

Westbury LLC

Director's Final Findings and Orders

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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. 03-16459, together with detailed plans, were received at Ohio EPA, Northwest District Office ("NWDO"), on September 13, 2004, for the installation of a sanitary sewer extension to serve the Facility.
5. The sanitary sewer extension proposed in PTI Application No. 03-16459 is a "disposal system," as such term is defined in ORC § 6111.01 (G).
6. On September 28, 2004, Ohio EPA conducted an inspection at the Facility, which inspection confirmed that the installation of the sanitary sewer extension had been completed prior to the approval of plans and issuance of a PTI by Ohio EPA.
7. By letter dated October 25, 2004, Respondent was notified via mail that its installation of the sanitary sewers extension at the Facility was in violation of ORC Chapter 6111., and OAC Chapter 3745-42.
8. PTI Application No. 03-16459 was issued on November 23, 2004.
9. 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 ("Ohio EPA NPDES Storm Water General Permit") and to develop and implement a Storm Water Pollution Prevention Plan ("SWP3") specific to the Site.
10. Part II.A of the Ohio EPA NPDES Storm Water General Permit requires that an operator submit a complete and accurate NOI application form and appropriate fee at least twenty-one (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 6111.
11. Part III.B of the Ohio EPA 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.
12. Pursuant to ORC Section 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.

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13. 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 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.
14. On September 28, 2004, and October 18, 2004, inspections of the Site were conducted by NWDO, which inspections confirmed that construction activities at the Site had commenced prior to the submission of an NOI and prior to completing and implementing a SWP3, in violation of ORC § 6111.07.
15. Respondent is an operator of the Site as defined in Part VII.O of the Ohio EPA NPDES Storm Water General Permit.
16. On October 25, 2004, Respondent was notified by certified mail, that the construction activities occurring at the site were in violation of ORC Chapter 6111.
17. Respondent was granted coverage on November 15, 2004 under Permit No. 2GC00653.
18. On December 1, 2004, Ohio EPA received the SWP3 for the Site which after review was found to be deficient. Respondent was notified of such deficiencies and informed to submit a revised SWP3.
19. 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 sewer extensions, at any location in Ohio without first receiving prior approval from the Director as required by law. 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. Respondent shall not initiate construction activities that disturb more than one (1) acre of land without having first developed and implemented a SWP3 and obtained coverage under an Ohio EPA NPDES Storm Water General Permit. Respondent may request termination of this Order upon a demonstration to the satisfaction of

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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.

3. Within ten (10) days of the effective date of these Orders, Respondent shall develop and implement a SWP3 for the Site. Respondent shall submit a copy of the SWP3 to NWDO, in accordance with Section X. of these Orders.
4. 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 Ohio EPA NPDES Storm Water General Permit, Respondent shall comply with the SWP3 and/or any amendments to the SWP3, in accordance with Part III.D of the Ohio EPA NPDES Storm Water General Permit.
5. Respondent shall pay to the Ohio EPA the amount of seven thousand dollars (\$7,000.00) 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 Facility (The Reserve Subdivision, Phase I).

A photocopy of the check shall be sent to NWDO, 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.

II. 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 Reserve Subdivision, Phase I.

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

Ohio Environmental Protection Agency
Northwest District Office
347 North Dunbridge Road
P.O. Box 466
Bowling Green, Ohio 43402
Attn: Enforcement Supervisor, Division of Surface Water

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.

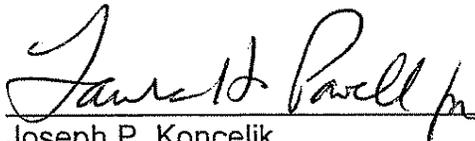
XIII. EFFECTIVE DATE

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.

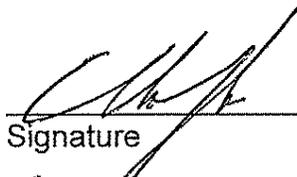
**IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency**



Joseph P. Koncelik
Director

9-8-05
Date

**IT IS SO AGREED:
Westbury LLC**



Signature
Chuck Samples

Printed or Typed Name
Member

Title

7/26/05
Date

