

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
MAR - 1 2011

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Versant Group, LLC  
75 Holiday Drive  
Englewood, Ohio 45322

: Director's Final  
: Findings and Orders  
:

Respondent

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

PREAMBLE

It is agreed by the parties hereto as follows:

By [Signature] Date: 3-1-11

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Versant Group, 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 ownership of the Respondent or the Site described in Finding No. 1 of these Orders 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 has made the following findings:

1. Respondent was the developer of an approximately twenty-six and a half (26.5) acre residential development project called Pointe Oakwood Subdivision, located at the northwest corner of Far Hills Avenue and Schantz Avenue, Oakwood, Montgomery County, Ohio (the "Site").
2. Storm water from the Site discharges to the Great Miami River by way of the City of Oakwood and City of Dayton storm sewer systems. The Great Miami River

constitutes "waters of the state," as defined by ORC § 6111.01(H). Sediment contained in 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. Ohio Administrative Code ("OAC") Rule 3745-38 provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without either applying for and obtaining an Ohio National Pollutant Discharge Elimination System ("NPDES") individual permit in accordance with OAC Rule 3745-33, complying with the indirect discharge permit program pursuant to OAC Rule 3745-36, or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with OAC Rule 3745-38.
4. Because the Site is a construction site which disturbed 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 (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity OHC000002 (Construction Storm Water NPDES Permit) and to develop and implement a Storm Water Pollution Prevention Plan (SWP3) specific to the Site prior to initiating construction activity.
5. On May 29, 2008, Ohio EPA conducted an inspection at the Site and determined that an estimated nine (9) acres had been disturbed. The inspection confirmed that construction activities at the Site had commenced prior to the submission of an NOI for Construction Storm Water General NPDES Permit coverage and prior to completing and implementing an SWP3.
6. A Notice of Violation ("NOV") was handed to Respondent's on-site representative on May 29, 2008. The NOV documented Respondent's failure to submit an NOI and obtain coverage under the Construction Storm Water General NPDES Permit prior to commencing construction activities at the Site, failure to install sediment controls (a sediment pond) prior to commencing construction activities and failure to prepare an SWP3 prior to initiating construction activity.
7. Storm water passed over all or part of the disturbed portions of this construction site and picked up dirt and soil which was discharged off site to waters of the state. The discharge, at least in part, was from bulldozers and/or other earthmoving equipment, and/or from piles of earth and land clearing debris formed by such equipment and earthmoving activity and/or left the site in discrete

conveyances such as drains, ditches, fissures, rills and gullies and/or trenches. The discharges from the Site were point source discharges.

8. Respondent was an "operator" as defined in the NPDES Storm Water General Permit.
9. Ohio Administrative Code (OAC) § 3745-38-06 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 activities.
10. Respondent failed to notify the Director of its intent to be covered for construction activity at the Site by submission of an NOI at least twenty-one (21) days prior to the commencement of construction activities at the Site in violation of OAC § 3745-38-06 and R.C. § 6111.07(A).
11. Ohio EPA received a complete NOI for the Site on June 13, 2008, and granted Respondent coverage under Construction Storm Water General NPDES Permit No. 1GC03078\*AG, effective September 11, 2008.
12. On July 2, 2008, Respondent submitted an SWP3 for the Site. The SWP3 was not acceptable to Ohio EPA. Respondent submitted revised versions of the SWP3 in accordance with comments from Ohio EPA on September 24, 2008, and October 5, 2009. By the end of 2009, Respondent had an acceptable SWP3 for the Site.
13. 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.
14. ORC § 6111.03(J)(1) authorizes the Director to set the terms and conditions of the permit. That section further provides that any permit terms and conditions set by the Director shall be designed to achieve and maintain full compliance with mandatory requirements of the Federal Water Pollution Control Act that are imposed by regulation of the Administrator of the United States Environmental Protection Agency. Pursuant to Section 402(p) of the federal act, the Administrator of USEPA imposed by regulation requirements to regulate storm water discharges. In 40 C.F.R. 122.26, the Administrator requires dischargers of storm water associated with construction activity that disturbs more than one (1) acre of land to obtain an individual NPDES permit or coverage under a storm water general permit.

15. By way of storm water discharges Respondent was discharging wastes and pollutants into waters of the state without an appropriate permit or authorization in violation of ORC § 6111.04, OAC § 3745-38-02(A), and 40 C.F.R. 122.26.
16. On June 23, 2009, Ohio EPA inspected the Site for compliance with Respondent's Construction Storm Water General NPDES Permit. During the inspection, Respondent was unable to produce inspection records, in violation of Part III.G.2.i. of Respondent's Permit.
17. On March 24, 2010, Ohio EPA inspected the Site for compliance with Respondent's Construction Storm Water General NPDES Permit and SWP3. A Notice of Violation was mailed to Respondent on March 25, 2010, and re-sent on April 6, 2010. The following violations were noted: curb inlet protections described in the SWP3 were not installed; silt fence was not in place at the base of each slope as described in the SWP3; slopes at final grade had not been stabilized; the sediment pond shown in the SWP3 at the north west of the Site had not been installed; the description of post construction controls in the SWP3 was no longer accurate and needed to be updated; storm water control inspection records were not available for review by Ohio EPA; and, one temporary sediment pond and one sediment trap which were located at the Site were not included in the SWP3 and needed to be added.
18. Currently, Respondent is not the developer of the Site and does not have access to the Site.
19. 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.
20. The following Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Any such construction or modification is subject to the permit to install and plan approval requirements of ORC §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.
21. 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 in the state of Ohio that disturb more than one acre of land without having first developed and implemented an SWP3 for the construction site, and obtained coverage of the construction site under the Construction Storm Water General NPDES Permit.
2. Respondent shall pay the amount of six thousand three hundred thirty dollars (\$6,330.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Five thousand sixty-four dollars (\$5,064.00) of the penalty shall be paid by tendering official checks made payable to "Treasurer, State of Ohio" in accordance with the schedule below. The official checks shall be submitted to Brenda Case, or her successor, together with letters identifying the Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

- A. Within fourteen (14) days of the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of three hundred seventeen dollars (\$317.00).
- B. Within ninety (90) days of the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of one thousand five hundred eighty-three dollars (\$1,583.00).
- C. Within one hundred eighty (180) days of the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of one thousand five hundred eighty-two dollars (\$1,582.00).
- D. Within two hundred seventy (270) days of the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of one thousand five hundred eighty-two dollars (\$1,582.00).

Photocopies of the check shall be sent to the addresses in Section X. of these Orders.

3. In lieu of paying the remaining one thousand two hundred sixty-six dollars (\$1,266.00) of the civil penalty, Respondents shall, within fourteen (14) days of the effective date of these Orders, fund a supplemental Environmental Project (SEP) by making a contribution in the amount of one thousand two hundred sixty-six dollars (\$1,266.00) to the Ohio EPA Clean Diesel School Bus Program (FUND 5CD). Respondents shall tender an official check made payable to "Treasurer, State of Ohio" for this amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondents, at:

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

Photocopies of the check shall be sent to the addresses in Section X. of these Orders.

4. Should Respondents fail to fund the SEP within the required time frame set forth in Order No. 3, Respondents shall immediately pay to Ohio EPA one thousand two hundred sixty-six dollars (\$1,266.00) of the civil penalty in accordance with the procedures in Order No. 2.

## **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 the Chief of 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 as defined in OAC Rule 3745-33-03(E).

#### **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 or the Site.

#### **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**

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

Ohio Environmental Protection Agency  
Southwest District Office  
Division of Surface Water  
Attn: DSW Enforcement Supervisor  
401 East Fifth Street  
Dayton, Ohio 45402

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Surface Water  
Attn: Manager, Storm Water and Enforcement Section  
50 West Town Street, Suite 700  
[P.O. Box 1049]  
Columbus, Ohio 43215 [43216-1049]

[For mailings use the post office box number and zip code in brackets]

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

#### **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 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:**

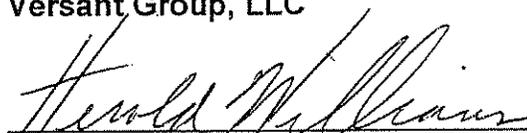
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Scott Nally  
Director

2/25/11  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Versant Group, LLC**

  
\_\_\_\_\_  
Signature

2-14-2011  
\_\_\_\_\_  
Date

HEROLD WILLIAMS  
\_\_\_\_\_  
Printed or Typed Name

MANAGING MEMBER  
\_\_\_\_\_  
Title