

A. Conway

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

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.

By: *Michael A Shapiro* Date: *3/8/07*

In the Matter of:

Best Buy Stores, L.P.
BBE Properties - Building B, Sixth Floor
7601 Penn Avenue South
Richfield, MN 55423

Tri-C Construction Co., Inc.
1765 Merriman Road
Akron, OH 44313

Respondents

Director's Final Findings
and Orders

REGISTERED DIRECTOR'S JOURNAL

MAR - 8 2007

OHIO E.P.A.

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued jointly and severally to Best Buy Stores, L.P., 7601 Penn Avenue South, Richfield, Minnesota 55423, and Tri-C Construction Co., Inc., 1765 Merriman Road, Akron, Ohio 44313-5251, (together referred to as "Respondents" and individually as "Best Buy" and "Tri-C," respectively), 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 jointly and severally binding upon Respondents and successors in interest liable under Ohio law. No change in the composition of Respondents or the operation of the site as defined below shall in any way alter Respondents' 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

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 6111.03 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondents of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. The site, located at 32745 Walker Road, Avon Lake, Lorain County, Ohio 44012, ("site"), is owned by Margam Investment, Ltd.
2. The site is comprised of 5.33 acres and is leased to Best Buy for the development, including the construction, of a free-standing retail store.
3. Best Buy has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications.
4. Tri-C, hired by Best Buy, has day-to-day operational control of those site activities which are necessary to ensure compliance with the storm water pollution prevention plan ("SWP3") or other permit conditions (e.g., authorization to direct workers at the site to carry out activities required by the SWP3 or comply with other permit conditions).
5. During a January 24, 2006 inspection at the site, Ohio EPA observed that Respondents had disturbed approximately 5 acres of the site without receiving authorization to proceed under a permit from the Director.
6. Ohio EPA also observed that storm water passed over all or part of the disturbed portions of this 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.
7. During the January 24, 2006 inspection of the site, Ohio EPA also observed that Respondents failed to:
 - a. Temporarily stabilize disturbed areas within 7 days of last disturbance;
 - b. Maintain silt fences in a functional condition until up slope areas have been permanently stabilized; and
 - c. Provide storm drain inlet protection on storm sewer catch basins.
8. 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.
9. Ohio Administrative Code ("OAC") Rule 3745-38-02(A) 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 NPDES individual permit in accordance with requirements of OAC Chapter 3745-33,

complying with the indirect discharge permit program pursuant to OAC Chapter 3745-36 or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of OAC Chapter 3745-38.

10. In the required permit, ORC § 6111.03(J)(1) authorizes the permit 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. The Director is authorized to ensure compliance with ORC § 6111.03(K).
11. By way of storm water discharges, Respondents discharged wastes and pollutants into waters of the state without an appropriate permit or authorization in violation of ORC § 6111.04, OAC Rule 3745-38-02(A) and 40 C.F.R. 122.26.
12. ORC § 6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violating any order, rule, or term or condition of a permit issued or adopted by the Director of Environmental Protection pursuant to those sections. Each day of violation is a separate offense.
13. 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. Respondents may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondents have 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. Respondents shall not initiate construction activities that disturb more than one acre of land without first obtaining coverage under an Ohio NPDES Storm Water General Permit for the disturbed area.
3. Within fourteen (14) days of the effective date of these Orders, Respondent shall submit a complete and approvable notice of intent. The notice of intent shall comply with the requirements of OAC Rule 3745-38-06 and be submitted in accordance with Section X. of these Orders, to Ohio EPA Northeast District Office.
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 NPDES Storm Water General Permit, Respondents shall comply with the current SWP3 and/or any future amendments to the SWP3, in accordance with Part III.D of the Ohio NPDES Storm Water General Permit. The two underground sand filter units for post-construction runoff control shall be installed in the process of achieving final stabilization and prior to opening the store for business.
5. Respondents shall pay to Ohio EPA seven thousand five hundred dollars (\$7,500) in settlement of Ohio EPA's claims for civil penalties which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for six thousand dollars (\$6,000) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondents and the site, to:

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

A photo copy of the check shall be sent to Ohio EPA's Northeast District Office at:

Ohio Environmental Protection Agency
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: Enforcement Supervisor

6. In lieu of paying the remaining one thousand five hundred dollars (\$1,500) of the civil penalty, Respondents shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of one thousand five hundred dollars (\$1,500) to the Ohio EPA's Clean Diesel School Bus Fund (FUND 5CD). Respondent 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, to:

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

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049

7. Should Respondents fail to fund the SEP within the required timeframe set forth in Order No.6., Respondent shall immediately pay to Ohio EPA one thousand five hundred dollars (\$1,500) of the civil penalty in accordance with the procedures in Order No. 5.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrates to the satisfaction of Ohio EPA that Respondents have 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 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 responsible officials of Respondents.

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 Respondents.

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 Respondents pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Division of Surface Water
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: DSW Enforcement Coordinator

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

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

Notwithstanding the preceding, Ohio EPA and Respondents agree that if 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 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.

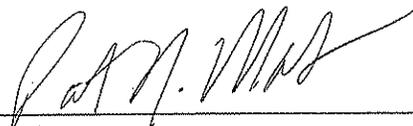
**IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency**



Chris Korleski
Director

3/7/07
Date

**IT IS SO AGREED:
Best Buy Stores, L.P.
By: BBC Property Co., it general partner**

By: 

Signature

December 20, 2007
Date

Patrick R. Matre
Printed or Typed Name

Vice President
Title

Tri-C Construction Co., Inc.



Signature

4-26-06
Date

Robert Smetzer
Printed or Typed Name

Sr. Proj. Manager
Title