

OHIO E.P.A.

MAR - 6 2006

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Homestead Furniture, Ltd.
P.O. Box 158
Mt. Hope, Ohio 44660

and

Ivan Weaver Construction Co.
124 N. Mill Street
Fredericksburg, Ohio 44627

Respondents

Director's Final Findings and
Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Homestead Furniture, Ltd. (Homestead) and Ivan Weaver Construction Co. (Weaver) (collectively, Respondents), 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 Respondents and their successors in interest liable under Ohio law.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC § 6111.01 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent Homestead is the developer of property more than one acre in size located in Salt Creek Township, Holmes County, Ohio, on which a warehouse facility is being constructed (Site).

This to be a true and accurate copy of the
 original document as filed in the records of the Ohio
 Environmental Protection Agency
 [Signature] Date 3-6-06

2. Respondent Weaver, an active, for profit corporation registered in the State of Ohio, is engaged in construction activities on the Site.
3. Storm water from the Site discharges to an unnamed tributary of the Middle Fork of Sugar Creek. The Middle Fork of Sugar Creek and the unnamed tributary constitute "waters of the state," as defined by ORC § 6111.01 (H). Sediment contained in the 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).
4. Ohio Administrative Code (OAC) § 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.
5. Because the Site is a construction site which disturbs more than one (1) acre of land, Respondents were required to submit Notices 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 (NPDES Storm Water General Permit) as co-permittees and to develop and implement a Storm Water Pollution Prevention Plan (SWP3) specific to the Site prior to initiating construction activity.
6. On September 13, 2005, Ohio EPA conducted an inspection at the Site and determined that an estimated 5.0 acres had been disturbed. The inspection confirmed that construction activities at the Site had commenced prior to the submission of a NOI, in violation of OAC § 3745-38-06 and ORC § 6111.07.
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. By letter dated September 21, 2005, Respondents were notified via certified mail that the construction activities occurring at the Site were in violation of storm water permitting requirements.

9. Respondents are "operators" as defined in the NPDES Storm Water General Permit.
10. On October 5, 2005, Respondent Weaver submitted a NOI for the Site. NPDES Storm Water General Permit coverage was granted for the Site on October 13, 2005.
11. Pursuant to Part II.A. of the NPDES Storm Water General Permit, each operator which will be engaged at a site must seek coverage under the permit. Where one operator has already submitted a NOI, the additional operator must request modification of coverage to become a co-permittee.
12. Respondent Homestead submitted a request for modification of coverage to become a co-permittee at the Site on November 21, 2005. Coverage was approved on November 29, 2005.
13. Ohio EPA received a SWP3 from Respondents on November 8, 2005. On December 13, 2005, Respondents submitted revisions to the SWP3 as requested by Ohio EPA on December 9, 2005. By letter dated December 21, 2005, Ohio EPA notified Respondents that the SWP3 met all minimum requirements of the NPDES Storm Water General Permit.
14. 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.
15. 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.
16. By way of storm water discharges Respondents are or were 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.

17. 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.
18. 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 shall not initiate construction activities that disturb more than one acre of land without first obtaining an NPDES Storm Water General Permit for the disturbed area.
2. Within seven (7) days of the effective date of these Orders, Respondents shall immediately implement the SWP3 approved by Ohio EPA on December 21, 2005. Should any revisions to the SWP3 be required prior to completion of these construction activities due to a change in design, construction, operation or maintenance, revisions shall be made and implemented in accordance with the requirements contained in Part III.D of the NPDES Storm Water General Permit.
3. 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 NPDES Storm Water General Permit, Respondents shall comply with the SWP3 approved by Ohio EPA, and/or any future amendments to the SWP3, in accordance with Part III.D of the NPDES Storm Water General Permit.
4. Within one hundred fifty (150) days of the effective date of these Orders, Respondents shall install the dry extended detention basin for post-construction water quality in accordance with the approved SWP3.
5. Notices of Termination (NOTs) shall be filed with Ohio EPA within forty-five (45) days after the dry extended detention basin reaches final stabilization. For purposes of this order, "final stabilization" means that the dry extended detention basin has been constructed, seeded, mulched, and the grass is growing to a growth density of seventy percent (70%) or greater.

6. Respondents shall jointly and severally pay the amount of seven thousand five hundred dollars (\$7,500.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check or checks made payable to "Treasurer, State of Ohio" for a total amount of six thousand dollars (\$6,000.00). The official check(s) shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondents and the Site, to:

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

7. In lieu of paying the remaining one thousand five hundred dollars (\$1,500.00), of civil penalty, Respondents shall, within fourteen (14) days of the effective date of these Orders, jointly and severally fund a Supplemental Environmental Project (SEP) by making a contribution(s) in the amount of one thousand five hundred dollars (\$1,500.00) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondents shall tender an official check or checks made payable to "Treasurer, State of Ohio" for a total amount of one thousand five hundred dollars (\$1,500.00). The official check(s) shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondents and the Site, to:

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

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

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of both checks shall be sent to Ohio EPA's Northeast District Office in accordance with Section X. of these Orders.

8. Should Respondents fail to fund the SEP within the required time frame set forth in Order No. 7, Respondents shall immediately pay to Ohio EPA one thousand five

hundred dollars of the civil penalty in accordance with the procedures in Order No. 6.

VI. TERMINATION

Respondents' 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 have maintained compliance with these Orders for a period of three hundred and sixty five (365) days from the effective date of 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 a responsible official of each Respondent.

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.

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X. NOTICE

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

Ohio Environmental Protection Agency
Central Office
Division of Surface Water
Storm Water Section
122 South Front Street
Columbus, Ohio 43215
Attn: Storm Water Coordinator

and to:

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

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

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents 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, 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



Joseph P. Koncek
Director

Date

3/6/06

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IT IS SO AGREED:

Homestead Furniture, Ltd.


Signature

2-21-06
Date

Ernest Hershberg
Printed or Typed Name

Owner
Title

Ivan Weaver Construction Co.


Signature

2-16-06
Date

MARK WEAVER
Printed or Typed Name

V. PRES
Title