

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

SEP 25 2006

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Gerald Benson and Stanley Nicolozakes
P.O. Box 668
Cambridge, Ohio 43725

Director's Final Findings
and Orders

Respondents

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Gerald Benson and Stanley Nicolozakes ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code (R.C.) §§ 6111.03, 6117.34 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents and successors in interest liable under Ohio law. No change in the composition of Respondents 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 R.C. Chapters 6111, 6117 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

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
 9-25-06

1. Since at least 1990, Respondents have owned, controlled and/or conducted operation 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 1-70 (hereinafter referred to as "the Property"). Located on the Property are wetlands, which constitute "water 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 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. Respondents have not obtained a Section 404 permit from the Department of the Army Corps of Engineers or a 401 certification from Ohio EPA.
4. Ohio Administrative Code Rule ("O.A.C.") 34745-1-04 requires that all waters of the State shall be free from, without limitation, suspended solids or other material 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 in the wetland on the Property. This permit required Ohio EPA's water quality certification under §401 of the Clean Water Act.
6. On March 2, 1999, the Director of 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 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 the Director's Final Findings and Orders.
10. As of the date of these Director's Modified Findings and Orders, Respondents had not complied with Order 2 and Order 3 of the Director's Final Findings and Orders dated July

6, 2001. (A copy of the Modified Findings and Orders is attached as Attachment A)

11. Order 2 and Order 3 of the Director's Final Findings and Orders dated July 6, 2001 are modified and have been replaced by Orders 2 through 7, below.
12. 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 condition calculated to result from compliance with the 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 water 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 remove the fill material from the filled area generally located at the eastern end of the property to restore that area to its original grade. The map contained in Attachment B, not to scale, indicates the area that should be returned to original grade.
3. Respondents shall conduct monitoring of this restored area to document its condition. Monitoring shall be conducted between June and September of the third year and fifth year after removal of the fill material has been completed. Monitoring will include:
 - a. Percent of invasive species in the restored area
 - b. Representative photographs of the restored area
 - c. The applicant shall assess the restored area to obtain a VIBI score according to methods approved by Ohio EPA (<http://www.epa.state.oh.us/dsw/401/401.html>).
4. All material removed from the restored area at the eastern end of the property must remain on site.
5. If any material is removed from the site for any reason, that material must be tested for radiological contamination. If any radiological contamination is detected, all movement of the material must stop and Ohio EPA contacted immediately.

6. Respondents shall place a conservation easement or environmental covenant on all wetlands remaining on the site, including the area to be restored under these Orders, to preserve those areas in perpetuity. In the event the parcel which is the subject of this Order should be subdivided such that the wetlands described herein are contained in a single parcel, the covenant or easement described here shall apply only to the subdivided parcel containing the wetlands which are the subject of this Order.
7. Respondents agree that they will contribute the sum of Seventy Thousand (\$70,000.00) dollars As a donation to The Nature Conservancy for wetland restoration and acquisition. A photocopy of the check shall be sent to Ohio EPA, at the following address:

Ohio Environmental Protection Agency
401/Isolated Wetland Permitting Section
Lazarus Government Center
122 South Front Street
P.O. Box 1049
Columbus, Ohio 43216-1049

8. All work and actions called for under this agreement shall be completed by Respondents on or before December 31, 2006.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that have not been performed, in which case Respondents 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 Respondents to Ohio EPA and shall be signed by a responsible official of the Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility.

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 activities occurring on or at the Facility.

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

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

Ohio Environmental Protection Agency
401/Isolated Wetland Permitting Section
Lazarus Government Center
122 South Front Street
P.O. Box 1049
Columbus, Ohio 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.

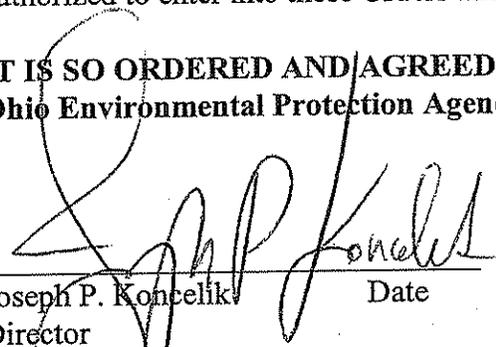
XIII. EFFECTIVE DATE

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

XIV. SIGNATORY AUTHORITY

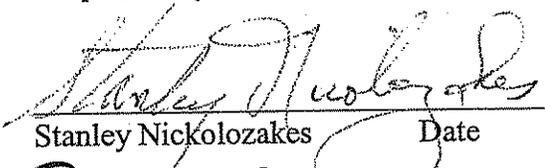
Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency

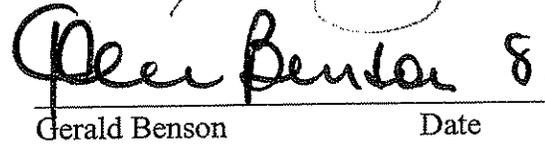
 9/21/06

Joseph P. Koncelik Date
Director

IT IS SO AGREED:
Respondents

 8-24-06

Stanley Nickolozakes Date

 8.24.06

Gerald Benson Date