

A Conway

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

New Straitsville Enterprises, LLC
9 East Second Street, STE A
Logan, Ohio 43138

Director's Final Findings
and Orders

Respondent

OHIO E.P.A.
MAY - 1 2006
INTEREU DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to New Straitsville Enterprises, 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 or the ownership or operation 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 Chapter 6111. and the rules promulgated 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, a domestic limited liability company in good standing in Ohio, is the developer of a 12 acre residential development, Freedom Hill Subdivision, located immediately north of the water tower and west of Cunningham Street, in the Village of New Staitsville, Coal Township, Perry County, ("Site").
2. Storm water from the Site discharges to the unnamed tributaries of Monday Creek, which constitutes "waters of the state" as defined by ORC § 6111.01 (H). Sediment contained in said storm water, constitutes "other wastes" as defined in ORC §

official document as filed in the records of the Ohio Environmental Protection Agency
Dony Jackson Date 5-1-06

6111.01 (0). Placement of this waste into waters of the state constitutes "pollution" as defined in ORC § 6111.01 (A).

3. Because the Site is a construction site which disturbs more than one (1) acre of land, Respondent was required to submit a Notice of Intent ("NOI") to obtain coverage under the Ohio EPA National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity ("NPDES Storm Water General Permit"), and to develop and implement a Storm Water Pollution Prevention Plan ("SWP3") specific to the Site.
4. On July 15, 2005, Ohio EPA conducted an inspection at the Site and determined that an estimated 12 acres had been disturbed. The inspection confirmed that construction activities at the Site commenced prior to the submission of an NOI and prior to completing and implementing a SWP3, in violation of ORC § 6111.07.
5. Part II.A of the NPDES Storm Water General Permit requires that an operator submit a complete and accurate NOI application form and appropriate fee at least 21 days prior to the commencement of construction activity. Pursuant to Part II.B, an operator who fails to notify the Director of their intent to be covered and who discharges pollutants to surface waters of the state without an NPDES permit is in violation of ORC Chapter 6111.
6. Part III.B of the NPDES Storm Water General Permit requires that a SWP3 be completed prior to the timely submittal of an NOI and updated in accordance with Part III.D. The SWP3 must be implemented upon initiation of construction activities.
7. By letter dated August 2, 2005, Respondent was notified that the construction activities occurring at the Site were in violation of ORC Chapter 6111.
8. On August 5, 2005, Respondent submitted to Ohio EPA an NOI for the Site and requested an extension of time to complete the SWP3 for the Site. Respondent has completed the SWP3.
9. Respondent was granted NPDES Storm Water General Permit coverage on August 25, 2005, under permit No. OGC00343*AG.
10. 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.
11. 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.

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 initiate construction activities that disturb more than one (1) acre of land without having first submitted an NOI and obtained coverage under the NPDES Storm Water General Permit and has developed and implemented a SWP3 that satisfies all minimum criteria listed in Part III of the NPDES Storm Water General Permit. Respondent may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondent has maintained compliance with this Order for a period of three hundred and sixty five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section VI. of these Orders.
2. From the effective date of these Orders and until all disturbed areas on the Site meet the criteria for final stabilization, as outlined in the NPDES Storm Water General Permit, Respondent shall comply with the current SWP3 and/or any future amendments to the SWP3, in accordance with Part III.D of the NPDES Storm Water General Permit.
3. Respondent shall pay to Ohio EPA the amount of one thousand eight hundred thirty-five dollars (\$1,835.00) 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.

A photo copy of the check shall be sent to Ohio EPA's Southeast District Office in accordance with Section X of these Orders.

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 stated, all documents required to be submitted by Respondent pursuant to these Orders shall be submitted to:

Ohio Environmental Protection Agency
Division of Surface Water
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: DSW Enforcement Coordinator

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, 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 or 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**



Joseph P. Koncelik
Director

Date

4/20/06

**IT IS SO AGREED:
New Straitsville Enterprises, LLC**



Signature

Date

4-20-06

LARRY P. GERSTNER
Printed or Typed Name

MEMBER/MANAGER
Title