

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

SEP 24 2009

In the Matter of:

The Promenade at Beaver Creek, LLC :
(Beaver Creek Partners, LLC) :
8900 Keystone Crossing :
Suite 1200 :
Indianapolis, IN 46240 :
Respondent :

Director's Final Findings
and Orders

ENTERED DIRECTOR'S JOURNAL

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows:

By: [Signature] Date: 9-24-09

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to The Promenade at Beaver Creek, LLC (Beaver Creek Partners, LLC), ("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 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 adopted thereunder.

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 6111.03, and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Respondent, an Indiana corporation registered (in good standing) with the Ohio Secretary of State's Office as a foreign limited liability company, is the developer of the approximately 24.8 acre apartment community subdivision known as "The Promenade at Beaver Creek" which is located west of the intersection of Grange Hall and New Germany-Trebein Roads in Beaver Creek, Greene County, hereinafter known as the "site."

2. Respondent's registered agent is CSC - Lawyers Incorporating Service, 50 West Broad Street, Columbus, OH 43215.
3. Storm water from the site discharges to an unnamed tributary to the Mad River, which constitute "waters of the state." Sediment contained in the storm water constitutes "other wastes," with placement of this waste into waters of the state constituting "pollution."
4. Pursuant to ORC § 6111.04, no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.
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 without applying for and obtaining an NPDES 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 § 6111.07(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 pursuant to those sections. Each day of violation is a separate offense.
8. On July 15, 2005, Respondent submitted to Ohio EPA a Notice of Intent ("NOI") for the site. On July 25, 2005, the Director granted Respondent coverage under NPDES General Permit for Storm Water Discharges Associated with Construction Activity ("Construction Storm Water General Permit"), Facility Permit No. 1GC01351*AG.
9. On August 10, 2005, Ohio EPA and Respondent held a meeting to discuss the terms and conditions of the Construction Storm Water General Permit prior to Respondent's commencement of construction activities.
10. On March 28, 2006, October 12, 2006, July 24, 2007, October 16, 2007, and April 24, 2008, Ohio EPA inspected the site and observed the following violations of the Construction Storm Water General Permit:

- a. In violation of Part III.G.2.b.i. of the Construction Storm Water General Permit, and on at least March 28, 2006 and April 24, 2008, Respondent failed to stabilize disturbed areas at the site that were dormant for more than twenty-one (21) days within seven (7) days of the most recent disturbance within the area;
- b. In violation of Part III.G.2.b. of the Construction Storm Water General Permit, and on at least March 28, 2006, October 12, 2006, July 24, 2007, October 16, 2007, and April 24, 2008, Respondent failed to provide erosion control practices;
- c. In violation of Part III.G.2. b.ii of the Construction Storm Water General Permit, and on at least March 28, 2006, Respondent failed to stabilize conveyance channels;
- d. In violation of Part III.G.2.c. of the Construction Storm Water General Permit, and on at least March 28, 2006, October 12, 2006, July 24, 2007, October 16, 2007, and April 24, 2008, Respondent failed to provide runoff control practices;
- e. In violation of Part III.G.2.d. of the Construction Storm Water General Permit, and on at least March 28, 2006, October 12, 2006, July 24, 2007, October 16, 2007, and April 24, 2008, Respondent failed to provide sediment control practices;
- f. In violation of Part III.G.2.h. of the Construction Storm Water General Permit, and on at least March 28, 2006, October 12, 2006, July 24, 2007, October 16, 2007, and April 24, 2008, Respondent failed to maintain sediment control practices;
- g. In violation of Part III.G.2.d.ii. of the Construction Storm Water General Permit, and on at least March 28, 2006 and October 12, 2006, Respondent failed to install a sediment settling pond;
- h. In violation of Part III.G.2.d.iv. of the Construction Storm Water General Permit, and on at least October 16, 2007 and April 24, 2008, Respondent failed to provide inlet protection;
- i. In violation of Part III.G.2.d.iii. of the Construction Storm Water General Permit, and on at least March 28, 2006, Respondent failed to provide silt fence and diversions; and

- j In violation of Part III.G.2.i. of the Construction Storm Water General Permit, and on at least March 28, 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.
11. The Ohio EPA sent Respondent letters and Notices of Violation that were dated March 20, 2006, October 13, 2006, December 1, 2006, August 1, 2007, October 22, 2007, and April 30, 2008, identifying the above violations.
 12. The following Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Any such construction or modification is subject to the permit to install and plan approval requirements of OAC Chapter 3745 42 and ORC § 6111.44.
 13. These Orders do not modify Facility Permit No. 1GC01351*AG.
 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. Respondent shall achieve compliance with the Construction Storm Water General Permit as soon as possible, but not later than thirty (30) days from the effective date of these Orders.
2. Within seven (7) days of the effective date of these Orders, Respondent shall submit the most recent storm water pollution prevention plan ("SWP3") for the site to Ohio EPA for review and approval. Respondent shall amend the SWP3 for the site as required by Part III.D. of the Construction Storm Water General Permit, and shall submit a copy of any amendments or revisions of the SWP3 to Ohio EPA, in accordance with Section X. of these Orders. Respondent shall include post-construction storm water management requirements in the SWP3. Detail drawings and maintenance plans for all post-construction BMPs shall be provided by Respondent to the post-construction operator of the site prior to termination of Construction Storm Water General Permit coverage.
3. Respondent shall maintain compliance with the Construction Storm Water General Permit.

4. 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 a Construction Storm Water General Permit.
5. Within seven (7) days after the effective date of these Orders, Respondent shall stabilize the following areas:
 - a. around the detention basin;
 - b. adjacent to the outlet point at of the western property line; and
 - c. area north of the parking lot adjacent to the site's northeastern most building.
6. Within seven (7) days after the effective date of these Orders, Respondent shall:
 - a. install inlet protection to storm sewer inlets in the parking lot near the northeastern building;
 - b. maintain and repair silt fence adjacent to and uphill from outlet at along the western side perimeter of the site; and
 - c. properly (i.e. perpendicular to storm water runoff) install straw wattles in swale near northeastern building parking lot.
7. Respondent shall pay the amount of five thousand dollars (\$5,000.00) 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 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, and 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

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

Unless otherwise specified, 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
Attention: 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 XII. 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

9/23/09

Date

**IT IS SO AGREED:
The Promenade at Beavercreek, LLC
(Beavercreek Partners, LLC)**



By

9/3/09

Date

David M. Flaherty

Printed or Typed Name

Managing Member

Title