

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:
WXZ Development, Inc.
7055 Engle Road, #302
Middleburg Heights, OH 44130

Director's Final Findings and
Orders

OHIO E.P.A.
MAR 24 2005
ENTERED 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 WXZ Development, 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 the Respondent, or of the Facility owned by Respondent, shall in any way alter the 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 has determined the following findings:

- 1 Respondent is the developer of the Advance Auto Parts store located at 5636 and 5640 Gender Road, Columbus, Franklin County, Ohio, hereinafter known as the "site".
2. Ohio Administrative Code ("OAC") Rule 3745-42-02 requires the Director's issuance of a permit to install (PTI) prior to the installation of a new "disposal system," as

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.

Joseph J. Anderson 3-24-05

such term is defined in ORC § 6111.01 (G).

3. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any rule adopted by the Director pursuant to those sections, including OAC Rule 3745-42-02.
4. PTI Application No. 01-11351, and detailed plans, were submitted to Ohio EPA by Respondent and were received at Ohio EPA Central District Office on October 29, 2004, for the installation of a sanitary sewer extension to serve the site.
5. The sanitary sewer extension proposed in the PTI Application No. 01-11351 is a "disposal system" as such term is defined in ORC § 6111.01 (G).
6. On November 3, 2004, an inspection of the site was conducted by Ohio EPA Central District Office. The inspection confirmed that the installation of the sanitary sewer extension had been completed prior to approval of the plans and issuance of a PTI by Ohio EPA. Based on Ohio EPA's investigation of this matter, it appears that construction began approximately October 1, 2004 and was substantially completed by October 16, 2004.
7. By letter dated November 4, 2004, Respondent was notified via certified mail that the sanitary sewer extension installation was in violation of ORC Chapter 6111. and OAC Rule 3745-42-02 (formerly OAC rule 3745-31-02).
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 install sewerage or treatment works for sewage disposal or new disposal systems, including, but not limited to, sanitary sewers, at any location in Ohio without first receiving prior approval from the Director as required by law. Respondent may request termination of the 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. Within 30 days of the effective date of these Orders, Respondent shall submit to the Ohio EPA "As-Built" plans for the entire project, which plans shall be signed by the City of Columbus. The "As-Built" plans shall show all profile and plan views of the sanitary sewer system, including the sanitary sewer inlet and outlet invert elevations of the lines at all manholes. All water line and sanitary sewer line crossings shall be shown in a profile view on the plans with invert elevations of the lines at the crossing. All storm sewers and sanitary sewer line crossings shall be shown in a profile view on the plans with invert elevations of the lines at the crossing.
3. Respondent shall pay to the Ohio EPA the amount of one thousand dollars (\$1,000.00) in settlement of the 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 project (Advance Auto Parts, Gender Road).

A photocopy of the check shall be sent to Ohio EPA Central District Office at the address below:

Ohio Environmental Protection Agency
Central District Office
3232 Alum Creek Drive
Columbus, Ohio 43207-3417
Attn: Enforcement Supervisor, Division of Surface Water

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 principal 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 Advance Auto Parts store project.

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

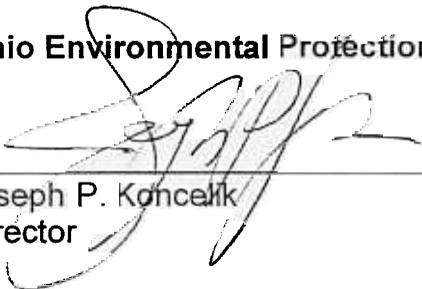
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIII. SIGNATORY AUTHORITY

Each undersigned representative 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

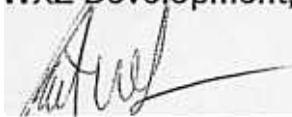


Joseph P. Koncek
Director

3/12/05
Date

IT IS SO AGREED:

WXZ Development, Inc.



Signature

3/11/05
Date

ROBERT W SHEARER
Printed or Typed Name

PROJECT COORDINATOR
Title