

BEFORE THE

OHIO E.P.A.

OHIO ENVIRONMENTAL PROTECTION AGENCY

SEP -5 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Cook Road Investments, LLC
387 Medina Road, Suite 600
Medina, OH 44256

Respondent

Director's Final Findings
and Orders

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: 9-5-07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued Cook Road Investments, 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, 3745.01, and 3745.08 and the rules adopted thereunder.

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 ownership of the site (defined 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 Chapters 3745. and 6111., and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

A. Verified Complaint

- On May 9, 2006, Ohio EPA received verified complaint No. VC0605W01 from Marjorie E. King, ("complainant") President, Cinnamon Woods Unit Owners Association, 30961 Jasmine Court, North Olmsted, Ohio, alleging that the Arbors at Olmsted Apartments ("Arbors") will pose a threat to the environment and create pollution. In particular, complainant alleged that:

- a. Site operators will not minimize the discharge of sediment-laden runoff to the unnamed tributary of French Creek which separates Cinnamon Woods from the Arbors;
 - b. Site operators have not obtained the "permissions" or have not conducted required inspections; and
 - c. Existing pollutants on the site (residual chemicals, animal feeds, pest/foilage control chemicals, fertilizers and manure) from the site's prior land use as a horse and llama farm pose a threat during construction of the development.
2. Pursuant to ORC § 3745.08, upon receipt of a verified complaint, the Director shall cause a prompt investigation to be conducted such as is reasonably necessary to determine whether a violation, as alleged, has occurred, is occurring, or will occur.

B. Background

3. Respondent, located at 387 Medina Road, Suite 600, Medina, Ohio, is a domestic limited liability company in good standing with the Ohio Secretary of State's Office.
4. Respondent is constructing the Arbors at 27370 and 27380 Cook Road, Cuyahoga County, ("site"), and is identified as "project site" in Attachment I, which is attached hereto, incorporated by reference herewith as if fully rewritten herein.
5. On July 17, 2006, Ohio EPA inspected the site ("July inspection").

C. Discharge of Sediment Laden Runoff

6. During the July inspection Ohio EPA found that only limited construction activities had occurred, consisting of removal of an existing barn structure and its contents, limited tree cutting, stump grinding, and installation of silt fence in all perimeter locations indicated in the storm water pollution prevention plan ("SWP3"), except a 100-foot stretch along the northern perimeter. Most of the site was covered with existing vegetation. No erosion concerns were noted.
7. The July inspection did not indicate that a discharge of sediment laden runoff had or was taking place.

D. Authorization and Inspection Issues

8. Coverage under Ohio EPA General Storm Water NPDES Permit for Construction Activities #OHC000002 is required whenever the larger common plan of development or sale results in the disturbance of one or more acres of land. As construction activities on the site result in the disturbance of 13.43 acres, coverage is required for storm water runoff.
9. On October 19, 2005, Respondent received coverage to discharge storm water from site construction activities under facility permit number 3GC02013*AG.
10. A permit to install for the installation of a sanitary sewer for the site was issued on June 26, 2006.
11. All persons that meet the definition of operator are required to obtain coverage under the Ohio EPA General Storm Water NPDES Permit for Construction Activities. As it was determined that Fechko Excavating, Inc., ("Fechko"), 865 West Liberty St., Suite 120, Medina, Ohio, would be responsible for day-to-day operations at the site once construction activities commenced in earnest, coverage was required.
12. On July 28, 2006, Fechko received coverage as a co-permittee to discharge storm water from site construction activities under facility permit number 3GC02013*AG.
13. The SWP3 showed the presence of wetlands on the site, with some filled by construction activity. Respondent received a March 13, 2006 letter from the Buffalo District Office of the US Army Corps of Engineers authorizing coverage under a Nationwide Permit. The permit authorized the permanent impact of 0.447 acres of wetlands and 98.5 linear feet of intermittent stream. The delineation of wetlands attached to the authorization letter matched the delineation of wetlands indicated in the SWP3. Appropriate permits have been obtained for impacts to the wetlands.
14. Inspection reports required by Part III.G.2.i of the Ohio EPA General Storm Water NPDES Permit for Construction Activities are being performed. The most current report, dated June 23, 2006, meets the requirements of the Ohio EPA General Storm Water NPDES Permit for Construction Activities.

E. Former Land Use

15. The July inspection did not reveal any residual chemicals, animal feeds, pest/foilage control chemicals or fertilizers stored at the site.
16. During the July inspection, two piles of manure were observed, with the piles well vegetated and not posing a threat of contaminating storm water runoff in their current state. Because the manure would be disturbed by construction activities, Respondent was requested to remove the manure from the site, which was done and verified by Ohio EPA during subsequent site inspections.
17. An empty fuel tank and a few rusty pieces of what were formerly 55-gallon drums were observed during the July inspection. Respondents stated that these items were dumped at the site and would be removed. Ohio EPA was informed on August 1, 2006, that the items were removed from the site by Poff and Sons Excavating and were disposed of at Wooster Iron and Metal, a salvage yard located in Wooster, Ohio.

F. Meeting with Complainants

18. ORC § 3745.08 requires that the verified complaint investigation include a discussion of the complaint with the alleged violator.
19. An interview was held with the alleged violator and a separate meeting with the complainants on July 17, 2006, during which complainant raised no new concerns.

G. Subsequent Site Inspections

20. On August 28, 2006, an inspection for storm water best management practices ("BMPs") was conducted to determine if the amended SWP3 was being implemented. The following violations were observed:
 - a. Failure to install sediment basins prior to grading and within seven days from the start of grubbing. This violation pertained to Sediment Basin #3. Although a basin had been excavated, the required sediment control of the outlet structure of the basin was not installed;
 - b. Failure to control off-site tracking of sediment. This violation was noted in two areas: (i) accessing the site in areas other than the designated rock construction entrance, thus dragging mud onto Cook Road and (ii) placing spoils from utility trench excavation on Cook Road during a rain event, allowing runoff to flow across the road and enter storm water drainage channels and to be tracked further down the road by passing traffic; and

- c. Failure to intercept sheet flow runoff from denuded areas with silt fencing, so as to protect adjacent water resources. This violation pertained to the lack of silt fence along a stream channel located in the extreme southwest corner of the site and along Cook Road to protect its drainage system.
21. In addition to the above violations, a number of concerns regarding how certain BMPs had been implemented were noted during the August 28, 2006 inspection and summarized in a Notice of Violation ("NOV") dated September 1, 2006.
22. On September 15, 2006, Ohio EPA received a response indicating that all concerns addressed in the above referenced NOV had been addressed.
23. On September 20, 2006, a follow up inspection was conducted. Although steps had been taken to address the violations, it was observed that corrective action was not implemented correctly in most cases. A second NOV was sent on September 27, 2006. In addition to noting concerns about on-going violations, two additional actions were identified that would be required to bring the site into compliance with the Ohio EPA General Storm Water NPDES Permit for Construction Activities:
 - a. Stabilization of all disturbed areas not being reworked within twenty-one days of last disturbance. Although the entire 13+ acre site had been disturbed by construction activity, road paving and home building are initially limited to the east half of the site. Initiation of stabilization activities on the west side of the site did not occur within seven days of last disturbance. To correct this problem, the entire west side of the site, as well as soil stockpiles need to be seeded and mulched; and
 - b. Installation of the correct permanent outlet structure for Sediment Basin #3 is required. Sediment Basin #3 is the only sediment pond that will become a permanent feature of the site. Once construction is complete, the basin is to serve as a dry extended detention basin to control the Water Quality Volume ("WQv"). This will satisfy the post-construction requirements of the Ohio EPA General Storm Water NPDES Permit for Construction Activities. However, as initially designed, the elevations of the orifices of the outlet structure were not properly set to provide the required storage volume and draindown time of the WQv and had to be redesigned. Fechko installed the outlet structure indicated on the original SWP3 rather than the amended SWP3 because it had already been ordered based on the original plan. The permanent basin will not provide extended detention of the WQv as required by the Ohio EPA General Storm Water NPDES Permit for Construction Activities. To correct this problem, the incorrect orifices need to be plugged and the structure needs to be recorded with the correct orifices at the elevations indicated in the amended SWP3.

24. To assure that implementation of the temporary stabilization, a follow up inspection was conducted on October 11, 2006, in which it was observed that all disturbed areas were seeded and straw mulched with the exception of the largest soil stockpile. Respondent indicated that there was some confusion as to whether that stockpile would remain on site or not, so that is why it wasn't stabilized. Respondent then indicated that the stockpile would remain, and Respondent was instructed to seed and mulch it as well. An October 19, 2006 inspection showed that the stockpile had been seeded and straw mulched.
25. The October 11, 2006 inspection revealed a new problem, the occurrence of excessive tracking of sediments onto the now-paved roadways of the site. This is occurring because apartment building construction has begun and contractors are driving bobcats and delivery trucks onto disturbed areas and back out onto paved roadways without using rock construction entrances. In addition, the streets are not being swept on a regular basis, which causes off-site tracking onto Cook Road as vehicles and construction workers drive off site. Respondent was informed of this problem during the inspection and instructed to sweep the streets and address the problem. The subcontractor stated that the street sweeper was broken, but would be repaired and on-site by the next day. However, the problem was observed to be worse during the October 19, 2006 inspection.
26. All violations have been remedied with the exception of the violation regarding off-site tracking.
27. Compliance would be achieved if Respondent reviewed pertinent elements of the SWP3 with each contractor before the contractor begins working at the site. In addition, Respondent should obtain a certification from each contractor acknowledging receipt and understanding of this information.
28. Inspection reports make no mention of the existence of sediment ponds or BMPs for pollutants other than sediment, indicating that a complete inspection of storm water BMPs is not being performed.
29. There is a concern regarding the post-construction BMP. The modifications that must be made to the permanent outlet structure of Sediment Basin #3 cannot yet occur because the basin must continue to function as a sediment basin rather than an extended detention pond until the entire site is developed, i.e., apartment construction is complete on the west half of the site. It could take one to two years to reach this point. On October 9, 2006, Ohio EPA received a response letter from Fechko acknowledging the problem with the outlet structure and

indicating that it will be recorded and repaired as necessary to comply with the amended SWP3 upon the clean up stage of the project. However, Fechko is no longer responsible for any future activities at the site because their contract is complete now that idle areas have been temporarily seeded and straw mulched.

30. The following conditions of the Ohio EPA General Storm Water NPDES Permit for Construction Activities have been violated:
 - a. Failure to install sediment basins prior to grading and within 7 days from the start of grubbing. This is a violation of Part III.G.2.d.i;
 - b. Failure to control off-site tracking of sediment. This is a violation of Part III.G.2.g.ii;
 - c. Failure to intercept sheet flow runoff from denuded areas with silt fence so as to protect adjacent water resources. This is a violation of Part III.G.2.d.iii; and
 - d. Failure to initiate temporary stabilization of disturbed areas that will remain idle for 21 days or longer within 7 days of last disturbance. This is a violation of Part III.G.2.b.i
31. Failure to comply with the requirements of the Ohio EPA General Storm Water NPDES Permit for Construction Activities is a violation of ORC §§ 6111.04 and 6111.07.
32. The site is located within the French Creek drainage basin, a watershed designated as "rapidly-developing" under the Ohio EPA NPDES Storm Water Program for Small Municipal Separate Storm Sewer Systems. Ohio EPA places an emphasis on construction and post-construction storm water BMP implementation in these watersheds.
33. ORC § 3745.08(B) provides that if upon completion of the investigation, the Director determines that a violation, as alleged, has occurred, is occurring, or will occur, he may enter such order as may be necessary.
34. ORC § 3745.08(B) provides that if the Director enters an order pursuant to ORC § 3745.08(B) without having commenced a hearing, the Director or his delegate, prior to entry of the order, shall provide an opportunity to the complainant and the alleged violator to attend a conference with the Director or his delegate concerning the alleged violation.

35. The opportunity to attend the conference referred to in Finding No. 34 has been provided to the complainant and Respondent.
36. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.
37. 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. As of the effective date of these Orders, Respondent shall review pertinent parts of the SWP3 with each contractor before the contractor begins work at the site. For current contractors, the review must occur within ten (10) days of the effective date of these Orders.
2. As of the effective date of these Orders, Respondent shall maintain signed certification statements from each contractor acknowledging receipt and understanding of the pertinent parts of the SWP3. These certification statements must be made available to Ohio EPA immediately upon request.
3. Within fourteen (14) days of the effective date of these Orders, Respondent shall hire an inspector that is a Certified Professional in Erosion and Sediment Control, not merely someone who has attended IECA training classes;
4. Respondent shall provide written notification to Ohio EPA when Sediment Basin #3 is converted into an extended detention pond, noting this cannot occur until construction activities are complete across the entire site. This notification shall consist of a certification statement that the temporary riser pipe has been removed and the permanent outlet structure of Sediment Basin #3 has been modified to match the specifications in the amended SWP3. This notification shall be submitted to Ohio EPA within seven (7) days of the date of conversion.
5. Respondent shall pay to Ohio EPA the amount of three thousand seven hundred and twenty six dollars (\$3,726.00) in settlement of Ohio EPA's claim for civil penalties which may be assessed pursuant to ORC Chapter 6111. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the full amount within thirty (30) days of the effective date of these

Orders, to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the site.

A Photocopy of the check shall be sent to Ohio EPA, Northeast District Office.

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. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principle business function 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 operation of the Facility.

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 herein, all documents required to be submitted by Respondent shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
ATTN: DSW Enforcement Group Leader.

XI. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. Ohio EPA and Respondent each reserve all other 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, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders, which right Ohio EPA does not waive, 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.

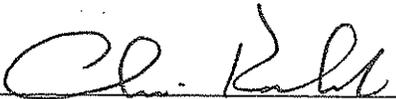
XIII. EFFECTIVE DATE

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

Date 9/4/07

**IT IS SO AGREED:
Cook Road Investments, LLC**



Signature

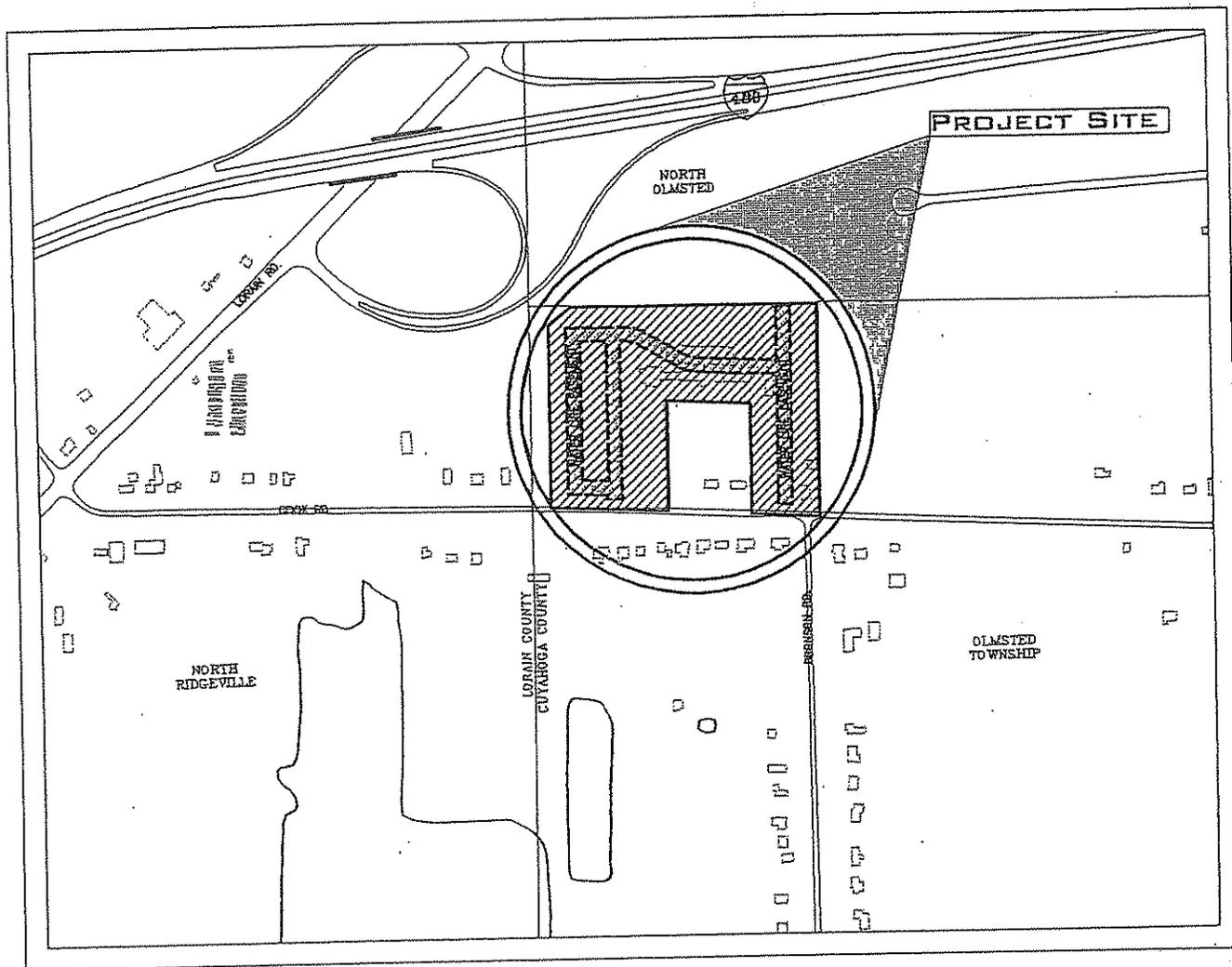
Date 7-5-07



Printed or Typed Name



Title



VICINITY MAP

SCALE: 1" = 400'