



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

2/23/2018

Orient (Harrisburg) DOHP XII, LLC
9010 Overlook Boulevard
Brentwood, TN 37027

RE: Director's Final Findings & Orders
NPDES
Franklin County
4GCD0146

Ladies and Gentlemen:

Transmitted herewith is one copy of the Director's Final Findings & Orders in the referenced matter

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
S. Sheerin, DSW
J. Martin, DSW
Fiscal
B. Schuch, CDO/DSW
Compliance Section
M. McCarron, PIC
H. Griesmer, PIC
J. Lee, PIC
B. Fischbein, Legal
P. Fallah, DEFA
File

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

**Orient (Harrisburg) DOHP XII, LLC
9010 Overlook Boulevard
Brentwood, TN 37027**

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**Director's Final Findings
and Orders**

Respondent

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Orient (Harrisburg) DOHP XII, 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 successors in interest liable under Ohio law. No change in the composition of Respondent 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 Chapters 6111 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA makes the following findings:

1. The property ("the Site") is located at 6732 Lambert Road, Orient, Franklin County, Ohio, 43146.
2. The Site discharges storm water associated with construction activity to an unnamed tributary of the Big Darby Creek. The Site is located within the Big Darby Creek watershed.

3. The construction activities at the Site are covered under the Construction General Permit for the Big Darby Creek Watershed (NPDES Permit number 4GCD0146*AG). Permit coverage was issued in March 2016.
4. On February 14, 2017, Ohio EPA conducted an inspection of the Site. Numerous issues were noted including the following: no soil stabilization in areas at final grade, barren areas, inadequate rock outlet, lack of sediment and erosion controls, no riser or skimmer on the sediment basin outfall structure, lack of maintenance to the concrete washout pit, and installation concerns with the bioretention basin. A subsequent inspection letter was issued on February 24, 2017.
5. On April 10, 2017, Ohio EPA conducted the second inspection of the Site. As a result of the inspection, a Notice of Violation (NOV) was issued to the Respondent on April 21, 2017 and the following violations were noted: silt fence still down along perimeter of site, area surrounding the septic mound was not stabilized, barren areas of soil, and the rock outlet was inadequate to prevent erosion in the bioretention area.
6. On May 16, 2017 and June 16, 2017, Ohio EPA conducted additional inspections of the Site. As a result of these inspections, NOVs were issued on May 25, 2017 and June 29, 2017, respectively. Both NOVs documented that the following violations had still not been fixed: silt fence still down along perimeter of site, area surrounding the septic mound was not stabilized, barren areas of soil, and the rock outlet was inadequate to prevent erosion in the bioretention area.
7. On July 25, 2017, Ohio EPA conducted an inspection of the Site. As a result of the inspection, a Partial Resolution of Violation (PROV) was issued on August 9, 2017. The PROV resolved the site stabilization violation. However, the following violations were documented as still outstanding: silt fence was still in need of maintenance in several areas along the perimeter, and the rock outlet was inadequate to prevent erosion in the bioretention area.
8. On September 6, 2017, Ohio EPA conducted an inspection of the Site. As a result of the inspection, a PROV was issued on September 15, 2017. The PROV resolved rock outlet erosion protection in the bioretention area. However, the following violations were documented as still outstanding: silt fence was still in need of maintenance in several areas along the perimeter, the post construction Storm Water Management Plan that was submitted did not name a designated entity for maintenance of post construction Best Management Practices (BMPs) nor did it contain routine and non-routine maintenance tasks and a schedule for inspections and maintenance, and the bioretention area had not been planted or seeded and appeared to be clogged with sediment. Standing water was present in the bioretention area.

9. On October 5, 2017 a meeting took place at Ohio EPA Central District Office (CDO) to discuss the ongoing compliance issues at the site with the Respondent. Ohio EPA was represented by Central District Office (CDO) management and staff and Northwest District Office (NWDO) management. The Respondent was represented by Eastin Travis of GBT Realty. The Respondent indicated during the meeting that the Site would return to compliance by October 23, 2017. CDO and NWDO staff agreed to this timeframe.
10. On October 19, 2017, Ohio EPA has a meeting onsite with contractors associated with the project to determine status of compliance agreed to in the October 5th meeting. Ohio EPA observed that the Site had 70% vegetative cover except near the sediment basin. In addition, it was observed that there was standing water in the bioretention area. The contractors indicated the well installation contractors had been flushing the well and discharging shocked water into the bioretention area. Ohio EPA recommended the bioretention area be completely redone due to impacts of the sediment.
11. On November 6, 2017, Ohio EPA conducted an inspection of the Site to determine if compliance had been achieved. As a result of the inspection, an NOV was issued to the Respondent on November 9, 2017 and the following violations were included: silt fence was in continued need of maintenance in several areas along the perimeter of the site, the updated post construction Storm Water Management Plan had not been submitted, and the one on file did not name a designated entity for maintenance of post construction BMPs nor did it contain routine and non-routine maintenance tasks. Other deficiencies noted included no schedule for inspections and maintenance, the bioretention area still had standing water appeared to be clogged with sediment, and had not been planted or seeded.
12. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
13. 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 purpose of ORC Chapter 6111.

V. ORDERS

1. Within fourteen (14) days after the effective date of these Orders, Respondent shall repair silt fence around the perimeter of the site and keep it maintained until 70% vegetative cover is achieved.
2. Within thirty (30) days after the effective date of these Orders, Respondent shall repair and remediate the bioretention area. Repairs to the bioretention area should include the following: excavate and examine layers of the bioretention area and the underdrain system and repair as needed so that the system drains within a period of 12-48 hours; replace the bioretention soils with a soil that meets the specifications of the Rainwater and Land Development Manual (see page 76 in manual); if stabilized in winter, stabilize the area with coarse shredded hard wood mulch; once weather permits, seed and plant the area in accordance with the approved Storm Water Pollution Prevention Plan (SWP3).
3. Within thirty (30) days after the effective date of these Orders, Respondent shall ensure any barren areas be dormant seeded with straw matting providing immediate cover. Once 70% vegetative cover is achieved, Respondent shall remove the silt fence.
4. Within thirty (30) days after the effective date of these Orders, Respondent shall develop and submit a post-construction long term maintenance plan which will include, but not limited to, the following: Naming the responsible party for the lifetime of the bioretention basin, details what items need regular maintenance, and frequency of said maintenance.
5. 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 43215-1049

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 43215-1049

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(F)(1) for a corporation, OAC Rule 3745-33-03(F)(2) for a partnership, OAC Rule 3745-33-03(F)(3) for a sole proprietorship, and OAC Rule 3745-33-03(F)(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

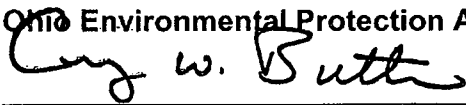
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

February 23, 2018

Date

IT IS SO AGREED:

Orient (Harrisburg) DOHP XII, LLC


Signature

Jason Howartz
Printed or Typed Name

Authorized Agent
Title

2.13.18
Date