



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

11/13/2017

Burton Scot Contracting, LLC  
11330 Kinsman Road  
Newbury, Ohio 44065

RE: Director's Final Findings & Orders  
401  
Cuyahoga County  
8OU00052

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". The signature is fluid and cursive.

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 - DSW  
2017 OCT 31 AM 10:26

**In the Matter of:**

**Burton Scot Contacting, LLC  
11330 Kinsman Road  
Newbury, Ohio 44065**

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**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 Burton Scot Contacting, LLC (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 a contractor for a construction project at the Cuyahoga County Airport, Willoughby Hills, Lake County, Ohio ("the Site").
5. On the Site is a tributary to the East Branch Euclid Creek. Euclid Creek is a "water of the state" as defined in ORC 6111.01(H).
6. On August 20, 2017, material from the site was discovered to have been discharged into a tributary of the East Branch Euclid Creek. The project generated asphalt cuttings, fines, and waste water. The material was placed within a temporary storm water control area, but the volume generated overflowed the containment. The impacted runoff entered the tributary. Approximately 300 feet of the 20 foot wide creek was coated with up to 6 inches of cuttings fines. Approximately 1/3 mile of the creek was visibly impacted by the material. At the time of placement, controls to limit additional overflow were implemented, but Respondent failed to address off-site impact. Respondent has since adequately removed the material from the tributary.
7. The placing by Respondent of fill material into a tributary to the East Branch Euclid Creek is a violation of ORC 6111.04 and 6111.07.
8. 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 cause pollution to waters of the state, alter, fill, dredge or otherwise degrade the uses and/or existing functions or values of any portion of any waters of the state 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 an approvable contingency plan to Ohio EPA outlining steps that will be taken to ensure future violations do not occur.
3. 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**

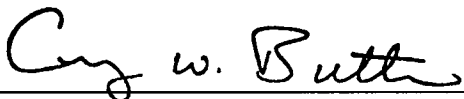
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

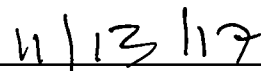
**XIII. SIGNATORY AUTHORITY**

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**

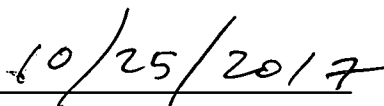
  
\_\_\_\_\_  
Craig W. Butler, Director


  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Burton Scot Contracting, LLC**

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Printed or Typed Name

  
\_\_\_\_\_  
Title