

OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Shelly Materials, Inc.
301 Frank Road
Columbus, Ohio 43207

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 Shelly Materials, Inc. (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 ownership of Site A or Site B (as hereinafter defined) 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 (Director) has determined the following findings:

- 1 Respondent is the owner and operator of an industrial gravel operation located at 6824 Mt. Vernon Road, Newark, Ohio in Licking County (Site A), and an asphalt facility located at 6101 Westerville Road, Westerville, Ohio in Franklin County (Site B).

I certify this to be a true and accurate copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency.

Jonita Jackson 9-9-04

2. Storm water from Site A discharges to the North Fork of the Licking River. Storm water from Site B has on occasion discharged to Alum Creek. The Licking River and Alum Creek constitute "waters of the state" as defined by ORC § 6111.01. Sediment contained in said storm water constitutes "other wastes," as defined in ORC § 6111.01(D). Placement of this waste into waters of the state constitutes "pollution," as defined in ORC § 6111.01(A).
3. Pursuant to ORC § 6111.04, no person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state.
4. 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 pursuant to those sections. Each day of violation is a separate offense.
5. On October 20, 1995, a notice of intent (NOI) to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Storm Water Permit Associated with Industrial Activities (General Storm Water Permit) was submitted for Site A by the former owner, Van Wey Sand and Gravel Company. On October 27, 1995, the Director granted coverage for Site A under General Storm Water Permit number 4GG00019*AG.
6. The General Storm Water Permit only authorizes the release of storm water associated with the industrial activity and does not allow the discharge of any wastewater to waters of the state.
7. Pursuant to Ohio Administrative Code (OAC) Rule 3745-38-09, Ohio EPA must be notified in writing at least sixty (60) days prior to any proposed transfer of an Ohio NPDES General Permit, and the transferor and transferee must jointly inform Ohio EPA of the transition of responsibilities regarding permit coverage.
8. In or about January 2001, Respondent purchased the stock of Van Wey Sand and Gravel Company which resulted in the merging of the companies and Respondent becoming the responsible owner of Site A. As of the effective date of these Orders, Respondent has failed to notify Ohio EPA of the General Storm Water Permit transfer, in violation of OAC Rule 3745-38-09 and ORC § 6111.07(A).
9. On June 5, 1996, the Director granted Respondent coverage for Site B under General Storm Water Permit number 4GG00174*AG.

10. On February 6, 2001, Ohio EPA conducted an inspection at Site A, and an unauthorized wastewater discharge by Respondent into the North Fork of the Licking River was documented. This unauthorized wastewater discharge resulted from the gravel washing operations at Site A, and is a violation of ORC §§ 6111.04 and 6111.07(A) as well as the General Storm Water Permit.
11. During the February 6, 2001 inspection at Site A, Ohio EPA requested that Respondent immediately cease the discharge or obtain coverage for the discharge under an individual NPDES Permit; Respondent agreed stop the unauthorized discharge by recycling the wastewater.
12. On February 8, 2001, Ohio EPA sent Respondent a Notice of Violation (NOV) covering the February 6, 2001 event, and again required that Respondent cease the unauthorized discharge to Licking River or obtain coverage for such discharge under an individual NPDES permit. On February 22, 2001, Ohio EPA sent Respondent correspondence indicating that during a follow-up inspection on February 12, 2001, the wastewater discharge associated with the gravel washing operations had temporarily ceased.
13. On July 18, 2002, Ohio EPA conducted an inspection at Site A, and unauthorized wastewater discharges by Respondent into the North Fork of the Licking River were documented. These unauthorized discharges were associated with sand and gravel washing operations and vehicle washing operations at Site A, and are violations of ORC §§ 6111.04 and 6111.07(A) as well as the General Storm Water Permit.
14. On July 29, 2002, Ohio EPA sent Respondent a NOV covering the July 18, 2002 event, and again required that the unauthorized discharges cease in accordance with the Respondent's representations of February 6, 2001, or, alternatively, that Respondent obtain coverage for these discharges to waters of the state under an individual NPDES Permit. On August 19, 2002, Ohio EPA sent Respondent correspondence indicating that during a follow-up inspection on August 9, 2002, no turbid discharge to the Licking River was documented.
15. On September 26, 2002, Ohio EPA conducted an inspection at Site B, and unauthorized wastewater discharges by Respondent to a separate storm sewer system which discharges directly to Alum Creek were documented. These unauthorized wastewater discharges were associated with the washing activities at Site B, and are violations of ORC §§ 6111.04 and 6111.07(A) and the General Storm Water Permit.

On October 16, 2002, Ohio EPA sent Respondent a NOV covering the September 26, 2002 event, and required the elimination of the unauthorized discharges as well as the submission of a corrective action plan to eliminate future unauthorized discharges. Respondent addressed the noncompliance issues contained in this NOV within thirty (30) days of notification.

17. On October 10, 2002, Ohio EPA conducted an inspection of Site A. On that date, Respondent was performing dewatering activities in association with a stream crossing, and these activities resulted in an unauthorized (turbid) discharge to the North Fork of the Licking River in violation of ORC §§ 6111.04 and 6111.07(A) as well as the General Storm Water Permit.
18. During the October 10, 2002 inspection of Site A, Ohio EPA documented violations of the General Storm Water Permit, Part IV attachment III (D)(3) and ORC § 6111.07(A), as Respondent has failed to implement measures to limit soil erosion associated with the stream crossing at Site A, and has failed to stabilize the banks of Site A along the North Fork of the Licking River.
19. On October 28, 2002, Ohio EPA sent Respondent a NOV regarding the October 10, 2002 event, and required Respondent to eliminate the unauthorized discharge to waters of the state from the dewatering activities. Respondent subsequently stabilized the banks of the North Fork of the Licking River at the new stream crossing as well as at the former stream crossing.

On May 1, 2003, Ohio EPA conducted an inspection of Site A, and documented an unauthorized wastewater discharge to the North Fork of the Licking River. This unauthorized wastewater discharge was associated with vehicle washing operations at Site A, and is a violation of ORC §§ 6111.04 and 6111.07(A) as well as the General Storm Water Permit.

21. On May 8, 2003, Ohio EPA sent Respondent a NOV regarding the May 1, 2003 event which required Respondent to immediately cease this unauthorized discharge to waters of the state.

On June 30, 2004, Ohio EPA conducted an inspection at Site B and industrial wastewater associated with Respondent's vehicle washing operations was documented to be discharging onto the ground within the facility's property.

23. Pursuant to OAC Rule 3745-38-04, the Director may require any person to apply for and obtain an individual NPDES permit in various cases including, but not limited to, when the discharger is not or has previously not been in compliance with the conditions of a NPDES general permit.

Considering Respondent's reoccurring violations of the General Storm Water Permit documented by Ohio EPA and outlined in the above Findings, as well as Respondent's failure to permanently remedy the unauthorized discharges to waters of the state, the Director finds Respondent has exhibited a consistent pattern of noncompliance with the General Storm Water Permit.

Each day of violation cited above represents a separate violation of ORC §§ 6111.04 and 6111.07.

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 in 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. From the effective date of these Orders, Respondent shall implement immediate measures to cease all unauthorized discharges and prevent any such future discharges to water of the state resulting from equipment cleaning, vehicle washing operations, and sand and gravel washing operations at Site A and Site B.
2. Within two (2) days of the effective date of these Orders, Respondent shall complete the stabilization of the banks of Site A along the North Fork of the Licking River to prevent additional erosion and the deposition of sediment into the North Fork of the Licking River.
3. Within fourteen (14) days of the effective date of these Orders, Respondent shall submit a complete and approvable Notice of Intent application to receive coverage under the General Storm Water Permit for Site B.
4. Within ninety (90) days of the effective date of these Orders, Respondent shall design and complete the installation of protective measures, such as a berm, around the sand and gravel washing operations at Site A to protect against damage and infiltration potentially caused from a one hundred (100) year flood event.
5. Within ninety (90) days of the effective date of these Orders, Respondent shall submit to Ohio EPA written verification that the protective measure selected and installed under Order No. 4 has been demonstrated to ensure against any damage and infiltration potentially caused from a one hundred (100) year flood event at the Site A sand and gravel washing operations.

6. Respondent shall select and implement any one of the following four activities to address Finding No. 22 and prevent potential discharges of contaminants to groundwater and/or Alum Creek:
 - a. Within ninety (90) days of the effective date of these Orders, Respondent shall collect the industrial wastewater associated with the vehicle washing operations at Site B and ensure the proper disposal of the industrial wastewater to a Publically Owned Treatment Works; or
 - b. Respondent shall address the industrial wastewater associated with the vehicle washing operations at Site B in accordance to the following schedule;
or
 - Within three (3) months of the effective date of these Orders, Respondent shall submit a complete and approvable Permit to Install (PTI) and detailed plans to Ohio EPA for the proper disposal of all industrial wastewater generated at Site B.
 - ii. Within six (6) months of the effective date of these Orders, Respondent shall initiate construction in accordance to the approved PTI and detailed plans for the proper disposal of all industrial wastewater generated at Site B.
 - iii. Within nine (9) months of the effective date of these Orders, Respondent shall complete construction of the approved PTI and detailed plans for the proper disposal of all industrial wastewater generated at Site B.
 - c. Within ninety (90) days of the effective date of these Orders, Respondent shall submit to Ohio EPA a complete and approvable NPDES permit for the proper treatment and discharge of industrial wastewater generated at Site B.
 - d. Within thirty (30) days of the effective date of these Orders, Respondent shall submit to Ohio EPA for approval a General Plan to address the potential discharges of the industrial wastewater generated at Site B. Should the General Plan be determined by Ohio EPA to be deficient and unapprovable, Respondent shall, within fourteen (14) days after receiving written comments from Ohio EPA, incorporate such comments and resubmit the General Plan for approval, or select and implement one of the three activities listed within this Order (if this latter option is chosen the timeframes stated within the above provisions shall be applicable and shall run from the date of the Ohio EPA comment letter).

7. Within three years of the effective date of these Orders, Respondent shall relocate the gravel washing operations at Site A to an area where no discharge to the North Fork of the Licking River may occur, including, but not limited to, the removal of any temporary protective measures installed at Site A, such as a berm.
8. Should Respondent fail to fully accomplish the relocation of the gravel washing operations at Site A pursuant to Order No. 7, within fourteen (14) days of receipt of written notification from Ohio EPA, Respondent shall submit a complete and approvable PTI application, detailed plans, Antidegradation Addendum, and an individual NPDES permit application for Site A.
9. Within one hundred and eighty (180) days after the Director's issuance of any PTI for Site A, Respondent shall complete construction pursuant to the PTI and achieve compliance with the final effluent limitations in its NPDES permit.
10. Respondent shall pay to Ohio EPA fifteen thousand nine hundred and five dollars (\$15,905.00) dollars in settlement of Ohio EPA, Division of Surface Waters' (DSW) claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111.
11. Within fourteen (14) days of the effective date of these Orders, Respondent shall pay to Ohio EPA five thousand nine hundred and five dollars (\$5,905.00) of civil penalty by tendering a check payable to the "**Treasurer, State of Ohio**" to the following address:

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

12. In lieu of payment to Ohio EPA of ten thousand dollars (\$10,000.00) of civil penalty, within eighteen (18) months of the effective date of these Orders, Respondent shall, at a minimum, perform a total of twenty-eight hundred (2,800) feet of river bank stabilization activities within the North Fork of the Licking River watershed to receive supplemental environmental project (SEP) credit. Respondent shall spend not less than \$10,000.00 on these river bank stabilization activities; activities that shall receive SEP credit towards the twenty-eight hundred (2,800) feet include:
 - a. Any unstabilized area of Site A that is not covered by a General Storm Water Permit or is surface mining related and subject to ORC Chapter 1514.
 - b. Providing the Licking County Soil and Water Conservation District and/or private landowners with any resources necessary to aid in the completion of

any river bank stabilization project or projects that consist of regrading activities, vegetative restorative practices, revegetative activities, stabilization practices, or natural stream bed restoration activities for river bank areas located within the North Fork of the Licking River watershed that have been assessed for excessive erosion.

13. Within eight (8) months of the effective date of these Orders, and prior to the commencement of any work with regard to the SEP in Order No. 12, Respondent shall submit to Ohio EPA for review and approval a detailed stream mitigation and bank stabilization plan (SMBS) for performing the SEP. The SMBS shall not incorporate any unstabilized areas that are covered by General Storm Water Permit or which are surface mining related and subject to ORC Chapter 1514.
14. Within nineteen (19) months of the effective date of these Orders, Respondent shall submit documentation to Ohio EPA, including, but not limited to, receipts and photographs, to confirm the completion of the SEP listed in Order No. 12.
15. Should the Respondent fail to timely or fully complete the SEP outlined in Order No. 12 within eighteen (18) months of the effective date of these Orders, within thirty (30) days of receipt of notification from Ohio EPA, Respondent shall pay to Ohio EPA the ten thousand dollars (\$10,000.00) of civil penalty by an official check as described in Order No. 11.
16. Respondent has expressed concern that compliance with the timeframe for completion of the SEP contained within Order No. 12 may be delayed as a result of issues stemming from the necessary coordination with the Licking County Soil and Water Conservation District and/ or private landowners. Upon request and sufficient justification by Respondent, the Director may, at his sole discretion, extend in writing the eighteen (18) month period in Order No. 12.

VI. TERMINATION

Respondents 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 defined in OAC Rule 3745-33-03(D)(1) for a corporation.

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, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek closure of hazardous waste units by 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.

XII. EFFECTIVE DATE

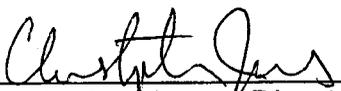
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

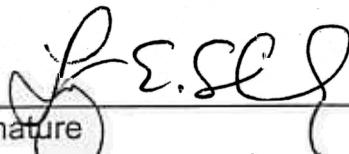


Christopher Jones, Director

9-7-04
Date

IT IS SO AGREED:

Shelly Materials, Inc.



Signature

8/23/04
Date

LARRY E. SHIVELY Vice President
Printed or Typed Name and Title