

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
JUL -6 2001

ENTERED DIRECTOR'S JOURNAL

In the matter of:

GERALD BENSON & STANLEY
NICOLOZAKES
P.O. Box 668
Cambridge, Ohio 43725

Respondents

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Director's Final Findings
and Orders

Jurisdiction

Pursuant to Ohio Revised Code ("R.C.") Chapter 6111 and §3745.01, and the rules of the Ohio Environmental Protection Agency, the Director of the Environmental Protection Agency ("Ohio EPA") hereby makes the following Findings and issues the following Orders.

Parties Bound

These Orders shall apply to and be binding upon Gerald Benson and Stanley Nicolozakes, (hereinafter collectively referred to as "Respondents"). Nothing herein shall prevent, or be construed to prevent, Respondents from transferring, by sale or otherwise, the Property (as defined below) to a third party. No change in ownership of the Property identified in Finding No. 1, below, shall in any way alter Respondents' responsibilities and obligations under these Orders. The obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

Findings

1. Since at least 1990, Respondents have owned, controlled and/or conducted operations on a 7.48 acre parcel of real property located adjacent to Chapman Run, a tributary to Wills Creek, in Guernsey County, Ohio, and approximately one mile southeast of the intersection of SR 209 and I-70 (hereinafter referred to as "the Property"). Located on the Property are wetlands, which constitute "waters of the state" as that term is defined in R.C. §6111.01(H).
2. At various times in 1990, and at other times not known, approximately .78 acre of wetlands on the Property have been filled with an estimated eleven thousand (11,000) to

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 Joseph Jackson Date 7-6/01

twelve thousand (12,000) cubic yards of fill materials. This fill material constitutes "other wastes" as that term is defined in R.C. §6111.01(D).

3. Pursuant to R.C. §6111.04, no person shall discharge fill material into waters of the State of Ohio without obtaining a permit from Ohio EPA. Respondants have not obtained a Section 404 permit from the Department of the Army Corps of Engineers or a 401 certification from the Ohio EPA.
4. Ohio Administrative Code Rule ("O.A.C.") 3745-1-04 requires that all waters of the State shall be free from, without limitation, suspended solids or other materials resulting from human activity that are harmful to aquatic life.
5. On July 31, 1995, Respondents sought after-the-fact authorization for discharges of fill material by submitting an application to the Department of the Army Corps of Engineers for a permit pursuant to §404 of the Clean Water Act to retain the fill material placed into the wetland on the Property. This permit required the Ohio EPA's water quality certification under §401 of the Clean Water Act.
6. On March 2, 1999, the Director of the Ohio EPA issued as a proposed action the denial of Respondents' request for water quality certification under §401 of the Clean Water Act.
7. On April 1, 1999, Respondents submitted a timely request for an adjudication hearing with the Ohio EPA regarding the Director's proposed action.
8. Following the filing of the request for adjudication hearing, the parties have engaged in settlement discussions. As a result of those discussions, the parties have entered into these Final Findings and Orders.
9. The parties agreed on March 16, 2001, to settle the case through the issuance of these Director's Final Findings and Orders.
10. 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 their relation to the benefits to the people of the state to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

Orders

1. Respondents shall not discharge any fill material, pollution, or other wastes, into the wetlands on the Property or any other waters of the State on or adjacent to the Property. Except as otherwise provided in this section, Respondents are hereby required to immediately comply with the applicable provisions of Ohio's water pollution control laws, R.C. Chapter 6111, the rules adopted thereunder, and the terms and conditions of these Orders.
2. Respondents shall, in accordance with the Remediation Plan submitted to Ohio EPA on November 2, 2000 and the supplemental map submitted on January 30, 2001 (See Attachment A) undertake wetland remediation activities to assure achievement of the category three status in the restored wetland, and shall within two (2) months after issuance of these Orders, restore the 0.78 acre of wetland on the property. In addition, the Respondents shall restore and remediate the wetland according to the following:
 - a. The fill material in the wetland shall be removed prior to June 30, 2001 to allow wetland restoration during the growing season.
 - b. No heavy equipment shall be used in any wetland and/or stream on the property, except as described in the April 23, 2001 letter from Linda Merchant – Masonbrink. (See Attachment B).
 - c. The wetland shall be established at its original grade.
 - d. Fill material removed within two (2) feet of the original grade shall be tested for radioactive material.
 - e. If any radioactive material is detected, the fill material shall be disposed at an appropriate facility.

All invasive exotic vegetation identified by Ohio EPA shall be removed during the monitoring period. (See Attachment C)

3. Respondents shall submit to Ohio EPA annual monitoring reports for all wetlands on the property for each growing season starting in the monitoring year 2001 through 2006. The monitoring report shall be due on December 1, 2001 and every year thereafter until December 1, 2006. Ohio EPA will require additional monitoring if the wetland does not

achieve category three status on or before the fifth year of wetland monitoring. However, if on or before December 2006, Applicants demonstrate and it is accepted by Ohio EPA that the wetland has achieved category three status, then no further annual monitoring reports shall be required to be filed with Ohio EPA.

4. Respondents shall pay to the State of Ohio a civil penalty of Fifteen thousand, dollars (\$15,000.00). The civil penalty shall be paid by delivering, within thirty (30) days from the date of issuance of these Orders, a certified check for that amount, payable to the order of "Treasurer, State of Ohio," to Ms. Vicki Galilei at the following address:

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

A photocopy of the check shall be sent to Ms. Linda Merchant-Masonbrink at the following address:

Ohio Environmental Protection Agency
Division of Surface Water/Wetlands Unit
Lazarus Government Center
122 South Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049

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. 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 Respondents.

Reservation of Rights

These Orders do not prevent the 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 Respondents for noncompliance with these Orders. These Orders do not prevent the Ohio EPA from exercising its authority to require Respondents to perform additional activities pursuant to R.C. Chapter 6111 or any other required applicable law in the future. These Orders do not restrict the right of Respondents to raise any administrative, legal or equitable claim or defense for any additional activities that the Ohio EPA may seek to require of Respondents. These Orders do not limit the authority of the Ohio EPA to seek relief for violations not cited in these Orders.

Termination

Respondents' obligations under these Orders shall be satisfied and terminate when Respondents demonstrate in writing and certify to the satisfaction of the Ohio EPA that all obligations under these Orders have been performed and the Chief of Ohio EPA's Division of Surface Water acknowledges the termination of these Orders in writing.

This certification shall be signed and submitted by Respondents, Gerald Benson and Stanley Nicolozakes, to Ms. Rachel DeMuth, or her successor in the Ohio EPA's Division of Surface Water. The certification shall contain the following attestation:

I certify under the penalty of law that I have personally examined and am familiar with the information contained in or accompanying this certification, and based on my 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, and without admitting any fact, violation or liability, Respondents agree to comply with these Orders. Respondents further agree that these Orders are lawful and reasonable, and Respondents agree that the times provided for compliance herein are

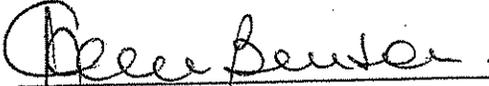
reasonable. The Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph of these Orders. Respondents do not admit or deny any of the Findings made by the Director above, however, agree to this Order in order to compromise and settle this action.

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

Notwithstanding the preceding, the Ohio EPA and Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents agree to continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

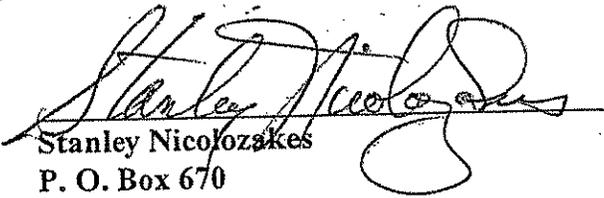
Each undersigned representative of a signatory to these Orders certifies that he is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO AGREED:



Gerald Benson
P. O. Box 787
Cambridge, Ohio 43725

6.12.2001
Date

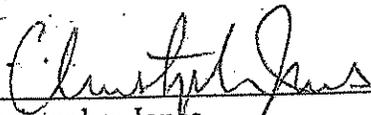


Stanley Nicolozakes
P. O. Box 670
Cambridge, Ohio 43725

6-12-01
Date

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Christopher Jones
Director of Environmental Protection

6-21-01
Date

Cc: Samuel Wilson, Hearing Officer
Robert J. Karl, AGO
Roger Sugarman, Esq