



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

10/18/2017

CSX Transportation
Daniel Dyer, Manager
Environmental Remediation
31 E Georgia Street
Indianapolis, IN 46204

RE: Director's Final Findings & Orders
401
Lake County
8OU00051

Ladies and Gentlemen:

Transmitted herewith is one copy of the Director's Final Findings & Orders in the referenced matter. An appeal paragraph is set forth in the Orders.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Fowler".

Kevin J. Fowler, Supervisor
Permit Processing Unit
Division of Surface Water

KJF/dks

Enclosure

CERTIFIED MAIL

cc: L. Reeder, DSW
R. Demuth, DSW
B. Palmer, DSW
J. Martin, DSW
Fiscal
Compliance Section
M. McCarron, PIC
H. Griesmer, PIC
J. Lee, PIC
D. Stoll, NEDO/DSW
B. Fischbein, Legal
Journal Room
File

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

Ohio EPA OCT 18 '17
Entered Directors Journal

In the Matter of:

**CSX Transportation
239 West Union Street
Walbridge, Ohio 43465**

:
:
:
:
:
:

**Director's Final Findings
and Orders**

Respondent

PREAMBLE

The parties hereto agree as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to CSX Transportation (Respondent), pursuant to the authority vested in the Director (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 ownership or composition of Respondent or the ownership of the development 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 makes the following findings:

1. 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.

2. "Other wastes" is defined in ORC 6111.01(D) to include ". . . dredged or fill material, or silt, other substances that are not sewage, sludge, sludge materials, or industrial waste. . . ." and would include the concrete blocks, rocks, gabion baskets and other fill material.
3. ORC 6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code 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.
4. Respondent is owner of rail based transportation services which includes the track located South of Route 2 in Lake County, Ohio ("the Site").
5. Near the Site is the Grand River. The Grand River is a "water of the state" as defined in ORC 6111.01(H).
6. On August 2, 2017, an excavator operator for CSX Transportation discharged fill material into the Grand River from a railroad bridge just south of Route 2, Lake County at river mile 5.63. A complainant submitted a video of the activity to Ohio EPA.
7. Pursuant to 33 USC 1344, a person seeking to discharge fill material into a water of the United States is required to obtain a permit from the United States Army Corps of Engineers (404 permit). As a condition of obtaining a 404 permit, a water quality certification is required from the state pursuant to 33 USC 1341 (401 Certification).
8. OAC Rule 3745-32-02(B) provides that no person shall engage in an activity requiring a 401 certification prior to obtaining that certification from Ohio EPA.
9. OAC Rule 3745-32-02(A) requires that any applicant for a federal license or permit to conduct any activity which may result in a discharge of dredged or fill material to a water of the state shall apply for and obtain a 401 Certification from Ohio EPA.
10. In violation of OAC Rule 3745-32-02(A) and ORC 6111.07, Respondent failed to apply for and obtain a 401 Certification from Ohio EPA.
11. In violation of OAC Rule 3745-32-02(B), ORC 6111.04 and 6111.07, Respondent placed fill material into waters of the state without a 401 certification from Ohio EPA.
12. 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 alter, fill, dredge or otherwise degrade the uses and/or existing functions or values of any portion of any stream at any location in Ohio, without first receiving prior approval from the Director as required by law.
2. Within thirty (30) days from the effective date of these Orders, Respondent shall submit a Stream Restoration Plan addressing the restoration of the affected portion of Grand River to Ohio EPA Central Office, 401 Wetlands/Environmental Mitigation Section for review and approval. The Stream Restoration Plan shall include a list of performance criteria for the stream restoration project sufficient to ensure that the activities conducted to fulfill the requirements of these Orders have been successful. The Plan must include a schedule for implementation that commences upon approval by the Ohio EPA.
3. Within seven (7) days of Ohio EPA's approval of the Stream Restoration Plan, Respondent shall implement the Stream Restoration Plan in accordance with the approved schedule.
4. Respondent shall pay the amount of five thousand dollars (\$5,000) in settlement of Ohio EPA's claims 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". The official check shall be submitted to Carol Butler, or her successor, together with a letter identify the Respondent, to:

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

A copy of the check shall be sent to Larry Reeder, Environmental Manager, 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 the Chief of Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

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

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of the Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(D)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole proprietorship, and OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to activities occurring on or at the site.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

XI. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders,

Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

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

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

XII. EFFECTIVE DATE

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

XIII. SIGNATORY AUTHORITY

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

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Craig W. Butler
Craig W. Butler, Director

10/18/17
Date

IT IS SO AGREED:

CSX Transportation

Raghunath S. Chatrathi
Signature

10/05/2017
Date

RAGHUNATH S. CHATRATHI
Printed or Typed Name

DIRECTOR ENVIRONMENTAL SYSTEMS
Title