

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.

By: Zona L. Clements Date: 5-18-01

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

Phillips Excavating Company
5784 Wadsworth Road
Medina, OH 44256

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Director's Final Findings
and Orders

OHIO E.P.A.
MAY 18 2001
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

These Director's Final Findings and Orders ("Orders") are hereby issued to the Phillips Excavating Company pursuant to the authority invested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Chapter 6111 and Section 3745.01.

PARTIES BOUND

These Orders shall apply to and be binding upon Phillips Excavating Company ("Respondent"), its assigns and successors in interest. No change in ownership will in any way alter Respondent's responsibilities under these Orders. Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

FINDINGS OF FACT

1. Respondent is the developer of the Hayes Mirasol Estates ("Facility") Sanitary Sewer extension project in Montville Township, Medina County.
2. Ohio Administrative Code ("OAC") Rule 3734-31-02 requires the Director's issuance of a Permit to Install ("PTI") prior to the installation of a new "disposal system" as defined in ORC Section 6111.01(G).
3. ORC Section 6111.44 requires the Director's approval of plans for sewerage or treatment works for sewage disposal prior to the installation of such sewerage or treatment works for sewage disposal.
4. ORC Section 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC Sections 6111.01 to 6111.08, or violating any rule issued by the Director pursuant to those sections, including OAC Rule 3745-31-02.
5. On October 19, 2000, Respondent submitted an application for a PTI for a sanitary sewer extension (PTI Application 02-14441).

6. The sanitary sewer extension is a "disposal system" as defined under ORC Section 6111.01(G).
7. On November 1, 2000, Ohio EPA NEDO inspected the proposed development. The sanitary sewers had already been partially constructed.
8. Respondent violated OAC Rule 3745-31-02, ORC Section 6111.44 and ORC Section 6111.07 by installing a sanitary sewer extension without first receiving plan approval and a PTI from the Director.
9. 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 Chapter 6111 of the Revised Code.

ORDERS

1. Respondent shall not install sewerage or treatment works for sewerage 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 of Ohio EPA as required by law.
2. Within thirty (30) days of the effective date of these Orders, Respondent shall pay the amount of one thousand dollars (\$1,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed under ORC Chapter 6111. This payment shall be made by tendering a certified check for the full amount, made payable to "Treasurer, State of Ohio" to the following address

Vicki Galilei, Office of Fiscal Administration
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be taken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Respondent and its operations.

RESERVATION OF RIGHTS

These Orders do not prevent Ohio EPA from enforcing the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders. These Orders do not prevent Ohio EPA from exercising its authority to require Respondent to perform additional activities pursuant to Chapter 6111 of the Ohio Revised Code or any other applicable law in the future. These Orders do not restrict the right of Respondent to raise any administrative, legal or equitable claim or defense for any additional activities that Ohio EPA may seek to require of Respondent. These Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

These Orders are not, and shall not be construed to be, a permit, plan approval or other authorization issued pursuant to any statute or regulation. These Orders specifically do not authorize the construction of any new disposal system or sewerage or treatment works for sewerage disposal at the Facility or any other location. Respondent must obtain all permits, approvals and authorizations as required by law. Ohio EPA reserves all rights, privileges and causes of action except as specifically provided herein.

TERMINATION

The Respondent's obligations under these Orders shall be satisfied and terminated when the Respondent demonstrates in writing and certifies to the satisfaction of the Ohio EPA that it has satisfied all its obligations under these Orders, and the Chief of Ohio EPA's Division of Surface Water acknowledges the termination of these Orders in writing.

This certification shall be submitted by the Respondent to the Northeast District Office (attention: DSW Enforcement Group Leader) and shall be signed by a responsible official of the Respondent. A responsible official is as defined in OAC Rule 3745-33-03(D)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole proprietorship, and OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility. The certification shall contain the following attestation:

"I certify under the penalty of law that I have personally examined and are familiar with the information contained in or accompanying this certification, and based on inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

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 agrees to comply with these Orders, Respondent agrees that these Orders are lawful and reasonable, and Respondent agrees that the times provided for compliance herein are reasonable. Compliance with these Orders shall be a full accord and satisfaction of Respondent's liability for the violations specifically cited herein. Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph of these Orders.

Respondent hereby waives the right to appeal the issuance, terms and service of these Orders, and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that 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 agrees to continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

SIGNATORY AUTHORITY

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO AGREED:

Respondent

By: William H Phillips

Date: 4/25/2001

Title: owner

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones
Christopher Jones

Date: 5-14-01

Director