

OHIO E.P.A.  
JAN 19 2005  
ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

**In the matter of:**

M/I Homes of Central Ohio, LLC &  
Cheshire Road, LLC  
3 Easton Oval, Suite 540  
Columbus, Ohio 43219

Director's Final Findings  
and Orders

Respondents

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to M/I Homes of Central Ohio, LLC and Cheshire Road, LLC ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03, 6109.04 and 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondents and their successors in interest liable under Ohio law. No change in ownership of the Respondents or of their Facility shall in any way alter Respondents' obligations under these Orders.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 6111 and 6109 and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

File No. \_\_\_\_\_ Date \_\_\_\_\_  
Ohio Environmental Protection Agency  
By: Michael A. Shapiro Date: 1/19/05

## **I. Cheshire Crossing**

### **A. Background/Jurisdictional Issues: Cheshire Crossing**

1. Respondent M/I Homes of Central Ohio, LLC, (hereinafter referred to as M/I Homes) an Ohio limited liability company and residential developer in Central Ohio and Respondent Cheshire Road, LLC, an Ohio limited liability company of which M/I Homes is the managing member, collectively are the developers of Cheshire Crossing, a 300 home residential community in Delaware County located at Cheshire Road and U.S. Route 23 North, in the City of Delaware, Delaware County, Ohio.
2. The development of Cheshire Crossing required the installation of sanitary sewer (hereinafter referred to as the Cheshire Road Sanitary Trunk Sewer) to convey sewage to the City of Delaware's wastewater treatment plant (WWTP). Because of the location of the proposed community relative to the WWTP, the Cheshire Road Sanitary Trunk Sewer crosses four tributaries of the Olentangy River and employs an aerial crossing of the Olentangy River itself. Respondents M/I Homes and Cheshire Road, LLC proposed to accomplish this by suspending the sewer line from a pedestrian foot bridge that would be constructed over the Olentangy River.
3. The Cheshire Road Sanitary Trunk Sewer is a "disposal system" as defined in ORC Section 6111.01(G).
4. Ohio Administrative Code ("OAC") Rule 3745-42-02 (formally 3745-31-02 at the time of this project) requires the Director's issuance of a PTI prior to the installation of a new disposal system.
5. The Olentangy River and its tributaries are defined as "waters of the state" by ORC Section 6111.01. Further, the Olentangy River is designated as a State Scenic River in this section of the river.
6. Because the installation of the foot bridge would involve the discharge of dredged or fill material into a "navigable water" as defined by 33 USC Section 1362, a 401 Water Quality Certification from the State of Ohio was required under Section 401 of the Clean Water Act as well as a permit from the United States Army Corps of Engineers (hereinafter referred to as the "Corps") under Section 404 of the Clean Water Act.
7. Mr. Joe Pingue, a private individual, obtained, via contract with Respondent M/I Homes, a 401 Certification from Ohio EPA on July 22, 2002 and the 404 Permit

on July 12, 2002. The 404 permit became effective when the 401 was issued on July 22, 2002. Activities conducted in furtherance of construction the foot bridge/sewer line were required to comply with the 401 Certification/404 Permit as of those dates.

8. Because construction of Cheshire Crossing constitutes a construction site, as defined in 40 CFR 122, which disturbs more than five (5) acres of land (the standard at the time of the project's permitting), Respondents M/I Homes and Cheshire Road, LLC were required to submit a Notice of Intent (NOI) to obtain coverage under the Ohio EPA Authorization for Storm Water Discharges Associated with Construction Activity Under the National Pollutant Discharge Elimination System (Storm Water General Permit).
9. On or about June 6, 2002, Respondent M/I Homes submitted a Notice of Intent (NOI) to obtain coverage under the Storm Water General Permit. Ohio EPA granted Respondent M/I Homes coverage under General Permit No. OHR100000 (facility permit number OHR111314) effective June 6, 2002. Respondent was required to comply with the terms and conditions of the Storm Water General Permit as of that date. Respondent M/I Homes was also required to develop a Storm Water Pollution Prevention Plan (SWP3) under that permit and comply with the approved SWP3.
10. Respondent M/I Homes' Storm Water General Permit covered areas within the residential development of Cheshire Crossing as well as the areas around the aerial sewer crossing.
11. Pursuant to ORC Section 6111.04, no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit.
12. ORC Section 6111.07 (A) prohibits any person from violating, or failing to perform, any duty imposed by ORC Sections 6111.01 to 6111.08, or violating any rule issued by the Director pursuant to those sections, including OAC Rule 3745-31-02 (now OAC Rule 3745-42-02).
13. With respect to the Orders to address violations cited under ORC Chapter 6111 and the rules promulgated thereunder, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

## **B. Permit To Install (PTI) Violations**

14. PTI Application 01-10243 and detailed plans were received at Ohio EPA Central District Office on September 24, 2002 for the installation of a sanitary sewer extension to serve Cheshire Crossing Section 1. The PTI application, which was submitted by Respondent Cheshire Road, LLC, proposed the installation of approximately 15,209 lineal feet of sanitary sewer ranging from 8 to 30-inch diameter pipe. As indicated in Finding No. 2, the sewer alignment involved five stream crossings including an aerial crossing of the Olentangy River.
15. On October 9, 2002 an inspection of Cheshire Crossing Section 1 was conducted by Ohio EPA Central District Office. The inspection revealed that the installation of the sanitary sewers was substantially complete with the exception of the work remaining on the final 200 feet of the aerial crossing of the Olentangy River. The installation of this sewer line had begun prior to approval of the plans and issuance of a PTI by Ohio EPA. It is estimated that construction of the sanitary sewer began sometime during Spring, 2002.
16. Respondents M/I Homes' and Cheshire Road LLC's installation of a new disposal system without a PTI was in violation of OAC Rule 3745-31-02 and ORC Section 6111.07.
17. On October 25, 2002, Ohio EPA met with Respondent M/I Homes to discuss the sewer crossing and the non compliance with Ohio's PTI requirements. At that meeting, Respondent M/I Homes was informed that construction should cease until a PTI was received. This was reiterated in an October 30, 2002, certified letter to Respondent M/I Homes.
18. Respondent M/I Homes and Respondent Cheshire Road, LLC continued construction of the Cheshire Crossing Sanitary Trunk Sewer. Pursuant to ORC Section 6111.07(A), each day of violation is a separate violation.
19. Ohio EPA issued PTI No. 01-10243 to Cheshire Road LLC on May 1, 2003.

## **C. Storm Water Violations**

20. Part III.C.5.b.i.(B)(1) of the Storm Water General Permit and Respondent M/I Homes' SWP3 require that sediment control structures be functional throughout earth disturbing activity; and within seven (7) days from the start of grubbing; and that the controls continue to function until the upslope development area is restabilized. Inspections on October 29, 2002 and November 4, 2002 revealed that in the area of the aerial crossing, sediment and erosion controls were not installed within seven (7) days from the start of grubbing and/or did not remain

functional in violation of the Storm Water General Permit, the Respondent M/I Homes' SWP3, and ORC Sections 6111.04 and 6111.07.

21. Respondent M/I Homes' SWP3 provides that "untreated and sediment-laden runoff shall not flow off the site without being directed through a control practice." Inspections conducted by Ohio EPA on October 29, 2002, December 10, 2002 and December 11, 2002 revealed dewatering and other construction activities from the project site that resulted in a turbid discharge directly into the Olentangy River in violation of Respondent M/I Homes' SWP3, the Storm Water General Permit, and ORC Sections 6111.04 and 6111.07.
22. Part III.C.5.b.i.(A) of the Ohio EPA Storm Water General Permit requires the initiation of appropriate vegetative practices on all disturbed areas within seven (7) days if they are to remain dormant (undisturbed) for more than forty-five (45) days. The inspection of the Cheshire Crossing Section 1, Part 1 area on January 3, 2003 indicated that disturbed areas had been left dormant for more than 45 days without vegetative cover in violation of the Storm Water General Permit, and ORC Sections 6111.04 and 6111.07.
23. Respondent M/I Homes' SWP3 requires the construction of a stable construction access and stone causeway within the Olentangy riverbed. The causeway is required to surround the areas where the bridge and sewer line pillars will be located. Inspections on October 29, November 1, November 4, November 11 and November 13, December 10, December 11 and December 13, 2002, revealed that the stone causeway was not constructed so as to surround the area where the bridge and sewer pillars were being constructed. As a consequence of this failure, equipment was observed to be driving on the river bed on at least November 13, 2002 and December 11, 2002 causing the release of sediment contaminated runoff from the site in violation of Respondent M/I Homes' SWP3, the Storm Water General Permit, and ORC Sections 6111.04 and 6111.07.
24. Part III.C.2 of the Storm Water General Permit requires that the SWP3 be made immediately available upon the request of the Director during working hours. Part III.C.2 of the Storm Water General Permit requires that the SWP3 be signed in accordance with Part V.G. of the Storm Water General Permit.
25. Ohio EPA requested a copy of the SWP3 in a meeting on December 16, 2002. On December 18, 2002, Ohio EPA's Central District Office received a letter transmitting the SWP3. The plan was unsigned and undated in violation of Part III.C.2 of the Storm Water General Permit and ORC Section 6111.07.

**D. 401 Water Quality Violations**

26. The 401 Water Quality Certification (401 Certification) for this project, issued July 22, 2002, requires that "steps must be employed throughout the course of this project to avoid the creation of unnecessary turbidity which may degrade water quality or adversely affect aquatic life outside the project area. As set forth in Finding No. 23, Ohio EPA observed, on at least November 13, 2002 and December 11, 2002 equipment driving on the river bed causing the release of sediment contaminated runoff from the site in violation of the 401 Certification, ORC Sections 6111.04 and 6111.07. Further, Respondent M/I Homes' dewatering activities detailed in Finding No. 21 in which Ohio EPA identified turbid discharges directly into the Olentangy River is also a violation of the 401 Certification, ORC Sections 6111.04 and 6111.07.

**E. Drinking Water Violations**

27. An application (243714) for Plan Approval for the installation of a drinking water distribution system for Cheshire Crossing Section 1 was received by Ohio EPA's Central District Office from Respondent M/I Homes' consultant, EMH&T on December 20, 2002. The application sought approval pursuant to ORC Section 6109.07 for the installation of approximately 3,355 lineal feet of 8-inch pipe.
28. The installation of the drinking water distribution system had been completed prior to an application from Respondent M/I Homes was received or approved by Ohio EPA.
29. Respondent M/I Homes' installation of a new drinking water distribution system without a plan approval is in violation of ORC Sections 6109.07(A) and 6109.31.
30. The Director of Ohio EPA issued a Plan Approval pursuant to ORC Section 6109.07 on January 29, 2003.

**II. Fieldstone Sections 1 and 2**

**A. Background/Jurisdictional Issues: Fieldstone Sections 1 and 2**

31. Respondent M/I Homes is the developer of Fieldstone Sections 1 and 2 (Fieldstone), a 177 home residential community located at the southwest corner of Havens Corners Road and Waggoner Road, Jefferson Township, Franklin County, Ohio.

The development of Fieldstone required the installation of sanitary sewer (hereinafter referred to as the Fieldstone Sanitary Sewer) to convey sewage to the Jefferson Sewer and Water District WWTP.

The Fieldstone Sanitary Sewer is a "disposal system" as defined in ORC Section 6111.01(G).

34. Ohio Administrative Code ("OAC") Rule 3745-42-02 (formally 3745-31-02 at the time of this project) requires the Director's issuance of a PTI prior to the installation of a new disposal system.
35. The Blacklick Creek and its tributaries border portions of the site. Blacklick Creek and its tributaries are defined as "waters of the state" by ORC Section 6111.01.
36. Construction of Fieldstone constitutes a construction site, as defined in 40 CFR 122, which disturbs more than one (1) acre of land. As such, Respondent M/I Homes was required to submit a Notice of Intent (NOI) to obtain coverage under the Ohio EPA Authorization for Storm Water Discharges Associated with Construction Activity Under the National Pollutant Discharge Elimination System (Storm Water General Permit).
37. On or about July 7, 2003, Respondent M/I Homes submitted a Notice of Intent (NOI) to obtain coverage under the Storm Water General Permit. Ohio EPA granted Respondent M/I Homes coverage under General Permit No. OHC000002 (facility permit number 4GC00150\*AG) effective July 10, 2003. Respondent M/I Homes was required to comply with the terms and conditions of the Storm Water General Permit as of that date. Respondent was also required to develop a SWP3 under that permit and comply with the requirements of the SWP3.
38. Pursuant to ORC Section 6111.04, no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit.  
  
ORC Section 6111.07 (A) prohibits any person from violating, or failing to perform, any duty imposed by ORC Sections 6111.01 to 6111.08, or violating any rule issued by the Director pursuant to those sections, including OAC Rule 3745-31-02 (now OAC Rule 3745-42-02).
40. With respect to the Orders to address violations cited under ORC Chapter 6111 and the rules promulgated thereunder, the Director has given consideration to,

and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

#### **B. Permit To Install (PTI) Violations**

41. PTI Application 01-10737 and detailed plans were received at the Ohio EPA Central District Office on September 25, 2003, for the installation of a sanitary sewer extension to serve Fieldstone Section 1. The PTI application proposed the installation of approximately 3,182 lineal feet of sanitary sewer ranging from 8 to 10-inch diameter PVC and ductile iron pipe.
42. On October 10, 2003, an inspection of Fieldstone was conducted by Ohio EPA Central District Office. The inspection revealed that the installation of the Fieldstone Sanitary Sewer was complete. The installation of this sanitary sewer began prior to the October 9, 2003, approval of the plans and issuance of a PTI by Ohio EPA.
43. Respondent M/I Homes' installation of a new disposal system without a PTI is in violation of OAC Rule 3745-31-02 (now OAC rule 3745-42-02) and ORC Section 6111.07.
44. On November 12, 2003, Respondent was notified via certified mail that the Fieldstone Sanitary Sewer installation was in violation of ORC Chapter 6111 and OAC Rule 3745-31-02.

#### **C. Storm Water Violations**

45. Part III.A. of the Storm Water General Permit specifies "For a multi-phase construction project, a separate NOI shall be submitted when a separate SWP3 will be prepared for subsequent phases." The NOI for this project was submitted under the name of "Schneider Farms, Section 1" and the site map showed the area currently under construction activity. The SWP3 referred to the site as Fieldstone, Sections 1 and 2. During an October 10, 2003, inspection it was noted the SWP3 on site specifically had Section 2 crossed out.
46. Part III, A. of the Storm Water General Permit also specifies "the SWP3 shall identify potential sources of pollution which may reasonably be expected to affect the quality of the storm water discharges associated with construction activities. In addition the SWP3 shall describe and ensure the implementation of best management practices (BMPs) that reduce pollutants in storm water

discharges during construction". Two temporary stream crossings were not addressed in the SWP3 reviewed on October 10, 2003. There were no drawings, specifications, cross sections, or other descriptions of the proper methods for construction of these temporary stream crossings, though their location was indicated on the SWP3.

47. Part III, A of the Storm Water General Permit requires that the SWP3 be prepared "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 had not been signed by the preparer of the plan, or some other responsible official involved in the preparation of the plan in violation of the Storm Water General Permit, and ORC Section 6111.07.
48. Part III, C. 1. of the Storm Water General Permit specifies that the SWP3 be signed and retained on site during working hours. The SWP3 on-site had not been signed by a responsible corporate officer.
49. Part III, C. 2. a. of the Storm Water General Permit requires that the SWP3 "shall be made available immediately upon request . . . during working hours". The copy of the SWP3 made available on October 10, 2003, specifically had Section 2 visibly crossed off of the plan in violation of the Storm Water General Permit, and ORC Section 6111.07.

Part III.G.1.I.vi of the Storm Water General Permit indicates that the SWP3 must show the location of all erosion and sediment control practices. The SWP3 failed to prescribe and show the location of erosion and sediment control practices for the temporary stream crossings in violation of the Storm Water General Permit, and ORC Section 6111.07.

51. Part III, G. 2. of the General Storm Water Permit requires that the SWP3 clearly describe for each major construction activity identified the appropriate control measures and the general timing or sequence during the construction process that these controls will be implemented. The SWP3 identified that temporary stream crossings were contemplated, but was silent as to their design, when they were to be constructed, and the materials to be used for their construction in violation of the Storm Water General Permit, and ORC Section 6111.07.

Respondent M/I Homes' SWP3 provides that "untreated and sediment-laden runoff shall not flow off the site without being directed through a control practice." The inspection conducted by Ohio EPA on October 10, 2003, revealed dewatering activities from the project site that resulted in a turbid discharge directly into a tributary of Blacklick Creek in violation of the SWP3, the Storm

Water General Permit, and ORC Sections 6111.04 and 6111.07.

**D. Drinking Water Violations**

53. An inspection of Fieldstone conducted by Ohio EPA Central District Office on October 10, 2003, revealed that the installation of the drinking water distribution system was ongoing. To date, Ohio EPA has not received plans as required by ORC Section 6109.07 for Fieldstone Phase I.
54. Respondent M/I Homes' installation of a new drinking water distribution system for Fieldstone Phase I without a plan approval is in violation of ORC Sections 6109.07(A) and 6109.31.
55. Respondent M/I Homes submitted plans for a new drinking water distribution system for Fieldstone Phase II on December 18, 2003. Ohio EPA issued a plan approval on February 3, 2004.

**V. ORDERS**

- 1 Respondents shall not install sewerage or treatment works for sewage disposal or new disposal systems, including, but not limited to, sanitary sewers, at any location in Ohio without first receiving prior approval from the Director as required by law. Respondents may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondents have maintained compliance with this Order for a period of three hundred and sixty five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section VI. of these Orders.
2. Respondents shall not install or make any modifications to a public water system at any location in Ohio without first receiving prior approval from the Director as required by law. Respondents may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondents have maintained compliance with this Order for a period of three hundred and sixty five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section VI. of these Orders.
3. Within 45 days of the effective date of these Orders, Respondent M/I Homes shall submit as built detail plans to the Ohio EPA Central District Office, Division of Drinking and Ground Water, Drinking Water Section, for the Field Stone Subdivision Section 1 water supply mains in accordance with ORC Section 6109.07 and OAC Chapter 3745-91.

4. If Ohio EPA should require any revisions to the detail plans (Order No. 3), Respondent M/I Homes shall make any changes or modifications and/or submit any additional information to Ohio EPA Central District Office, Division of Drinking and Ground Water, Drinking Water Section, within thirty (30) days of receiving a comment letter from Ohio EPA.
5. Within ninety (90) days of the effective date of these Orders, Respondent M/I Homes shall develop an Environmental Compliance Response Plan for Construction Activities that addresses, at a minimum, the following elements:
  - a. A plan for education and training for Respondent M/I Homes' staff and contractors on construction storm water issues and compliance, 401 Water Quality Certifications, and PTI and Plan Approval requirements under ORC Chapters 6111 and 6109, along with a schedule for implementation of the plan. The plan, once accepted by Ohio EPA shall be implemented according to the agreed upon schedule;
  - b. The designation of a contact at the level of Vice President or higher within Respondent M/I Homes that will serve as a liaison to Ohio EPA staff to deal with regulatory and compliance issues commonly encountered in residential development including storm water issues, 401/404 permitting, PTI/Plan approvals for sewers/drinking water lines;
  - c. Response plans that Respondent M/I Homes will execute upon learning of or being informed of potential violations.
  - d. An evaluation of Respondent M/I Homes' contractual relationship with its contractors, and identification of means by which compliance can be facilitated through those contracts. Items to be evaluated include, but are not limited to, evaluation of the use of penalty clauses in the case of noncompliance, requiring co-permittee status by contractors, and other means for engaging contractor cooperation in maintaining compliance.
6. Respondent M/I Homes shall pay to the Ohio EPA the amount of \$100,000.00 in settlement of the Ohio EPA's claim for civil penalties. Respondent M/I Homes shall satisfy this penalty in the following manner:
  - a. Within thirty (30) days of the effective date of these Orders, Respondent M/I Homes shall pay \$12,800.00 in settlement of Ohio EPA's claim for civil penalties which may be assessed pursuant to ORC Chapter 6109., for the violations cited herein. Payment shall be made by tendering a certified check drawn to the "Treasurer, State of Ohio" and submitted to Fiscal Administration, General Accounting Section, Ohio EPA, P. O. Box 1049,

Columbus, Ohio 43216-1049, for deposit into the Drinking Water Protection Fund established by ORC Section 6109.30.

- b. Within thirty (30) days of the effective date of these Orders, Respondent M/I Homes shall pay \$17,200.00 in settlement of Ohio EPA's claim for civil penalties which may be assessed pursuant to Chapter 6111 of the Ohio Revised Code by tendering a check payable to the "Treasurer, State of Ohio" to Fiscal Administration, General Accounting Section, P. O. Box 1049, Columbus, Ohio 43216-1049. The penalty for violations of Chapter 6111 associated with the Fieldstone development under this paragraph is \$10,000. The penalty for violations of Chapter 6111 associated with the Cheshire project under this paragraph is \$7,200.

A photocopy of the check shall be sent to Ohio EPA Central District Office at the address listed below:

Ohio Environmental Protection Agency  
Central District Office - Division of Surface Water  
3232 Alum Creek Drive  
Columbus, Ohio 43207-3417 (Attn: Mike Gallaway)

7. In lieu of payment of the remaining \$70,000.00 of the civil penalty (all associated with the Cheshire Crossing project), Respondent M/I Homes shall fund a Supplemental Environmental Project (SEP) consisting of the removal of the State Route 23 low head dam on the Olentangy River (low head dam immediately upstream of the Cheshire Crossing footbridge) by submitting a certified check for \$70,000.00 to the Ohio Department of Natural Resources (ODNR), (Attn: Bob Gable, Scenic River Coordinator). Respondent shall submit the check to ODNR within thirty (30) days of the effective date of these Orders. Respondent shall submit a copy of the certified check to Ohio Environmental Protection Agency, Central District Office - Division of Surface Water, 3232 Alum Creek Drive, Columbus, Ohio 43207-3417 (Attn: Mike Gallaway).
8. Should Respondent M/I Homes fail to fund the SEP within the required timeframe in Orders No. 7, Respondent shall pay to Ohio EPA \$70,000.00 of the civil penalty in accordance with the procedures in Order No. 6b.

## **VI. TERMINATION**

Respondents' obligations under these Orders shall be satisfied and terminated when the Respondents demonstrate in writing and certifies to the satisfaction of the Ohio

EPA that it has satisfied all their obligations under these Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges the termination of these Orders in writing.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

A responsible official is as defined in OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility.

#### **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to activities occurring on or at the Facility.

#### **VIII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondents.

#### **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

#### **X. RESERVATION OF RIGHTS**

Ohio EPA and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

#### **XI. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

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

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

#### **XII. EFFECTIVE DATE**

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

**XIII. SIGNATORY AUTHORITY**

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

**IT IS SO ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Joseph P. Koncelik  
Director

1-19-05  
Date

**IT IS SO AGREED:**

~~M/I Schottenstein~~ **M/I Homes of Central Ohio, LLC**

  
\_\_\_\_\_  
Signature

12-17-05  
Date

J. Thomas Mason  
\_\_\_\_\_  
Printed or Typed Name

Senior Vice President & General Counsel  
\_\_\_\_\_  
Title

**IT IS SO AGREED:**

**Cheshire Road, LLC, by M/I Homes  
of Central Ohio LLC, its managing member**

  
\_\_\_\_\_  
Signature

12-17-05  
Date

J. Thomas Mason  
\_\_\_\_\_  
Printed or Typed Name

Senior Vice President & General Counsel  
\_\_\_\_\_  
Title