FILED
ATHENS COUNTY, OHIO
JUL 02 2012
CLERK
OF COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO

STATE OF OHIO ex rel. MICHAEL DEWINE, OHIO ATTORNEY GENERAL, Plaintiff, v. JAMES BRENT HAYES and J.B. HAYES EXCAVATING & PIPELINE, INC., Defendants.	: : : : : : : : : : : : : : : : :	CASE NO. 10 CI 0182 JUDGE WARD

CONSENT ORDER

Plaintiff, the State of Ohio ("Plaintiff"/"State"), by and through its counsel, Attorney General Michael DeWine, filed a Complaint against Defendants James Brent Hayes and J.B. Hayes Excavating & Pipeline, Inc. ("Defendants") alleging violations of Ohio's Water Pollution Control laws, Ohio Revised Code ("R.C.") Chapter 6111 occurring at four separate sites which, at all times relevant to the Complaint, were owned and/or operated by Defendants, and which are located within Athens County and Vinton County, Ohio. Plaintiff also alleges in its Complaint that Defendants failed to comply with Orders 1, 2, 5 and 7 of Director's Final Findings and Orders ("Director's Orders") issued by the Director of the Ohio Environmental Protection Agency ("Director") on December 30, 2004. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims alleged in the Complaint.

NOW THEREFORE, without the trial of any issue of fact or law, and upon the consent of

the parties hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. DEFINITIONS

1. As used in this Consent Order:

(d) "**Four U.S. Route 50 Buildings Site**" shall mean the piece of property owned/operated by Defendants and located on 16635 U.S. Route 50 in Athens County, Ohio.

(c) "**Hamden Elementary Borrow Pit Site**" shall mean the piece of property owned/operated by Defendants and located next to Hamden Elementary School on State Route 93 in the City of Hamden, Vinton County, Ohio.

(b) "**Harmony Road Borrow Pit Site**" shall mean the piece of property owned/operated by Defendants and located on Harmony Road in Canaan Township, City of Athens, Athens County, Ohio.

(a) "**Hayes Professional Building Site**" shall mean the piece of property owned/operated by Defendants and located at the intersection of U.S. Route 33 and Township Road 655 in Dover Township, City of Athens, Athens County, Ohio.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over both the parties and the subject matter of this action pursuant to R.C. Chapter 6111. The Complaint states a claim upon which relief can be granted against Defendants under R.C. Chapter 6111. Venue is proper in this Court.

III. PARTIES

3. All terms and provisions of this Consent Order shall apply to and be binding upon the Defendants, Defendants' agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with Defendants. Defendants shall provide a copy of this Consent Order to each general contractor and/or consultant employed to perform work itemized herein and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

IV. SATISFACTION OF LAWSUIT

4. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for all claims alleged in the State's Complaint. This Consent Order is in settlement and compromise of disputed claims and nothing in this Consent Order is to be construed as an admission of facts or liability.

V. RESERVATION OF RIGHTS

5. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the State of Ohio to:

(a) Seek any legal or equitable relief from Defendants or any other appropriate person for claims or conditions not alleged in the Complaint, including violations that occur after the filing of the Complaint;

(b) Seek any legal or equitable relief from Defendants or any other appropriate person for claims or conditions alleged in the Complaint that occur or exist on the date of or after the entry of this Consent Order;

(c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;

(d) Take any action authorized by law against any appropriate person, including Defendants, to eliminate or mitigate conditions at the Four U.S. Route 50 Buildings Site, the Hamden Elementary Borrow Pit Site, the Harmony Road Borrow Pit Site and the Hayes Professional Buildings Site that may present a threat to the public health or welfare, or the environment; and/or,

(e) Bring any legal or equitable action against any appropriate person other than Defendants for any violation of applicable laws. For the purposes of this Consent Order, and in particular the provisions of this paragraph, the term "person" includes: an individual, corporation, business trust, estate, trust, partnership, association, municipal corporation, interstate body created by compact, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

VI. PERMANENT INJUNCTION

6. Defendants are hereby permanently enjoined and immediately ordered to comply

with the requirements of R.C. Chapter 6111 and the rules adopted thereunder. Defendants are further hereby permanently enjoined and ordered to immediately comply with the terms and conditions of the April 21, 2008 General National Pollutant Discharge Elimination System Permit for Storm Water Discharges Associated with Construction Activities (the "2008 Permit," attached hereto as Exhibit A), and any renewals or modifications thereof.

7. Defendants are prohibited from causing, permitting, or allowing the installation of a new system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes without first obtaining a Permit to Install from the Director. Defendants are further prohibited from causing, permitting, or allowing the modification of an existing system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes, without first obtaining a Permit to Install from the Director.

8. Defendants are hereby enjoined and ordered not to allow any additional connection(s) to the Frito-Lay Building sanitary sewerage system within the Four U.S. Route 50 Buildings Site unless and until the Director has issued a Permit to Install for such connection(s).

VII. COMPLIANCE PROGRAM

Hayes Professional Building, Harmony Road Borrow Pit and Hamden Elementary Borrow Pit Sites

9. Defendants are hereby enjoined and ordered to refrain from commencing or resuming clearing, grading, excavating, grubbing and/or filling activities or earthmoving, or otherwise developing or redeveloping any portion of the Hayes Professional Building Site, the Harmony Road Borrow Pit Site or the Hamden Road Elementary School Borrow Pit Site or any other site in the State of Ohio, in such a manner as to result in the disturbance of at least one or more acres of total land, unless Defendants have first developed a complete and approvable

Stormwater Pollution Prevention Plan and timely submitted a Notice of Intent Application Form for coverage under the 2008 Permit, or under any renewals or modifications thereof, in strict accordance with the applicable permit, and unless the Director has granted Defendants coverage to discharge under the terms of the applicable permit for each Notice of Intent Form submitted.

10. By no later than thirty (30) days following the entry of this Consent Order, Defendants shall submit complete Notice of Termination Applications for the Hayes Professional Building and the Hamden Elementary School Borrow Pit Sites.

Environmental Covenant

11. By no later than thirty (30) days from the entry of this Consent Order, Defendants shall execute an environmental covenant pursuant to R.C. 5301.80 to 5301.92, which is identical in substance to Exhibit B.

12. By no later than forty-five (45) days from the entry of this Consent Order, Defendants shall supply a copy of the signed and executed environmental covenant to Ohio EPA, Attn.: Mark Mann, 50 West Town Street, Suite 700, Columbus, Ohio 43215.

13. By no later than sixty (60) days from the entry of this Consent Order, Defendants shall inform adjacent property owners by letter of the recording of the environmental covenant. At minimum, the letter shall contain a description of the Covenant Area and the Activity and Use Limitations, as described in Exhibit B.

14. By no later than seventy-five (75) days from the entry of this Consent Order, Defendants shall provide a copy of the letter referenced in Paragraph 13 of this Consent Order to Ohio EPA, Attn.: Mark Mann, 50 West Town Street, Suite 700, Columbus, Ohio 43215.

Four U.S. Route 50 Buildings Site

15. By no later than thirty (30) days from the entry of the Consent Order, Defendants

shall hire a qualified consultant to assess the compliance issues pertaining to the sewage treatment systems located on the Four U.S. Route 50 Buildings Site.

16. By no later than sixty (60) days from the entry of the Consent Order, Defendants shall conduct a soil evaluation to determine an acceptable soil absorption field for the soil-based sewage treatment system serving the Shade River Agricultural Building and the Dovetail Solar and Wind Building on the Four U.S. Route 50 Buildings Site and submit the results to Ohio EPA, Southeast District Office, Attn.: Cynthia Yandrich, 2195 Front Street, Logan, Ohio 43138.

17. By no later than ninety (90) days from the entry of this Consent Order, Defendants shall submit complete and approvable after-the-fact Permit to Install applications to the Director for his review and approval, for the sewage treatment systems previously constructed for the Trane/Mountaineer Mechanic Building, the Shade River Agriculture Building, and the Dovetail Solar and Wind Building located on the Four U.S. Route 50 Buildings Site.

18. By no later than ninety (90) days from the entry of this Consent Order, Defendants shall complete all modifications to the sewage treatment system previously constructed for the Frito-Lay Storage Building located on the Four U.S. Route 50 Buildings Site such that the modified sewage treatment system has correctly sized risers, properly placed cleanouts, and adequate inspection ports as is required by Permit to Install Number 06-6335.

19. By no later than one hundred twenty (120) days from the entry of this Consent Order, Defendants shall complete the installation of the sewage treatment system serving the Shade River Agriculture Building and the Dovetail Solar and Wind Building located on the Four U.S. Route 50 Buildings Site.

20. Defendants are prohibited from causing, permitting, or allowing the installation of a new system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes

without first obtaining a Permit to Install from the Director. Defendants are further prohibited from causing, permitting, or allowing the modification of an existing system for disposing of sewage, sludge, sludge materials, industrial waste, or other wastes, without first obtaining a Permit to Install from the Director.

21. Defendants are hereby enjoined and ordered not to allow any additional connection(s) to the Frito-Lay Building sanitary sewerage system within the Four U.S. Route 50 Buildings Site unless and until the Director has issued a Permit to Install for such connection(s).

VIII. REVIEW OF SUBMITTALS

22. Upon the submission of any Permit to Install application and/or upon the submission of any other documents by Defendants to the Director pursuant to this Consent Order, if the Director determines, in his sole discretion, that the Permit to Install application or other documents are incomplete, not approvable and/or do not meet the requirements of R.C. Chapter 6111, Ohio Administrative Code Chapters 3745-1, 3745-33 and/or 3745-42, the Director shall promptly inform Defendants of the nature of the deficiencies. Thereafter, Defendants shall submit any and all corrections, additions or deletions necessary to address the deficiencies noted by the Director in order for the applications/documents to be complete and/or approvable. Any and all required corrections, additions or deletions shall be submitted to the Director within twenty-one (21) days from the Director's mailing of notice to Defendants that the Permit to Install application or other document(s) are incomplete and/or do not meet the requirements of the rules cited within this paragraph. The Director may issue an approval of the Permit to Install application or other documents, in his sole discretion, with additional terms and conditions as authorized by R.C. 6111.03(J).

IX. CIVIL PENALTY

23. Defendants shall pay to the State of Ohio a civil penalty of **thirty-eight thousand, one hundred twenty-five dollars ($38,125.00)** which shall be paid in installments according to the following schedule:

(a) By no later than May 31, 2012, Defendants shall pay the first installment of **nine thousand, five hundred thirty-one dollars and twenty-five cents ($9,531.25)**.

(b) By no later than September 30, 2012, Defendants shall pay the second installment of **nine thousand, five hundred thirty-one dollars and twenty-five cents ($9,531.25)**.

(c) By no later than January 31, 2013, Defendants shall pay the third installment of **nine thousand, five hundred thirty-one dollars and twenty-five cents ($9,531.25)**.

(d) By no later than May 31, 2013, Defendants shall pay the fourth installment of **nine thousand, five hundred thirty-one dollars and twenty-five cents ($9,531.25)**.

24. The civil penalty shall be paid by delivering certified checks in the above stated amount, made payable to the order of "Treasurer, State of Ohio" to Martha Sexton, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

X. STIPULATED PENALTIES

25. In the event that Defendants fail to comply with any requirement of this Consent Order, Defendants are liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

(a) For each day of each failure to comply with a requirement or meet a deadline from one (1) day to thirty (30) days – two hundred fifty dollars ($250.00) per day per requirement not met;

(b) For each day of each failure to comply with a requirement or meet a deadline from thirty-one (31) days to sixty (60) days – five hundred dollars ($500.00) per day per requirement not met;

(c) For each day of each failure to comply with a requirement or meet a deadline over sixty-one (61) days – seven hundred fifty dollars ($750.00) per day per requirement not met.

26. Payments due under Paragraph 25 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline or knowledge of the effluent limitation violation. Payments shall be accompanied by a written explanation of the deadline missed and/or the effluent violation. Any payment required to be made under this paragraph shall be made by delivering a certified check or checks for the appropriate amount(s), made payable to "Treasurer, State of Ohio," to Martha Sexton, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400. The payment of stipulated penalties by Defendants and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section X shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial enforcement of this Consent Order. Further, payment by Defendants shall not be considered an admission of liability on the part of Defendants.

27. The stipulated penalties imposed by Paragraph 25 of this Consent Order may be terminated as to each specific paragraph of this Consent Order, for which stipulated penalties are imposed, only after Defendants have achieved and maintained compliance with all the requirements of that paragraph for a period of twelve (12) consecutive months, have paid all stipulated penalties incurred related to that paragraph, and are current on all civil penalty payments pursuant to Paragraph 23 of the Consent Order. Termination of one paragraph subject to stipulated penalties under this Consent Order shall not terminate the accrual of or the liability for payment of stipulated penalties under any other paragraph. Termination of stipulated penalties under this Consent Order shall only be upon written application by any party, and by order of the Court after the Court has made a determination that the requirements of this paragraph have been satisfied.

XI. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

28. Performance of the terms of this Consent Order by Defendants is not conditioned on the receipt of any Federal or State grants, loans and/or funds. In addition, Defendants' performance is not excused by the failure to obtain or any shortfall of any Federal or State grants, loans and/or funds or by the processing of any applications for the same.

XII. MISCELLANEOUS

29. Nothing in this Consent Order shall affect Defendants' obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

30. Any acceptance by the State of Ohio of any payment, document or other work due hereunder subsequent to the time that the obligation is due under this Consent Order shall not relieve Defendants from the obligations created by this Consent Order.

31. Defendants shall inform the Ohio EPA immediately of any change or the cessation of the business that is the subject of this action.

XIII. EFFECT OF CONSENT ORDER

32. This Consent Order does not constitute authorization or approval for the construction or modification of any physical structure, facility, disposal system, treatment works or sewerage system, or for the placement of fill in streams, wetlands, or other "waters of the state." Authorization or approval for any such construction, modification or fill shall be by permit issued by the Director or other such permits as may be required by applicable federal, state, or local laws, rules, or regulations. This Consent Order is not and shall not be construed as a permit nor shall it in any way relieve Defendants from the obligation to obtain permits or approvals for treatment or disposal of wastewater or to comply with any applicable federal, state or local laws or regulations.

XIV. CONTINUING JURISDICTION

33. This Court shall retain jurisdiction over this action for the purpose of enforcing and administrating Defendants' compliance with this Consent Order.

XV. COSTS

34. Defendants shall pay the court costs of this action.

35. Defendants are hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation. Defendants shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" and with a notation indicating that the funds are going to "Fund 699" on it, in the amount of the costs, to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days from the date he receives notice of the costs from Ohio EPA.

XVI. SIGNATORIES

36. The signatory for each Defendant represents and warrants that he has been duly authorized to sign this document and so bind the corporation or individual to all terms and conditions thereof.

XVII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

37. The parties agree and acknowledge that final approval by Plaintiff and Defendants and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123.27(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

38. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three

(3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties a notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED:

JUDGE WARD

7/2/12
Date

APPROVED:

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

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James Brent Hayes
President, J.B. Hayes Excavating and Pipeline, Inc.

James Brent Hayes, Individually

OHIO E.P.A.
APR 21 2008
CENTRAL DIRECTOR'S JOURNAL

Ohio EPA Permit No.: OHC000003

Effective Date: April 21, 2008
Expiration Date: April 20, 2013

OHIO ENVIRONMENTAL PROTECTION AGENCY

AUTHORIZATION FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et. seq. hereafter referred to as "the Act") and the Ohio Water Pollution Control Act [Ohio Revised Code ("ORC") Chapter 6111], dischargers of storm water from sites where construction activity is being conducted, as defined in Part I.B of this permit, are authorized by the Ohio Environmental Protection Agency, hereafter referred to as "Ohio EPA," to discharge from the outfalls at the sites and to the receiving surface waters of the State identified in their Notice of Intent ("NOI") application form on file with Ohio EPA in accordance with the conditions specified in Parts I through VII of this permit.

It has been determined that a lowering of water quality of various waters of the State associated with granting coverage under this permit is necessary to accommodate important social and economic development in the state of Ohio. In accordance with OAC 3745-1-05, this decision was reached only after examining a series of technical alternatives, reviewing social and economic issues related to the degradation, and considering all public and intergovernmental comments received concerning the proposal.

This permit is conditioned upon payment of applicable fees, submittal of a complete NOI application form and written approval of coverage from the director of Ohio EPA in accordance with Ohio Administrative Code ("OAC") Rule 3745-38-06.

Laura H. Powell

Laura H. Powell
Assistant Director

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: _____ Date: 4-21-08

EXHIBIT
A

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PART I. COVERAGE UNDER THIS PERMIT

A. Permit Area.

This permit covers the entire State of Ohio.

B. Eligibility.

1. Construction activities covered. Except for storm water discharges identified under Part I.B.2, this permit may cover all new and existing discharges composed entirely of storm water discharges associated with construction activity that enter surface waters of the State or a storm drain leading to surface waters of the State.

   For the purposes of this permit, construction activities include any clearing, grading, excavating, grubbing and/or filling activities that disturb one or more acres of land. Discharges from trench dewatering are also covered by this permit as long as the dewatering activity is carried out in accordance with the practices outlined in Part III.G.2.g.iv of this permit. The threshold acreage includes the entire area disturbed in the larger common plan of development or sale.

   This permit also authorizes storm water discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

   a. The support activity is directly related to a construction site that is required to have NPDES permit coverage for discharges of storm water associated with construction activity;

   b. The support activity is not a commercial operation serving multiple unrelated construction projects and does not operate beyond the completion of the construction activity at the site it supports;

   c. Appropriate controls and measures are identified in a storm water pollution prevention plan (SWP3) covering the discharges from the support activity; and

   d. The support activity is on or contiguous with the property defined in the NOI (off-site borrow pits and soil disposal areas, which serve only one project, do not have to be contiguous with the construction site);

Part I.B

2. Limitations on coverage. The following storm water discharges associated with construction activity are not covered by this permit:

   a. Storm water discharges that originate from the site after construction activities have been completed, including any temporary support activity, and the site has achieved final stabilization. Industrial post-construction storm water discharges may need to be covered by an NPDES permit;

   b. Storm water discharges associated with construction activity that the director has shown to be or may reasonably expect to be contributing to a violation of a water quality standard; and

   c. Storm water discharges authorized by an individual NPDES permit or an alternative NPDES general permit;

3. Waivers. After March 10, 2003, sites whose larger common plan of development or sale have at least one, but less than five acres of land disturbance, which would otherwise require permit coverage for storm water discharges associated with construction activities, may request that the director waive their permit requirement. Entities wishing to request such a waiver must certify in writing that the construction activity meets one of the two waiver conditions:

   a. **Rainfall erosivity waiver.** For a construction site to qualify for the rainfall erosivity waiver, the cumulative rainfall erosivity over the project duration must be five or less and the site must be stabilized with at least a 70 percent vegetative cover or other permanent, non-erosive cover. The rainfall erosivity must be calculated according to the method in U.S. EPA Fact Sheet 3.1 Construction Rainfall Erosivity Waiver dated January 2001. If it is determined that a construction activity will take place during a time period where the rainfall erosivity factor is less than five, a written waiver certification must be submitted to Ohio EPA at least 21 days before construction activity is scheduled to begin. If the construction activity will extend beyond the dates specified in the waiver certification, the operator must either: (a) recalculate the waiver using the original start date with the new ending date (if the R factor is still less than five, a new waiver certification must be submitted) or (b) submit an NOI application form and fee for coverage under this general permit at least seven days prior to the end of the waiver period (see Attachment A); or

Part I.B.3

b. **TMDL (Total Maximum Daily Load) waiver.** Storm water controls are not needed based on a TMDL approved or established by U.S. EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. The pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the director of Ohio EPA that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis. A written waiver certification must be submitted to Ohio EPA at least 21 days before the construction activity is scheduled to begin.

4. Prohibition on non-storm water discharges. All discharges covered by this permit must be composed entirely of storm water with the exception of the following: discharges from fire fighting activities; fire hydrant flushings; potable water sources including waterline flushings; irrigation drainage; lawn watering; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water from trench or well point dewatering and foundation or footing drains where flows are not contaminated with process materials such as solvents. Dewatering activities must be done in compliance with Part III.G.2.g.iv of this permit. Discharges of material other than storm water or the authorized non-storm water discharges listed above must comply with an individual NPDES permit or an alternative NPDES general permit issued for the discharge.

   Except for flows from fire fighting activities, sources of non-storm water listed above that are combined with storm water discharges associated with construction activity must be identified in the SWP3. The SWP3 must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

Part I.B

5. Spills and unintended releases (Releases in excess of Reportable Quantities). This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302. In the event of a spill or other unintended release, the discharge of hazardous substances in the storm water discharge(s) from a construction site must be minimized in accordance with the applicable storm water pollution prevention plan for the construction activity and in no case, during any 24-hour period, may the discharge(s) contain a hazardous substance equal to or in excess of reportable quantities.

   40 CFR Part 117 sets forth a determination of the reportable quantity for each substance designated as hazardous in 40 CFR Part 116. The regulation applies to quantities of designated substances equal to or greater than the reportable quantities, when discharged to surface waters of the State. 40 CFR Part 302 designates under section 102(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, those substances in the statutes referred to in section 101(14), identifies reportable quantities for these substances and sets forth the notification requirements for releases of these substances. This regulation also sets forth reportable quantities for hazardous substances designated under section 311(b)(2)(A) of the Clean Water Act (CWA).

C. Requiring an individual NPDES permit or an alternative NPDES general permit.

1. The director may require an alternative permit. The director may require any operator eligible for this permit to apply for and obtain either an individual NPDES permit or coverage under an alternative NPDES general permit in accordance with OAC Rule 3745-38-04. Any interested person may petition the director to take action under this paragraph.

   The director will send written notification that an alternative NPDES permit is required. This notice shall include a brief statement of the reasons for this decision, an application form and a statement setting a deadline for the operator to file the application. If an operator fails to submit an application in a timely manner as required by the director under this paragraph, then coverage, if in effect, under this permit is automatically terminated at the end of the day specified for application submittal.

Part I.C

2. Operators may request an individual NPDES permit. Any owner or operator eligible for this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application with reasons supporting the request to the director in accordance with the requirements of 40 CFR 122.26. If the reasons adequately support the request, the director shall grant it by issuing an individual NPDES permit.

3. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit or the owner or operator is approved for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of approval for coverage under the alternative general permit, whichever the case may be.

D. Permit requirements when portions of a site are sold

If an operator obtains a permit for a development, and then the operator (permittee) sells off lots or parcels within that development, permit coverage must be continued on those lots until a Notice of Termination (NOT) in accordance with Part IV.B is submitted. For developments which require the use of centralized sediment and erosion controls (i.e., controls that address storm water runoff from one or more lots) for which the conveyance of permit coverage for a portion of the development will either prevent or impair the implementation of the controls and therefore jeopardize compliance with the terms and conditions of this permit, the permittee will be required to maintain responsibility for the implementation of those controls. For developments where this is not the case, it is the permittee's responsibility to temporarily stabilize all lots sold to individual lot owners unless an exception is approved in accordance with Part III.G.4. In cases where permit coverage for individual lot(s) will be conveyed, the permittee shall inform, in writing, the individual lot owner of the obligations under this permit and ensure that the Individual Lot NOI application is submitted to Ohio EPA.

E. Authorization

1. Obtaining authorization to discharge. Operators that discharge storm water associated with construction activity must submit an NOI application form in accordance with the requirements of Part II of this permit to obtain authorization to discharge under this general permit. As required under OAC Rule 3745-38-06(E), the director, in response to the NOI submission, shall notify the applicant in writing that he/she has been granted general permit coverage to discharge storm water associated with construction activity under the terms and conditions of this permit or that the applicant must apply for an individual NPDES permit or coverage under an alternate general NPDES permit as described in Part I.C.1.

Part I.E

2. No release from other requirements. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations. Other permit requirements commonly associated with construction activities include, but are not limited to, section 401 water quality certifications, isolated wetland permits, permits to install sanitary sewers or other devices that discharge or convey polluted water, permits to install drinking water lines, single lot sanitary system permits and disturbance of land which was used to operate a solid or hazardous waste facility (i.e., coverage under this NPDES general permit does not satisfy the requirements of OAC Rule 3745-27-13 or ORC Section 3734.02(H)). This permit does not relieve the permittee of other responsibilities associated with construction activities such as contacting the Ohio Department of Natural Resources, Division of Water, to ensure proper well installation and abandonment of wells.

Part II. NOTICE OF INTENT REQUIREMENTS

A. Deadlines for notification.

Initial coverage: Operators who intend to obtain initial coverage for a storm water discharge associated with construction activity under this general permit must submit a complete and accurate NOI application form and appropriate fee at least 21 days prior to the commencement of construction activity. If more than one operator, as defined in Part VII of this general permit, will be engaged at a site, each operator shall seek coverage under this general permit. Where one operator has already submitted an NOI prior to other operator(s) being identified, the additional operator shall request modification of coverage to become a co-permittee. In such instances, the co-permittees shall be covered under the same facility permit number. No additional permit fee is required.

Individual lot transfer of coverage: Operators must each submit an individual lot notice of intent (Individual Lot NOI) application form (no fee required) to Ohio EPA at least seven days prior to the date that they intend to accept responsibility for permit requirements for their portion of the original permitted development from the previous permittee. The original permittee may submit an Individual Lot NOT at the time the Individual Lot NOI is submitted. Transfer of permit coverage is not granted until an approval letter from the director of Ohio EPA is received by the applicant.

B. Failure to notify.

Operators who fail to notify the director of their intent to be covered and who discharge pollutants to surface waters of the State without an NPDES permit are in violation of ORC Chapter 6111. In such instances, Ohio EPA may bring an enforcement action for any discharges of storm water associated with construction activity.

Part II

C. Where to submit an NOI.

Operators seeking coverage under this permit must submit a signed NOI form, provided by Ohio EPA, to the address found in the associated instructions.

D. Additional notification.

The permittee shall make NOIs and SWP3s available upon request of the director of Ohio EPA, local agencies approving sediment and erosion control plans, grading plans or storm water management plans, local governmental officials, or operators of municipal separate storm sewer systems (MS4s) receiving drainage from the permitted site. Each operator that discharges to an NPDES permitted MS4 shall provide a copy of its Ohio EPA NOI submission to the MS4 in accordance with the MS4's requirements, if applicable.

E. Renotification.

Upon renewal of this general permit, the permittee is required to notify the director of his intent to be covered by the general permit renewal. Permittees covered under the previous NPDES general permits for storm water discharges associated with construction activity (NPDES permit numbers OHR100000 and OHC000002) shall have continuing coverage under this permit. The permittees covered under OHR100000 or OHC000002 shall submit a letter within 90 days of receipt of written notification by Ohio EPA expressing their intent that coverage be continued. There is no fee associated with these letters of intent for continued coverage. Permit coverage will be terminated after the 90-day period if the letter is not received by Ohio EPA. Ohio EPA will provide instructions on the contents of the letter and where it is to be sent within the notification letter.

PART III. STORM WATER POLLUTION PREVENTION PLAN (SWP3)

A. Storm Water Pollution Prevention Plans.

A SWP3 shall be developed for each site covered by this permit. For a multi-phase construction project, a separate NOI shall be submitted when a separate SWP3 will be prepared for subsequent phases. SWP3s shall be prepared in accordance with sound engineering and/or conservation practices by a professional experienced in the design and implementation of standard erosion and sediment controls and storm water management practices addressing all phases of construction. The SWP3 shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with construction activities. The SWP3 shall be a comprehensive, stand-alone document, which is not complete unless it contains the information required by Part III.G of this permit. In addition, the SWP3 shall describe and ensure the implementation of best management practices (BMPs) that reduce the pollutants in storm water discharges during construction and pollutants associated with post-construction activities to ensure compliance with ORC Section 6111.04, OAC Chapter 3745-1 and the terms and conditions of this permit.

B. Timing

A SWP3 shall be completed prior to the timely submittal of an NOI and updated in accordance with Part III.D. Upon request and good cause shown, the director may waive the requirement to have a SWP3 completed at the time of NOI submission. If a waiver has been granted, the SWP3 must be completed prior to the initiation of construction activities. The SWP3 must be implemented upon initiation of construction activities.

Permittees continuing coverage from the previous generations of this permit (OHR100000 and OHC000002) that have initiated construction activity prior to the receipt of the first written notification from Ohio EPA to submit a letter of intent to continue coverage, as required in Part II.E, are not required to update their SWP3 as a result of this renewal (OHC000003). Permittees continuing coverage from the previous generations of this permit (OHR100000 and OHC000002) that have not initiated construction activity prior to the receipt of the first written notification from Ohio EPA to submit a letter of intent to continue coverage, as required in Part II.E, are required to update their SWP3 as a result of this renewal (OHC000003).

C. SWP3 Signature and Review.

1. Plan Signature and Retention On Site. The SWP3 shall include the certification in Part V.H., be signed in accordance with Part V.G., and be retained on site during working hours.

Part III.C

2. Plan Availability

   a. On-site: The plan shall be made available immediately upon request of the director or his authorized representative during working hours. A copy of the NOI and letter granting permit coverage under this general permit also shall be made available at the site.

   b. By written request: The permittee must provide a copy of the SWP3 within 10 days upon written request by any of the following:

      i. The director or the director's authorized representative;

      ii. A local agency approving sediment and erosion plans, grading plans or storm water management plans; or

      iii. In the case of a storm water discharge associated with construction activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the operator of the system.

   c. To the public: All NOIs, general permit approval for coverage letters, and SWP3s are considered reports that shall be available to the public in accordance with the Ohio Public Records law. The permittee shall make documents available to the public upon request or provide a copy at public expense, at cost, in a timely manner. However, the permittee may claim to Ohio EPA any portion of an SWP3 as confidential in accordance with Ohio law.

3. Plan Revision. The director or authorized representative, may notify the permittee at any time that the SWP3 does not meet one or more of the minimum requirements of this part. Within 10 days after such notification from the director (or as otherwise provided in the notification) or authorized representative, the permittee shall make the required changes to the SWP3 and, if requested, shall submit to Ohio EPA the revised SWP3 or a written certification that the requested changes have been made.

D. Amendments

The permittee shall amend the SWP3 whenever there is a change in design, construction, operation or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the State or if the SWP3 proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity. Amendments to the SWP3 may be reviewed by Ohio EPA in the same manner as Part III.C.

Part III

E. Duty to inform contractors and subcontractors

The permittee shall inform all contractors and subcontractors not otherwise defined as "operators" in Part VII of this general permit, who will be involved in the implementation of the SWP3, of the terms and conditions of this general permit. The permittee shall maintain a written document containing the signatures of all contractors and subcontractors involved in the implementation of the SWP3 as proof acknowledging that they reviewed and understand the conditions and responsibilities of the SWP3. The written document shall be created and signatures of each individual contractor shall be obtained prior to their commencement of work on the construction site.

F. Total Maximum Daily Load (TMDL) allocations

If a TMDL is approved for any waterbody into which the permittee's site discharges and requires specific BMPs for construction sites, the director may require the permittee to revise his/her SWP3.

G. SWP3 Requirements

Operations that discharge storm water from construction activities are subject to the following requirements and the SWP3 shall include the following items:

1. Site description. Each SWP3 shall provide:

    a. A description of the nature and type of the construction activity (e.g., low density residential, shopping mall, highway, etc.);

    b. Total area of the site and the area of the site that is expected to be disturbed (i.e., grubbing, clearing, excavation, filling or grading, including off-site borrow areas);

    c. An estimate of the impervious area and percent imperviousness created by the construction activity;

    d. A calculation of the runoff coefficients for both the pre-construction and post construction site conditions;

    e. Existing data describing the soil and, if available, the quality of any discharge from the site;

    f. A description of prior land uses at the site;

Part III.G.1

g. An implementation schedule which describes the sequence of major construction operations (i.e., grubbing, excavating, grading, utilities and infrastructure installation) and the implementation of erosion, sediment and storm water management practices or facilities to be employed during each operation of the sequence;

h. The name and/or location of the immediate receiving stream or surface water(s) and the first subsequent named receiving water(s) and the areal extent and description of wetlands or other special aquatic sites at or near the site which will be disturbed or which will receive discharges from disturbed areas of the project. For discharges to an MS4, the point of discharge to the MS4 and the location where the MS4 ultimately discharges to a stream or surface water of the State must be indicated;

i. For subdivided developments where the SWP3 does not call for a centralized sediment control capable of controlling multiple individual lots, a detail drawing of a typical individual lot showing standard individual lot erosion and sediment control practices.

   This does not remove the responsibility to designate specific erosion and sediment control practices in the SWP3 for critical areas such as steep slopes, stream banks, drainage ways and riparian zones.

j. Location and description of any storm water discharges associated with dedicated asphalt and dedicated concrete plants covered by this permit and the best management practices to address pollutants in these storm water discharges;

k. A copy of the permit requirements (attaching a copy of this permit is acceptable);

l. A cover page or title identifying the name and location of the site, the name and contact information of all construction site operators, the name and contact information for the person responsible for authorizing and amending the SWP3, preparation date, and the estimated dates that construction will start and be complete;

m. A log documenting grading and stabilization activities as well as amendments to the SWP3, which occur after construction activities commence; and

n. Site map showing:

Part III.G.1.n

i. Limits of earth-disturbing activity of the site including associated off-site borrow or spoil areas that are not addressed by a separate NOI and associated SWP3;

ii. Soils types should be depicted for all areas of the site, including locations of unstable or highly erodible soils;

iii. Existing and proposed contours. A delineation of drainage watersheds expected during and after major grading activities as well as the size of each drainage watershed, in acres;

iv. Surface water locations including springs, wetlands, streams, lakes, water wells, etc., on or within 200 feet of the site, including the boundaries of wetlands or stream channels and first subsequent named receiving water(s) the permittee intends to fill or relocate for which the permittee is seeking approval from the Army Corps of Engineers and/or Ohio EPA;

v. Existing and planned locations of buildings, roads, parking facilities and utilities;

vi. The location of all erosion and sediment control practices, including the location of areas likely to require temporary stabilization during the course of site development;

vii. Sediment and storm water management basins noting their sediment settling volume and contributing drainage area;

viii. Permanent storm water management practices to be used to control pollutants in storm water after construction operations have been completed.

ix. Areas designated for the storage or disposal of solid, sanitary and toxic wastes, including dumpster areas, areas designated for cement truck washout, and vehicle fueling;

x. The location of designated construction entrances where the vehicles will access the construction site;

xi. The location of any in-stream activities including stream crossings;

Part III.G

2. Controls. The SWP3 must contain a description of the controls appropriate for each construction operation covered by this permit and the operator(s) must implement such controls. The SWP3 must clearly describe for each major construction activity identified in Part III.G.1.g: (a) appropriate control measures and the general timing (or sequence) during the construction process that the measures will be implemented; and (b) which contractor is responsible for implementation (e.g., contractor A will clear land and install perimeter controls and contractor B will maintain perimeter controls until final stabilization). The SWP3 shall identify the subcontactors engaged in activities that could impact storm water runoff. The SWP3 shall contain signatures from all of the identified subcontractors indicating that they have been informed and understand their roles and responsibilities in complying with the SWP3. Ohio EPA recommends that the primary site operator review the SWP3 with the primary contractor prior to commencement of construction activities and keep a SWP3 training log to demonstrate that this review has occurred.

   Ohio EPA recommends that the erosion, sediment, and storm water management practices used to satisfy the conditions of this permit should meet the standards and specifications in the current edition of Ohio's Rainwater and Land Development (see definitions) manual or other standards acceptable to Ohio EPA. The controls shall include the following minimum components:

   a. **Non-Structural Preservation Methods.** The SWP3 must make use of practices which preserve the existing natural condition as much as feasible. Such practices may include: preserving riparian areas adjacent to surface waters of the State, preserving existing vegetation and vegetative buffer strips, phasing of construction operations in order to minimize the amount of disturbed land at any one time and designation of tree preservation areas or other protective clearing or grubbing practices. The recommended buffer that operators should leave undisturbed along a surface water of the State is 25 feet as measured from the ordinary high water mark of the surface water.

   b. **Erosion Control Practices.** The SWP3 must make use of erosion controls that are capable of providing cover over disturbed soils unless an exception is approved in accordance with Part III.G.4. A description of control practices designed to restabilize disturbed areas after grading or construction shall be included in the SWP3. The SWP3 must provide specifications for stabilization of all disturbed areas of the site and provide guidance as to which method of stabilization will be employed for any time of the year. Such practices may include: temporary seeding, permanent seeding, mulching, matting, sod stabilization, vegetative buffer strips, phasing of construction operations, use of construction entrances and the use of alternative ground cover.

Part III.G.2.b

i. **Stabilization.** Disturbed areas must be stabilized as specified in the following tables below. Permanent and temporary stabilization are defined in Part VII.

Table 1: Permanent Stabilization

Area requiring permanent stabilization	Time frame to apply erosion controls
Any areas that will lie dormant for one year or more	Within seven days of the most recent disturbance
Any areas within 50 feet of a surface water of the State and at final grade	Within two days of reaching final grade
Any other areas at final grade	Within seven days of reaching final grade within that area

Table 2: Temporary Stabilization

Area requiring temporary stabilization	Time frame to apply erosion controls
Any disturbed areas within 50 feet of a surface water of the State and not at final grade	Within two days of the most recent disturbance if the area will remain idle for more than 21 days
For all construction activities, any disturbed areas that will be dormant for more than 21 days but less than one year, and not within 50 feet of a surface water of the State	Within seven days of the most recent disturbance within the area For residential subdivisions, disturbed areas must be stabilized at least seven days prior to transfer of permit coverage for the individual lot(s).
Disturbed areas that will be idle over winter	Prior to the onset of winter weather

Where vegetative stabilization techniques may cause structural instability or are otherwise unobtainable, alternative stabilization techniques must be employed.

ii. **Permanent stabilization of conveyance channels**. Operators shall undertake special measures to stabilize channels and outfalls and prevent erosive flows. Measures may include seeding, dormant seeding (as defined in the current edition of the Rainwater and Land Development manual), mulching, erosion control matting, sodding, riprap, natural channel design with bioengineering techniques or rock check dams.

Part III.G.2

c. **Runoff Control Practices.** The SWP3 shall incorporate measures which control the flow of runoff from disturbed areas so as to prevent erosion from occurring. Such practices may include rock check dams, pipe slope drains, diversions to direct flow away from exposed soils and protective grading practices. These practices shall divert runoff away from disturbed areas and steep slopes where practicable. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

d. **Sediment Control Practices.** The plan shall include a description of structural practices that shall store runoff allowing sediments to settle and/or divert flows away from exposed soils or otherwise limit runoff from exposed areas. Structural practices shall be used to control erosion and trap sediment from a site remaining disturbed for more than 14 days. Such practices may include, among others: sediment settling ponds, silt fences, earth diversion dikes or channels which direct runoff to a sediment settling pond and storm drain inlet protection. All sediment control practices must be capable of ponding runoff in order to be considered functional. Earth diversion dikes or channels alone are not considered a sediment control practice unless those are used in conjunction with a sediment settling pond.

The SWP3 must contain detail drawings for all structural practices.

i. Timing. Sediment control structures shall be functional throughout the course of earth disturbing activity. Sediment basins and perimeter sediment barriers shall be implemented prior to grading and within seven days from the start of grubbing. They shall continue to function until the up slope development area is restabilized. As construction progresses and the topography is altered, appropriate controls must be constructed or existing controls altered to address the changing drainage patterns.

ii. Sediment settling ponds. A sediment settling pond is required for any one of the following conditions:
- concentrated storm water runoff (e.g., storm sewer or ditch);
- runoff from drainage areas, which exceed the design capacity of silt fence or other sediment barriers;
- runoff from drainage areas that exceed the design capacity of inlet protection; or
- runoff from common drainage locations with 10 or more acres of disturbed land.

Part III.G.2.d.ii

The permittee may request approval from Ohio EPA to use alternative controls if the permittee can demonstrate the alternative controls are equivalent in effectiveness to a sediment settling pond.

The sediment settling pond volume consists of both a dewatering zone and a sediment storage zone. The volume of the dewatering zone shall be a minimum of 1800 cubic feet (ft^3) per acre of drainage (67 yd^3/acre) with a minimum 48-hour drain time for sediment basins serving a drainage area over 5 acres. The volume of the sediment storage zone shall be calculated by one of the following methods: Method 1: The volume of the sediment storage zone shall be 1000 ft^3 per disturbed acre within the watershed of the basin. OR Method 2: The volume of the sediment storage zone shall be the volume necessary to store the sediment as calculated with RUSLE or a similar generally accepted erosion prediction model. The accumulated sediment shall be removed from the sediment storage zone once it's full. When determining the total contributing drainage area, off-site areas and areas which remain undisturbed by construction activity must be included unless runoff from these areas is diverted away from the sediment settling pond and is not co-mingled with sediment-laden runoff. The depth of the dewatering zone must be less than or equal to five feet. The configuration between inlets and the outlet of the basin must provide at least two units of length for each one unit of width (> 2:1 length:width ratio), however, a length to width ratio of 4:1 is recommended. When designing sediment settling ponds, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls must be used where site limitations would preclude a safe design. The use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal is encouraged.

iii. Silt Fence and Diversions. Sheet flow runoff from denuded areas shall be intercepted by silt fence or diversions to protect adjacent properties and water resources from sediment transported via sheet flow. Where intended to provide sediment control, silt fence shall be placed on a level contour downslope of the disturbed area. This permit does not preclude the use of other sediment barriers designed to control sheet flow runoff. The relationship between the maximum drainage area to silt fence for a particular slope range is shown in the table below.

Part III.G.2.d.iii

Maximum drainage area (in acres) to 100 linear feet of silt fence	Range of slope for a particular drainage area (in percent)
0.5	< 2%
0.25	≥ 2% but < 20%
0.125	≥ 20% but < 50%

Placing silt fence in a parallel series does not extend the size of the drainage area. Storm water diversion practices shall be used to keep runoff away from disturbed areas and steep slopes where practicable. Such devices, which include swales, dikes or berms, may receive storm water runoff from areas up to 10 acres.

iv. Inlet Protection. Other erosion and sediment control practices shall minimize sediment laden water entering active storm drain systems, unless the storm drain system drains to a sediment settling pond. All inlets receiving runoff from drainage areas of one or more acres will require a sediment settling pond.

v. Surface Waters of the State Protection. If construction activities disturb areas adjacent to surface waters of the State, structural practices shall be designed and implemented on site to protect all adjacent surface waters of the State from the impacts of sediment runoff. No structural sediment controls (e.g., the installation of silt fence or a sediment settling pond) shall be used in a surface water of the State. For all construction activities immediately adjacent to surface waters of the State, it is recommended that a setback of at least 25-feet, as measured from the ordinary high water mark of the surface water, be maintained in its natural state as a permanent buffer. Where impacts within this setback area are unavoidable due to the nature of the construction activity (e.g., stream crossings for roads or utilities), the project shall be designed such that the number of stream crossings and the width of the disturbance within the setback area are minimized.

vi. Modifying Controls. If periodic inspections or other information indicates a control has been used inappropriately or incorrectly, the permittee must replace or modify the control for site conditions.

Part III.G.2

e. **Post-Construction Storm Water Management Requirements.** So that the receiving stream's physical, chemical, and biological characteristics are protected and stream functions are maintained, post-construction storm water practices shall provide perpetual management of runoff quality and quantity. To meet the post-construction requirements of this permit, the SWP3 must contain a description of the post-construction BMPs that will be installed during construction for the site and the rationale for their selection. The rationale must address the anticipated impacts on the channel and floodplain morphology, hydrology, and water quality. Post-construction BMPs cannot be installed within a surface water of the State (e.g., wetland or stream) unless it's authorized by a CWA 401 water quality certification, CWA 404 permit, or Ohio EPA non-jurisdictional wetland/stream program approval. Note: localities may have more stringent post-construction requirements.

Detail drawings and maintenance plans must be provided for all post-construction BMPs. Maintenance plans shall be provided by the permittee to the post-construction operator of the site (including homeowner associations) upon completion of construction activities (prior to termination of permit coverage). For sites located within a community with a regulated municipal separate storm sewer system (MS4), the permittee, land owner, or other entity with legal control of the property may be required to develop and implement a maintenance plan to comply with the requirements of the MS4. Maintenance plans must ensure that pollutants collected within structural post-construction practices, be disposed of in accordance with local, state, and federal regulations. To ensure that storm water management systems function as they were designed and constructed, the post construction operation and maintenance plan must be a stand-alone document, which contains: (1) a designated entity for storm water inspection and maintenance responsibilities; (2) the routine and non-routine maintenance tasks to be undertaken; (3) a schedule for inspection and maintenance; (4) any necessary legally binding maintenance easements and agreements; and (5) a map showing all access and maintenance easements. Permittees are not responsible under this permit for operation and maintenance of post-construction practices once coverage under this permit is terminated.

Post-construction storm water BMPs that discharge pollutants from point sources once construction is completed, may in themselves, need authorization under a separate NPDES permit (one example is storm water discharges from regulated industrial sites).

Part III.G.2.e

Construction activities that do not include the installation of any impervious surface (e.g., soccer fields), abandoned mine land reclamation activities regulated by the Ohio Department of Natural Resources, stream and wetland restoration activities, and wetland mitigation activities are not required to comply with the conditions of Part III.G.2.e of this permit. Linear construction projects, (e.g., pipeline or utility line installation), which do not result in the installation of additional impervious surface, are not required to comply with the conditions of Part III.G.2.e of this permit. However, linear construction projects must be designed to minimize the number of stream crossings and the width of disturbance and achieve final stabilization of the disturbed area as defined in Part VII.H.1.

Large Construction Activities. For all large construction activities (involving the disturbance of five or more acres of land or will disturb less than five acres, but is a part of a larger common plan of development or sale which will disturb five or more acres of land), the post construction BMP(s) chosen must be able to detain storm water runoff for protection of the stream channels, stream erosion control, and improved water quality. The BMP(s) chosen must be compatible with site and soil conditions. Structural (designed) post-construction storm water treatment practices shall be incorporated into the permanent drainage system for the site. The BMP(s) chosen must be sized to treat the water quality volume (WQv) and ensure compliance with Ohio's Water Quality Standards in OAC Chapter 3745-1. The WQv shall be equivalent to the volume of runoff from a 0.75-inch rainfall and shall be determined according to the following equation:

$WQv = C * P * A / 12$
where:
WQv = water quality volume in acre-feet
C = runoff coefficient appropriate for storms less than 1 inch
(Either use the following formula: $C = 0.858i^3 - 0.78i^2 + 0.774i + 0.04$, where i = fraction of post-construction impervious surface or use Table 1)
P = 0.75 inch precipitation depth
A = area draining into the BMP in acres

Part III.G.2.e

Table 1
Runoff Coefficients Based on the Type of Land Use

Land Use	Runoff Coefficient
Industrial & Commercial	0.8
High Density Residential (>8 dwellings/acre)	0.5
Medium Density Residential (4 to 8 dwellings/acre)	0.4
Low Density Residential (<4 dwellings/acre)	0.3
Open Space and Recreational Areas	0.2

Where the land use will be mixed, the runoff coefficient should be calculated using a weighted average. For example, if 60% of the contributing drainage area to the storm water treatment structure is Low Density Residential, 30% is High Density Residential, and 10% is Open Space, the runoff coefficient is calculated as follows (0.6)(0.3) + (0.3)(0.5) + (0.1)(0.2) = 0.35.

An additional volume equal to 20 percent of the WQv shall be incorporated into the BMP for sediment storage. Ohio EPA recommends that BMPs be designed according to the methodology included in the Rainwater and Land Development manual or in another design manual acceptable for use by Ohio EPA.

The BMPs listed in Table 2 below shall be considered standard BMPs approved for general use. However communities with a regulated MS4 may limit the use of some of these BMPs. BMPs shall be designed such that the drain time is long enough to provide treatment, but short enough to provide storage for successive rainfall events and avoid the creation of nuisance conditions. The outlet structure for the post-construction BMP must not discharge more than the first half of the WQv or extended detention volume (EDv) in less than one-third of the drain time. The EDv is the volume of storm water runoff that must be detained by a structural post-construction BMP. The EDv is equal to 75 percent of the WQv for wet extended detention basins, but is equal to the WQv for all other BMPs listed in Table 2.

Part III.G.2.e

Table 2
Structural Post-Construction BMPs & Associated Drain (Drawdown) Times

Best Management Practice	Drain Time of WQv
Infiltration Basin^	24 - 48 hours
Enhanced Water Quality Swale	24 hours
Dry Extended Detention Basin*	48 hours
Wet Extended Detention Basin**	24 hours
Constructed Wetland (above permanent pool)+	24 hours
Sand & Other Media Filtration	40 hours
Bioretention Cell^	40 hours
Pocket Wetland#	24 hours
Vegetated Filter Strip	24 hours

* Dry basins must include forebay and micropool each sized at 10% of the WQv
** Provide both a permanent pool and an EDv above the permanent pool, each sized at 0.75 * WQv
+ Extended detention shall be provided for the full WQv above the permanent water pool.
^ The WQv shall completely infiltrate within 48 hours so there is no standing or residual water in the BMP.
# Pocket wetlands must have a wet pool equal to the WQv, with 25% of the WQv in a pool and 75% in marshes. The EDv above the permanent pool must be equal to the WQv.

The permittee may request approval from Ohio EPA to use alternative post-construction BMPs if the permittee can demonstrate that the alternative BMPs are equivalent in effectiveness to those listed in Table 2 above. Construction activities shall be exempt from this condition if it can be demonstrated that the WQv is provided within an existing structural post-construction BMP that is part of a larger common plan of development or if structural post-construction BMPs are addressed in a regional or local storm water management plan. A municipally operated regional storm water BMP can be used as a post-construction BMP provided that the BMP can detain the WQv from its entire drainage area and release it over a 24 hour period.

Transportation Projects The construction of new roads and roadway improvement projects by public entities (i.e., the state, counties, townships, cities, or villages) may implement post-construction BMPs in compliance with the current version (as of the effective date of this permit) of the Ohio Department of Transportation's "Location and Design Manual, Volume Two Drainage Design" that has been accepted by Ohio EPA as an alternative to the conditions of this permit.

Part III.G.2.e

Offsite Mitigation of Post-Construction Ohio EPA may authorize the offsite mitigation of the post-construction requirements of Part III.G.2.e of this permit on a case by case basis provided the permittee clearly demonstrates the BMPs listed in Table 2 are not feasible and the following criteria is met: (1) a maintenance agreement or policy is established to ensure operations and treatment in perpetuity; (2) the offsite location discharges to the same HUC-14 watershed unit; and (3) the mitigation ratio of the WQv is 1.5 to 1 or the WQv at the point of retrofit, whichever is greater. Requests for offsite mitigation must be received prior to receipt of the NOI applications.

Redevelopment Projects Sites that have been previously developed where no post-construction BMPs were installed shall either ensure a 20 percent net reduction of the site impervious area, provide for treatment of at least 20 percent of the WQ_v, or a combination of the two. A one-for-one credit towards the 20 percent net reduction of impervious area can be obtained through the use of pervious pavement and/or green roofs. Where projects are a combination of new development and redevelopment, the total WQv that must be treated shall be calculated by a weighted average based on acreage, with the new development at 100 percent WQv and redevelopment at 20 percent WQv.

Non-Structural Post-Construction BMPs The size of the structural post-construction can be reduced by incorporating non-structural post-construction BMPs into the design. Practices such as preserving open space will reduce the runoff coefficient and, thus, the WQv. Ohio EPA encourages the implementation of riparian and wetland setbacks. Practices which reduce storm water runoff include permeable pavements, green roofs, rain barrels, conservation development, smart growth, low-impact development, and other site design techniques contained in the Ohio Lake Commission's Balanced Growth Program (see www.glc.org/landuse/ohroundtable/ohiobgi.html). In order to promote the implementation of such practices, the Director may consider the use of non-structural practices to demonstrate compliance with Part III.G.2.e of this permit for areas of the site not draining into a common drainage system of the site, i.e., sheet flow from perimeter areas such as the rear yards of residential lots, for low density development scenarios, or where the permittee can demonstrate that the intent of pollutant removal and stream protection, as required in Part III.G.2.e of this permit is being addressed through non-structural post-construction BMPs based upon review and approval by Ohio EPA.

Part III.G.2.e

Use of Alternative Post-Construction BMPs This permit does not preclude the use of innovative or experimental post-construction storm water management technologies. However, the Director may require these practices to be tested using the protocol outlined in the Technology Acceptance Reciprocity Partnership's (TARP) Protocol for Stormwater Best Management Practice Demonstrations (see http://www.dep.state.pa.us/dep/deputate/pollprev/techservices/tarp).

The Director may require discharges from such structures to be monitored to ensure compliance with Part III.G.2.e of this permit. Permittees must request approval from Ohio EPA to use alternative post-construction BMPs if the permittee can demonstrate that the alternative BMPs are equivalent in effectiveness to those listed in Table 2 above. To demonstrate this equivalency, the permittee must show that the alternative BMP has a minimum total suspended solids (TSS) removal efficiency of 80 percent. Also, the WQv discharge rate from the practice must be reduced to prevent stream bed erosion and protect the physical and biological stream integrity unless there will be negligible hydrological impact to the receiving surface water of the State. The discharges will have a negligible impact if the permittee can demonstrate that one of the following four conditions exist:

i. The entire WQv is recharged to groundwater;

ii. The larger common plan of development or sale will create less than one acre of impervious surface;

iii. The project is a redevelopment project within an ultra-urban setting (i.e., a downtown area or on a site where 100 percent of the project area is already impervious surface and the storm water discharge is directed into an existing storm sewer system); or

iv. The storm water drainage system of the development discharges directly into a large river (fourth order or greater) or to a lake and where the development area is less than 5 percent of the watershed area upstream of the development site, unless a TMDL identified water quality problems in the receiving surface waters of the State.

Part III.G.2.e

The Director shall only consider the use of alternative BMPs on projects where the permittee can demonstrate that the implementation of the BMPs listed in Table 2 is infeasible due to physical site constraints that prevent the ability to provide functional BMP design. Alternative practices may include, but are not limited to, underground detention structures, vegetated swales and vegetated filter strips designed using water quality flow, natural depressions, rain barrels, permeable pavements green roofs, rain gardens, catch basin inserts, and hydrodynamics separators. The Director may also consider non-structural post-construction approaches where no local requirement for such practices exist.

Small Construction Activities. For all small land disturbance activities (which disturb one or more, but less than five acres of land and is not a part of a larger common plan of development or sale which will disturb five or more acres of land), a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed must be included in the SWP3. Structural measures should be placed on upland soils to the degree attainable. Such practices may include, but are not limited to: storm water detention structures (including wet basins); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). The SWP3 shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed pre-development levels.

f. **Surface Water Protection.** If the project site contains any streams, rivers, lakes, wetlands or other surface waters, certain construction activities at the site may be regulated under the CWA and/or state non-jurisdictional stream and wetland requirements. Sections 404 and 401 of the Act regulate the discharge of dredged or fill material into surface waters and the impacts of such activities on water quality, respectively. Construction activities in surface waters which may be subject to CWA regulation and/or state requirements include, but are not limited to: sewer line crossings, grading, backfilling or culverting streams, filling wetlands, road and utility line construction, bridge installation and installation of flow control structures. If the project contains streams, rivers, lakes or wetlands or possible wetlands, the permittee must contact the appropriate U.S. Army Corps of Engineers District Office. (CAUTION: Any area of seasonally wet hydric soil is a potential wetland - please consult the Soil Survey and list of hydric soils for your County, available at your county's Soil and Water Conservation District. If you have any questions about Section 401 water quality certification, please contact the Ohio Environmental Protection Agency, Section 401 Coordinator.)

Part III.G.2.f

U.S. Army Corps of Engineers (Section 404 regulation):
Huntington, WV District (304) 399-5210 (Muskingum River, Hocking River, Scioto River, Little Miami River, and Great Miami River Basins)
Buffalo, NY District (716) 879-4191 (Lake Erie Basin)
Pittsburgh, PA District (412) 395-7154 (Mahoning River Basin)
Louisville, KY District (502) 315-6733 (Ohio River)

Ohio EPA 401/404 and non-jurisdictional stream/wetland coordinator can be contacted at (614) 644-2001 (all of Ohio)

Concentrated storm water runoff from BMPs to natural wetlands shall be converted to diffuse flow before the runoff enters the wetlands. The flow should be released such that no erosion occurs downslope. Level spreaders may need to be placed in series, particularly on steep sloped sites, to ensure non-erosive velocities. Other structural BMPs may be used between storm water features and natural wetlands, in order to protect the natural hydrology, hydroperiod, and wetland flora. If the applicant proposes to discharge to natural wetlands, a hydrologic analysis shall be performed. The applicant shall attempt to match the pre-development hydroperiods and hydrodynamics that support the wetland. The applicant shall assess whether their construction activity will adversely impact the hydrologic flora and fauna of the wetland. Practices such as vegetative buffers, infiltration basins, conservation of forest cover, and the preservation of intermittent streams, depressions, and drainage corridors may be used to maintain wetland hydrology.

g. **Other controls.** The SWP3 must also provide BMPs for pollutant sources other than sediment. Non-sediment pollutant sources, which may be present on a construction site, include paving operations, concrete washout, structure painting, structure cleaning, demolition debris disposal, drilling and blasting operations, material storage, slag, solid waste, hazardous waste, contaminated soils, sanitary and septic wastes, vehicle fueling and maintenance activities, and landscaping operations.

   i. **Non-Sediment Pollutant Controls.** No solid or liquid waste, including building materials, shall be discharged in storm water runoff. The permittee must implement all necessary BMPs to prevent the discharge of non-sediment pollutants to the drainage system of the site or surface waters of the State. Under no circumstance shall concrete trucks wash out directly into a drainage channel, storm sewer or surface waters of the State. No exposure of storm water to waste materials is recommended.

   ii. **Off-site traffic.** Off-site vehicle tracking of sediments and dust generation shall be minimized.

Part III.G.2.g

iii. **Compliance with other requirements.** The SWP3 shall be consistent with applicable State and/or local waste disposal, sanitary sewer or septic system regulations, including provisions prohibiting waste disposal by open burning and shall provide for the proper disposal of contaminated soils to the extent these are located within the permitted area.

iv. **Trench and ground water control.** There shall be no turbid discharges to surface waters of the State resulting from dewatering activities. If trench or ground water contains sediment, it must pass through a sediment settling pond or other equally effective sediment control device, prior to being discharged from the construction site. Alternatively, sediment may be removed by settling in place or by dewatering into a sump pit, filter bag or comparable practice. Ground water dewatering which does not contain sediment or other pollutants is not required to be treated prior to discharge. However, care must be taken when discharging ground water to ensure that it does not become pollutant-laden by traversing over disturbed soils or other pollutant sources.

v. **Contaminated Sediment.** Where construction activities are to occur on sites with contamination from previous activities, operators must be aware that concentrations of materials that meet other criteria (is not considered a Hazardous Waste, meeting VAP standards, etc.) may still result in storm water discharges in excess of Ohio Water Quality Standards. Such discharges are not authorized by this permit. Appropriate BMPs include, but are not limited to:

- The use of berms, trenches, and pits to collect contaminated runoff and prevent discharges;
- Pumping runoff into a sanitary sewer (with prior approval of the sanitary sewer operator) or into a container for transport to an appropriate treatment/disposal facility; and
- Covering areas of contamination with tarps or other methods that prevent storm water from coming into contact with the material.

Operators should consult with Ohio EPA Division of Surface Water prior to seeking permit coverage.

h. **Maintenance.** All temporary and permanent control practices shall be maintained and repaired as needed to ensure continued performance of their intended function. All sediment control practices must be maintained in a functional condition until all up slope areas they control are permanently stabilized. The SWP3 shall be designed to minimize maintenance requirements. The applicant shall provide a description of maintenance procedures needed to ensure the continued performance of control practices.

Part III.G.2

i. **Inspections.** At a minimum, procedures in an SWP3 shall provide that all controls on the site are inspected at least once every seven calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24 hour period. The inspection frequency may be reduced to at least once every month if the entire site is temporarily stabilized or runoff is unlikely due to weather conditions (e.g., site is covered with snow, ice, or the ground is frozen). A waiver of inspection requirements is available until one month before thawing conditions are expected to result in a discharge if all of the following conditions are met: the project is located in an area where frozen conditions are anticipated to continue for extended periods of time (i.e., more than one month); land disturbance activities have been suspended; and the beginning and ending dates of the waiver period are documented in the SWP3. Once a definable area has been finally stabilized, you may mark this on your SWP3 and no further inspection requirements apply to that portion of the site. The permittee shall assign "qualified inspection personnel" to conduct these inspections to ensure that the control practices are functional and to evaluate whether the SWP3 is adequate and properly implemented in accordance with the schedule proposed in Part III.G.1.g of this permit or whether additional control measures are required.

Following each inspection, a checklist must be completed and signed by the qualified inspection personnel representative. At a minimum, the inspection report must include:

i. the inspection date;
ii. names, titles, and qualifications of personnel making the inspection;
iii. weather information for the period since the last inspection (or since commencement of construction activity if the first inspection) including a best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches), and whether any discharges occurred;
iv. weather information and a description of any discharges occurring at the time of the inspection;
v. location(s) of discharges of sediment or other pollutants from the site;
vi. location(s) of BMPs that need to be maintained;
vii. location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;
viii. location(s) where additional BMPs are needed that did not exist at the time of inspection; and
ix. corrective action required including any changes to the SWP3 necessary and implementation dates.

Part III.G.2.i

Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of or the potential for pollutants entering the drainage system. Erosion and sediment control measures identified in the SWP3 shall be observed to ensure that those are operating correctly. Discharge locations shall be inspected to ascertain whether erosion and sediment control measures are effective in preventing significant impacts to the receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site vehicle tracking.

The permittee shall maintain for three years following the submittal of a notice of termination form, a record summarizing the results of the inspection, names(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWP3 and a certification as to whether the facility is in compliance with the SWP3 and the permit and identify any incidents of non-compliance. The record and certification shall be signed in accordance with Part V.G. of this permit.

i. **When practices require repair or maintenance.** If the inspection reveals that a control practice is in need of repair or maintenance, with the exception of a sediment settling pond, it must be repaired or maintained within three days of the inspection. Sediment settling ponds must be repaired or maintained within 10 days of the inspection.

ii. **When practices fail to provide their intended function.** If the inspection reveals that a control practice fails to perform its intended function and that another, more appropriate control practice is required, the SWP3 must be amended and the new control practice must be installed within 10 days of the inspection.

iii. **When practices depicted on the SWP3 are not installed.** If the inspection reveals that a control practice has not been implemented in accordance with the schedule contained in Part III.G.1.g of this permit, the control practice must be implemented within 10 days from the date of the inspection. If the inspection reveals that the planned control practice is not needed, the record must contain a statement of explanation as to why the control practice is not needed.

Part III.G

3. **Approved State or local plans.** All dischargers regulated under this general permit must comply, except those exempted under state law, with the lawful requirements of municipalities, counties and other local agencies regarding discharges of storm water from construction activities. All erosion and sediment control plans and storm water management plans approved by local officials shall be retained with the SWP3 prepared in accordance with this permit. Applicable requirements for erosion and sediment control and storm water management approved by local officials are, upon submittal of a NOI form, incorporated by reference and enforceable under this permit even if they are not specifically included in an SWP3 required under this permit. When the project is located within the jurisdiction of a regulated municipal separate storm sewer system (MS4), the permittee must certify that the SWP3 complies with the requirements of the storm water management program of the MS4 operator.

4. **Exceptions.** If specific site conditions prohibit the implementation of any of the erosion and sediment control practices contained in this permit or site specific conditions are such that implementation of any erosion and sediment control practices contained in this permit will result in no environmental benefit, then the permittee shall provide justification for rejecting each practice based on site conditions. Exceptions from implementing the erosion and sediment control standards contained in this permit will be approved or denied on a case-by-case basis.

   The permittee may request approval from Ohio EPA to use alternative methods to satisfy conditions in this permit if the permittee can demonstrate that the alternative methods are sufficient to protect the overall integrity of receiving streams and the watershed. Alternative methods will be approved or denied on a case-by-case basis.

PART IV. NOTICE OF TERMINATION REQUIREMENTS

A. Failure to notify.

The terms and conditions of this permit shall remain in effect until a signed Notice of Termination (NOT) form is submitted. Failure to submit an NOT constitutes a violation of this permit and may affect the ability of the permittee to obtain general permit coverage in the future.

B. When to submit an NOT

1. Permittees wishing to terminate coverage under this permit must submit an NOT form in accordance with Part V.G. of this permit. Compliance with this permit is required until an NOT form is submitted. The permittee's authorization to discharge under this permit terminates at midnight of the day the NOT form is

submitted. Prior to submitting the NOT form, the permittee shall conduct a site inspection in accordance with Part III.G.2.i of this permit and have a maintenance agreement is in place to ensure all post-construction BMPs will be maintained in perpetuity.

2. All permittees must submit an NOT form within 45 days of completing all permitted land disturbance activities. Enforcement actions may be taken if a permittee submits an NOT form without meeting one or more of the following conditions:

   a. Final stabilization (see definition in Part VII) has been achieved on all portions of the site for which the permittee is responsible (including, if applicable, returning agricultural land to its pre-construction agricultural use);

   b. Another operator(s) has assumed control over all areas of the site that have not been finally stabilized;

   c. For residential construction only, temporary stabilization has been completed and the lot, which includes a home, has been transferred to the homeowner. (Note: individual lots without housing which are sold by the developer must undergo final stabilization prior to termination of permit coverage.); or

   d. An exception has been granted under Part III.G.4.

C. How to submit an NOT

Permittees must use Ohio EPA's approved NOT form. The form must be completed and mailed according to the instructions and signed in accordance with Part V.G of this permit.

PART V. STANDARD PERMIT CONDITIONS.

A. Duty to comply.

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of ORC Chapter 6111. and is grounds for enforcement action.

2. Ohio law imposes penalties and fines for persons who knowingly make false statements or knowingly swear or affirm the truth of a false statement previously made.

B. Continuation of an expired general permit.

An expired general permit continues in force and effect until a new general permit is issued.

Part V

C. Need to halt or reduce activity not a defense.

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to mitigate.

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty to provide information.

The permittee shall furnish to the director, within 10 days of written request, any information which the director may request to determine compliance with this permit. The permittee shall also furnish to the director upon request copies of records required to be kept by this permit.

F. Other information.

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the NOI, SWP3, NOT or in any other report to the director, he or she shall promptly submit such facts or information.

G. Signatory requirements.

All NOIs, NOTs, SWP3s, reports, certifications or information either submitted to the director or that this permit requires to be maintained by the permittee, shall be signed.

1. These items shall be signed as follows:

    a. For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

        i. A president, secretary, treasurer or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation; or

Part V.G.1.a

ii. The manager of one or more manufacturing, production or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA).

2. All reports required by the permits and other information requested by the director shall be signed by a person described in Part V.G.1 of this permit or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part V.G.1 of this permit and submitted to the director;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator of a well or well field, superintendent, position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The written authorization is submitted to the director.

Part V.G

3. Changes to authorization. If an authorization under Part V.G.2 of this permit is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.G.2 of this permit must be submitted to the director prior to or together with any reports, information or applications to be signed by an authorized representative.

H. Certification.

Any person signing documents under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

I. Oil and hazardous substance liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject under section 311 of the CWA or 40 CFR Part 112. 40 CFR Part 112 establishes procedures, methods and equipment and other requirements for equipment to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable surface waters of the State or adjoining shorelines.

J. Property rights.

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

K. Severability.

The provisions of this permit are severable and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

Part V

L. Transfers.

Ohio NPDES general permit coverage is transferable. Ohio EPA must be notified in writing sixty days prior to any proposed transfer of coverage under an Ohio NPDES general permit. The transferee must inform Ohio EPA it will assume the responsibilities of the original permittee transferor.

M. Environmental laws.

No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

N. Proper operation and maintenance.

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of SWP3s. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

O. Inspection and entry.

The permittee shall allow the director or an authorized representative of Ohio EPA, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and
3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

PART VI. REOPENER CLAUSE

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with construction activity covered by this permit, the permittee of such discharge may be required to obtain coverage under an individual permit or an alternative general permit in accordance with Part I.C of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to ORC Chapter 6111.

PART VII. DEFINITIONS

A. "Act" means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117 and Pub. L. 100-4, 33 U.S.C. 1251 et. seq.

B. "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices (both structural and non-structural) to prevent or reduce the pollution of surface waters of the State. BMP's also include treatment requirements, operating procedures and practices to control plant and/or construction site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

C. "Commencement of construction" means the initial disturbance of soils associated with clearing, grubbing, grading, placement of fill or excavating activities or other construction activities.

D. "Concentrated storm water runoff" means any storm water runoff which flows through a drainage pipe, ditch, diversion or other discrete conveyance channel.

E. "Director" means the director of the Ohio Environmental Protection Agency.

F. "Discharge" means the addition of any pollutant to the surface waters of the State from a point source.

G. "Disturbance" means any clearing, grading, excavating, filling, or other alteration of land surface where natural or man-made cover is destroyed in a manner that exposes the underlying soils.

H. "Final stabilization" means that either:

1. All soil disturbing activities at the site are complete and a uniform perennial vegetative cover (e.g., evenly distributed, without large bare areas) with a density of at least 70 percent cover for the area has been established on all unpaved areas and areas not covered by permanent structures or equivalent stabilization measures (such as the use of landscape mulches, rip-rap, gabions or geotextiles) have been employed. In addition, all temporary erosion and sediment control practices are removed and disposed of and all trapped sediment is permanently stabilized to prevent further erosion; or

2. For individual lots in residential construction by either:

   a. The homebuilder completing final stabilization as specified above or

Part VII.H.2

b. The homebuilder establishing temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for and benefits of, final stabilization. (Homeowners typically have an incentive to put in the landscaping functionally equivalent to final stabilization as quick as possible to keep mud out of their homes and off sidewalks and driveways.); or

3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its pre-construction agricultural use. Areas disturbed that were previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters of the State and which are not being returned to their pre-construction agricultural use, must meet the final stabilization criteria in (1) or (2) above.

I. "Individual Lot NOI" means a Notice of Intent for an individual lot to be covered by this permit (see parts I and II of this permit).

J. "Larger common plan of development or sale"- means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

K. "MS4" means municipal separate storm sewer system which means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains) that are:

1. Owned or operated by the federal government, state, municipality, township, county, district(s) or other public body (created by or pursuant to state or federal law) including special district under state law such as a sewer district, flood control district or drainage districts or similar entity or a designated and approved management agency under section 208 of the act that discharges into surface waters of the State; and

2. Designed or used for collecting or conveying solely storm water,

3. Which is not a combined sewer and

4. Which is not a part of a publicly owned treatment works.

L. "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits and enforcing pretreatment requirements, under sections 307, 402, 318 and 405 of the CWA. The term includes an "approved program."

Part VII

M. "NOI" means notice of intent to be covered by this permit.

N. "NOT" means notice of termination.

O. "Operator" means any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or

2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with an SWP3 for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).

As set forth in Part II.A, there can be more than one operator at a site and under these circumstances; the operators shall be co-permittees.

P. "Owner or operator" means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

Q. "Permanent stabilization" means the establishment of permanent vegetation, decorative landscape mulching, matting, sod, rip rap and landscaping techniques to provide permanent erosion control on areas where construction operations are complete or where no further disturbance is expected for at least one year.

R. "Percent imperviousness" means the impervious area created divided by the total area of the project site.

S. "Point source" means any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or the floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

T. "Qualified inspection personnel" means a person knowledgeable in the principles and practice of erosion and sediment controls, who possesses the skills to assess all conditions at the construction site that could impact storm water quality and to assess the effectiveness of any sediment and erosion control measures selected to control the quality of storm water discharges from the construction activity.

Part VII

U. "Rainwater and Land Development" is a manual describing construction and post-construction best management practices and associated specifications. A copy of the manual may be obtained by contacting the Ohio Department of Natural Resources, Division of Soil & Water Conservation.

V. "Riparian area" means the transition area between flowing water and terrestrial (land) ecosystems composed of trees, shrubs and surrounding vegetation which serve to stabilize erodible soil, improve both surface and ground water quality, increase stream shading and enhance wildlife habitat.

W. "Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

X. "Sediment settling pond" means a sediment trap, sediment basin or permanent basin that has been temporarily modified for sediment control, as described in the latest edition of the Rainwater and Land Development manual.

Y. "State isolated wetland permit requirements" means the requirements set forth in Sections 6111.02 through 6111.029 of the ORC.

Z. "Storm water" means storm water runoff, snow melt and surface runoff and drainage.

AA. "Surface waters of the State" or "water bodies" means all streams, lakes, reservoirs, ponds, marshes, wetlands or other waterways which are situated wholly or partially within the boundaries of the state, except those private waters which do not combine or effect a junction with natural surface or underground waters. Waters defined as sewerage systems, treatment works or disposal systems in Section 6111.01 of the ORC are not included.

BB. "SWP3" means storm water pollution prevention plan.

CC. "Temporary stabilization" means the establishment of temporary vegetation, mulching, geotextiles, sod, preservation of existing vegetation and other techniques capable of quickly establishing cover over disturbed areas to provide erosion control between construction operations.

DD. "Water Quality Volume (WQ_v)" means the volume of storm water runoff which must be captured and treated prior to discharge from the developed site after construction is complete. WQ_v is based on the expected runoff generated by the mean storm precipitation volume from post-construction site conditions at which rapidly diminishing returns in the number of runoff events captured begins to occur.

To be recorded with Deed Records –R.C. § 317.08

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into pursuant to Ohio Revised Code ("R.C.") 5301.80 to 5301.92 by James Brent Hayes (the "Owner" and "Holder"), having an address of 758 West Union Street, Athens, Ohio 45701 and the Ohio Environmental Protection Agency ("Ohio EPA"), as a non-holder agency, for the purpose of subjecting certain property ("the Covenant Area", defined below) to the activity and use limitations set forth herein.

WHEREAS, the Owner is the owner in fee of certain real property, which contains the Covenant Area and is situated in Athens County, Ohio;

WHEREAS, in order to protect the quality of surface waters located on the real property, the Ohio EPA and the Owner have agreed, pursuant to an environmental enforcement action brought by the State of Ohio, that the Owner shall hold an environmental covenant in and to a portion of the Owner's real property, which is more specifically identified in **Exhibit A** and **Exhibit B,** attached hereto and incorporated by reference herein (the "Property"); and

WHEREAS, this agreement is documented in a Consent Order entered into by the State of Ohio and James Brent Hayes and J.B. Hayes Excavating & Pipeline, Inc., effective the _____ day of _____, 2011; and

WHEREAS, Owner proposes to fulfill its obligation to ensure the Covenant Area is protected in perpetuity by this Environmental Covenant.

Now therefore, Owner and Holder and Ohio EPA agree to the following:

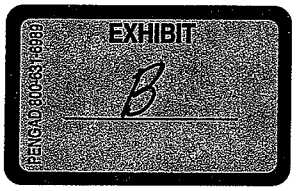
1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to R.C. 5301.80 to 5301.92.

2. Covenant Area. The Covenant Area shall place a perpetual, total fifteen hundred linear feet easement (which will be in at least two segments, separated by, at most, a seventy-five foot segment) along the bank of the stream which runs adjacent to the Oakmont Phase III Site, at a width of fifty (50) feet from the top of the stream bank on each side of the stream, in Athens County, Ohio, and more particularly described in **Exhibit A** and **Exhibit B** attached hereto and hereby incorporated by reference herein ("the Covenant Area").

3. Owner is the fee simple owner of the Covenant Area.

4. The Owner is the Holder of this Environmental Covenant.

5. Activity and Use Limitations. As part of the Consent Order entered into by the State of Ohio and James Brent Hayes, effective the _____ day of _____, 2011, Owner hereby imposes the following activity and use limitations on the Covenant Area and agrees to comply with such limitations:



a. Any division or subdivision of the Covenant Area is prohibited;

b. Commercial development or industrial activity on the Covenant Area is prohibited;

c. The placement or construction of any man-made modifications such as buildings, billboards, structures, fences, roads and parking lots, either temporary or permanent, on the Covenant Area is prohibited, other than construction activities that are authorized by Ohio EPA;

d. There shall be no filling, excavating, or removal of top soil, sand, gravel, or rock, minerals or other materials on or at the Covenant Area, nor any building of roads or change in topography of the Covenant Area in any manner, other than that caused by the forces of nature, other than activities authorized by the Ohio EPA;

e. The control, management and eradication of animal or plant species on the Covenant Area must comply with State and Federal requirements and manufacturer guidelines;

f. No power or petroleum transmission lines may be constructed, nor may any other interests in the Covenant Area be granted for this purpose. However, the Owner reserves the right to maintain and repair telephone, electric, water, wells, or other utility lines or mains on existing easements needed to provide for the needs of the Owner, successors or assigns. In addition, the Owner reserves the right to undertake activities necessary to service and maintain nearby rail structures in accordance with applicable laws and standards. The area affected by the repair work shall be the minimum necessary to accomplish the task. Upon completion of all construction for such utilities or rail structures, the area shall be restored to its previous state, except in the case where rail safety laws or standards require otherwise, in which case the area shall be restored to its previous state to the greatest extent possible;

g. No towers for communication or otherwise shall be constructed on the Covenant Area;

h. Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or pesticides on the Covenant Area is prohibited, other than the removal or control of invasive and noxious species and control activities that are authorized by the Ohio EPA or except as may be required in connection with activities covered by paragraph 5(f);

i. Owner shall not store or place garbage, trash, machinery and other unsightly material on the Covenant Area;

j. Use of vehicles for recreation, including snowmobiles, all terrain vehicles or other motorized vehicles, shall not be permitted on the Covenant Area;

k. Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area, other than as part of activities that are authorized by the Ohio EPA.

6. Breach. If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Covenant Area, or any other person constitutes a breach of the activity and use limitations, Owner or Transferee shall notify the Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action.

7. Running with the Land. This Environmental Covenant, including the activity and use limitations set forth in Paragraph 5 herein, shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to R.C. § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Covenant Area including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

8. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to R.C. §5301.91 or other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any provision of this Covenant. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law in order to protect public health or safety or the environment.

9. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees and the Holder or its agents the right of access to the Covenant Area in connection with the implementation or enforcement of this Environmental Covenant. Ohio EPA shall provide at least 24 hours advance notice to Owner before accessing the property, shall present proper credentials when seeking access, shall participate in a site safety briefing to be conducted by Owner and shall further make reasonable efforts to comply with appropriate safety instructions provided by Owner and to avoid disruption of rail operations.

10. Compliance Reporting. Upon the request of Ohio EPA, Owner and any Transferee shall submit to Ohio EPA written documentation verifying compliance with this Environmental Covenant. Such a request shall be made no more frequently than once a year.

11. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Covenant Area or any portion of the Covenant Area shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this

Environmental Covenant. The notice shall be substantially in the following form:

> THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED, 20__, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE ATHENS_COUNTY RECORDER ON THE _____ DAY OF _____, 20__, IN [DOCUMENT ____, *or* BOOK___, PAGE ____,]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS.
>
> [In the instrument conveying the property interest, the above text shall be followed by a restatement of the restrictions from Paragraph 5 of this Covenant.]

Owner shall notify Ohio EPA within ninety (90) days after each conveyance of an interest in any portion of the Covenant Area. Owner's notice shall include the name, address and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, a survey map that shows the boundaries of the property being transferred, and a copy of the original document that imposed restrictions on the Covenant Area.

12. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

a. that the Owner is the sole owner of the Covenant Area;

b. that the Owner holds fee simple title to the Covenant Area that is free, clear and unencumbered OR the Owner holds fee simple title to the Covenant Area that is free, clear and unencumbered with the exception of preexisting interests of record as set forth in Exhibit C[1];

c. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

d. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and

e. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

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1. For interests such as preexisting mortgages, Ohio EPA will likely seek to require the owner to obtain an agreement of the mortgage holder to subordinate the mortgage to the covenant because if the property is foreclosed upon, the covenant will not prevail against a preexisting mortgage.

13. Amendment. This Environmental Covenant may be amended only by consent of all of the following: the Owner or a Transferee; the Holder; and the Ohio EPA, pursuant to R.C. § 5301.90 and other applicable law. The term "Amendment" as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitation when there is at least one activity and use limitation remaining.

This Environmental Covenant may be amended only by a written instrument duly executed by the Director of Ohio EPA and the Owner or Transferee of the Property and the Holder, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Athens County Recorder's Office, and shall provide a file and date-stamped copy of the recorded instrument to the Ohio EPA.

14. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

16. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, the Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the property, with the Athens County Recorder's Office.

17. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Covenant Area with the Athens County Recorder. This Environmental Covenant shall remain in effect in perpetuity as provided in R.C. 5301.89.

18. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA, the City of Athens, the Holder, each person holding a recorded interest in the Property, and any other person designated by Ohio EPA.

19. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

Manager, Storm Water and Enforcement Section
Division of Surface Water
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049

Environmental Manager
Division of Surface Water
Ohio EPA
Southeast District Office
2195 Front Street
Logan, Ohio 43138

20. Counterparts. This Covenant may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Covenant.

The undersigned representative of the Owner/Holder represents and certifies that he or she is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

_____ _____

OWNER/HOLDER DATE

James Brent Hayes
758 West Union Street
Athens, Ohio 45701

State of _____)
) ss:
County of _____)

Before me, a notary public, in and for said county and state, personally appeared, a duly authorized representative of , who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of .

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____ day of _____, 20__.

_____

Notary Public

OHIO ENVIRONMENTAL PROTECTION AGENCY

_____

By: _____
Director

Date: _____

State of Ohio)
) ss:
County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared, the Director of Ohio EPA, who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____ day of _____, 20__.

_____
Notary Public