28/07

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Hutsenpiller Contractors, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in the composition of Respondent or the ownership of the Site described below 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 made the following findings:

1. Respondent, a corporation for profit in good standing with the Ohio Secretary of State's Office, is the developer of an approximately seventeen (17) acre office park located at 6900 Hamilton Mason Road, West Chester, Butler County, Ohio, hereinafter known as the "Site."

2. Storm water from the Site discharges to an unnamed tributary to Gregory Creek, which constitutes "waters of the state" and sediment contained in that storm water constitutes "other wastes."
3. On June 22, 2006, Ohio EPA confirmed that Respondent began construction activities at the Site, including the moving or removal of trees and/or vegetation and soils, before Respondent obtained an individual National Pollutant Discharge Elimination System ("NPDES") permit or obtained coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction Activity ("Construction Storm Water General Permit").
4. Ohio EPA received a complete Notice of Intent for the Site on July 21, 2006, with Respondent receiving coverage under Construction Storm Water General Permit No. 1GC01958*AG on August 7, 2006.
5. Ohio Administrative Code ("OAC") Rule 3745-33-02(A) provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without applying for and obtaining an Ohio NPDES individual permit in accordance with the requirements of OAC Chapter 3745-33.
6. OAC Rule 3745-38-02(A) provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without applying for and obtaining an Ohio NPDES individual permit in accordance with the requirements of OAC Chapter 3745-33, complying with the indirect discharge permit program pursuant to OAC Chapter 3745-36, or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of OAC Chapter 3745-38.
7. ORC § 6111.04 prohibits any person from causing pollution or causing any sewerage, industrial waste or other waste to be placed in any location where they cause pollution to waters of the state, except if such discharges occur in accordance with an Ohio NPDES permit issued by the Director.
8. 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 order, rule, or term or condition of a permit issued or adopted by the Director of Environmental Protection pursuant to those sections. Each day of violation is a separate offense.
9. In violation of Part III.G.2.d.v of the Construction Storm Water General Permit, and as of December 19, 2006, Respondent placed a rock check in the creek that serves as an equipment crossing.

10. In violation of Part III.G.2.d.ii of the Construction Storm Water General Permit, and on at least September 27, 2006 and October 25, 2006, Respondent did not have a functioning sediment settling pond outlet structure.
11. In violation of Part III.G.2.i. of the Construction Storm Water General Permit, and as of December 19, 2006, Respondent failed to inspect all controls on the Site at least once every seven calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24 hour period.
12. Respondent was notified of the continuing storm water violations by letters dated October 12, 2006, November 22, 2006, and December 21, 2006.
13. On September 27, 2006, Ohio EPA observed that approximately nine hundred thirty (930) feet of an unnamed tributary of Gregory Creek was modified. Respondent has not received a Section 401 water quality certification or other authorization from Ohio EPA to perform the aforementioned activity, which constitutes a violation of ORC Chapter 6111. and OAC Chapter 3745-32.
14. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

1. From the effective date of these Orders and until all disturbed areas of the Site meet the criteria for final stabilization, Respondent shall comply with the requirements of the Construction Storm Water General Permit and the approved storm water pollution prevention plan ("SWP3"). Respondent shall submit a copy of any revisions to the current SWP3 to Ohio EPA Southwest District Office in accordance with Section X of these Orders.
2. Within fourteen (14) days of the effective date of these Orders, Respondent shall submit to Ohio EPA SWDO in accordance with Section X of these Orders, a written response addressing the items set forth in the December 21, 2006 letter from Ohio EPA. The referenced letter is attached hereto and incorporated herewith as if fully rewritten herein.
3. Respondent shall not initiate construction activities in the state of Ohio that disturbs more than one acre of land without having first developed and implemented a SWP3 for the construction site, and obtained coverage of the construction site under the Construction Storm Water General Permit.

4. Within ninety (90) days of the effective date of these Orders, Respondent shall submit a complete and approvable Section 401 water quality certification application.
5. Within seven (7) days from the effective date of these Orders, Respondent shall remove the rock check from the creek and within seven (7) days of said removal, Respondent shall notify Ohio EPA, Southwest District Office, in accordance with Section X of these Orders.
6. Respondent shall pay the amount of twelve thousand dollars (\$12,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for nine thousand six hundred dollars (\$9,600.00) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent and the Site, to:

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

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

7. In lieu of paying the remaining two thousand four hundred dollars (\$2,400.00) of the civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of two thousand four hundred dollars (\$2,400.00) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and the Site, to:

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

A copy of each check shall be sent to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

8. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 7, Respondent shall immediately pay to Ohio EPA the remaining two thousand four hundred dollars (\$2,400.00) of the civil penalty in accordance with the procedures in Order No. 6.

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 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 Respondent.

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 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. NOTICE

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

Ohio Environmental Protection Agency
Southwest District Office
Division of Surface Water
401 East Fifth Street
Dayton, Ohio 45402
Attn: Enforcement Supervisor

XI. 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.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, through the date of these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

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

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.


XIII. EFFECTIVE DATE

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

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these orders.

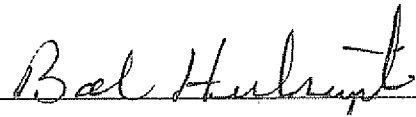
**IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency**



Chris Korleski
Director

8/27/07
Date

**IT IS SO AGREED:
Hutsenpiller Contractors, Inc.**



By

7-17-07
Date

Bob HUTSENPILLER

Printed or Typed Name

Pres.

Title



State of Ohio Environmental Protection Agency

Southwest District

401 East Fifth Street
Dayton, Ohio 45402-2911

TELE: (513)285-6357 FAX: (513)285-6249
www.epa.state.oh.us

Bob Taft, Governor
Bruce Johnson, Lt. Governor
Joseph P. Koncelik, Director

December 21, 2006

Mr. Bob Hutsenpiller
Hutsenpiller Contractors
7404 Liberty One Drive
Liberty Township, OH 45044

RE: Notice Of Violation, Liberty Office Park project, NPDES permit 1GC01958

Dear Mr. Hutsenpiller:

On Tuesday December 19, 2006, I inspected the Liberty Office Park construction site on Hamilton-Mason Road to determine compliance with the site's NPDES stormwater discharge permit. Based on my observations, the site is out of compliance with the following portions of its permit:

1. Part III.G.2.d.v Stream Protection (page 19)

A rock check was observed in the creek at the point where the newly modified stream returns to the original channel. This check is also serving as an equipment crossing, though culvert pipe has not been installed as required for temporary stream crossings. (See page 137 of the Ohio Dept. Of Natural Resources' Rainwater and Land Development manual for stream crossing specifications.) The above section of the permit specifically prohibits use of structural sediment controls in creeks. Please explain how this violation will be corrected.

2. Part III.G.2 Maintenance

Mulch/woodchip berms and silt fence have been installed adjacent to the east side of the newly modified creek channel. Much of the silt fence appears to be of marginal value as it has not been trenched in to the ground. Other sections were installed backwards; and a few have already failed. Please explain what measures will be taken to install these controls correctly, and what will be done to maintain them until the project has been completed. Note that properly installed mulch/woodchip berms are far superior to silt fence and often requiring little maintenance.

3. Part III.G.2.b.i Stabilization (Pages 16 and 17)

Disturbed soils were observed between the outlet of the detention basin and the modified creek channel. A second area of disturbed soils was observed adjacent to the rock check/creek crossing, on the west side of the creek. The permit requires disturbed soils within 50 feet of a creek to be stabilized within 2 days if the area is to remain idle for more than 21 days. Please explain in your written response what will be done to comply with this permit requirement.

Mr. Bob Hutsenpiller
December 21, 2006
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Along with your written response to the information requested above, please provide the following:

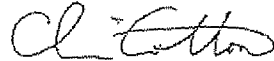
- A copy of the site's Stormwater Pollution Prevention Plan (SWP3);
- Copies of weekly inspection logs kept for the site since the project began (p 25)
- What the plans are for stabilizing inactive parts of the site over the coming winter;
- Who will be responsible for maintaining sediment controls throughout the project;
- How post-construction stormwater management requirements will be addressed (see page 20 of the permit).

It also appears that more than 200 feet of the original creek that once crossed the property has been impacted by this project. Please provide a copy of the approval letter you have received from the Army Corps of Engineers which permitted modification of the creek.

Please submit the requested information within 14 days of receipt of this letter.

If you have questions, please contact me at 937.285.6442 or via email at chris.cotton@epa.state.oh.us.

Sincerely,



Chris Cotton
Division of Surface Water

cc Eric Pottenger, Butler County Engineer's Office
Doug Dirksing, Butler County SWCD
Andrew Conway, Enforcement Coordinator, OEPA/CO/DSW

