OHIO E.P.A.

JAN 30 2008

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Massasauga Rattlesnake Ranch, Inc.	:	**Director's Final Findings**
P.O. Box 565	:	**and Orders**
Dover, OH 44622	:	
	:	
Respondent	:	

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: 1-30-08

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Massasauga Rattlesnake Ranch, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in the composition of Respondent shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 6111 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings of fact, not the Respondent. By consenting to the entry of these Orders, Respondent does not admit to the findings of fact set forth below, nor does Respondent admit to any legal liability associated with such findings of fact. The Director has made the following findings:

1. Respondent owns approximately 1,300 acres of land located in Hartford Township, Trumbull County, just north of Five Points Road and west of Yankee Creek ("the Site"). Respondent has disturbed approximately 10 to 15 acres of the Site.

Storm Water Impacts

2. On August 29, 2005, Ohio EPA's Division of Emergency and Remedial Response ("DERR") received a complaint alleging that Yankee Creek had changed colors in Hartford Township, Trumbull County. DERR investigated the complaint and determined that sediment discharging from the site without erosion or sediment controls installed. The Complaint was forwarded to Ohio EPA's Division of Surface Water ("DSW") on August 30, 2005.

3. On August 30, 2005, DSW investigated the complaint and documented that approximately 15 acres of the site had been disturbed by construction activities. Minimal erosion and sediment controls were installed onsite and untreated discharges of sediment-laden runoff were observed to be entering the unnamed tributary of Yankee Creek and onsite wetlands. DSW observed impacts to the onsite tributary of Yankee Creek and onsite wetlands from construction activities associated with construction of an onsite pond, culverting of a portion of the onsite tributary of Yankee Creek, channelization of a portion of the onsite tributary of Yankee Creek, and draining and filling of onsite wetlands. The inspection also confirmed that construction activities at the Site had commenced prior to the submission of an NOI and prior to completing and implementing a SWP3, violations of Ohio Administrative Code ("OAC") Rule 3745-38-06 and ORC Chapter 6111.07.

4. Storm water passed over all or part of the disturbed portions of this construction site and picked up dirt and soil which was discharged off site to waters of the state. The discharge, at least in part, was from bulldozers and/or other earthmoving equipment, and/or from piles of earth and land clearing debris formed by such equipment and earthmoving activity and/or left the site in discrete conveyances such as drains, ditches, fissures, rills and gullies and/or trenches.

5. Storm water from the Site discharges to onsite wetlands and an unnamed tributary of Yankee Creek. The onsite wetlands and the unnamed tributary of Yankee Creek constitute "waters of the state," as defined by ORC § 6111.01(H). Sediment contained in the storm water constitutes "other wastes," as defined in ORC § 6111.01(D). Placement of this waste into waters of the state constitutes "pollution," as defined in ORC § 6111.01(A).

6. Pursuant to ORC '6111.04, no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.

7. The discharges from the construction site were point source discharges.

8. OAC Rule '3745-38-02(A) provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without either applying

for and obtaining an Ohio NPDES individual permit in accordance with the requirements of Chapter 3745-33 of the Administrative Code, complying with the indirect discharge permit program pursuant to Chapter 3745-36 of the Administrative Code or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of Chapter 3745-38 of the Administrative Code.

9. ORC 6111.03(J)(1) provides that the Director may issue permits in compliance with all requirements of the Federal Water Pollution Control Act and mandatory regulations adopted thereunder. That section further provides that permit terms and conditions set by the Director shall be designed to achieve and maintain full compliance with mandatory requirements of the Federal Water Pollution Control Act that are imposed by regulation of the Administrator of the United States Environmental Protection Agency. In 40 C.F.R. 122.26, the Administrator requires dischargers of storm water associated with construction activity that disturbs more than one (1) acre of land to obtain an individual NPDES permit or coverage under a storm water general permit.

10. By way of storm water discharges documented on at least August 29th and August 30th, 2005, Respondent discharged wastes and pollutants into waters of the state without an appropriate permit or authorization in violation of ORC '6111.04 and OAC Rule 3745-38-02(A) and 40 C.F.R. 122.26.

11. By letter dated September 7, 2005, Respondent was notified by DSW via mail that construction activities were in violation of ORC Chapter 6111.

12. On September 8, 2005, DSW and the Trumbull County Soil and Water Conservation District (Trumbull SWCD) reinspected the site. Respondent was currently dewatering the pond with a temporary pump and discharging sediment-laden runoff directly into waters of the state without proper treatment. No additional erosion or sediment controls were observed onsite to prevent sediment-laden runoff from discharging directly into waters of the state. An SWP3 had not yet been developed for the site to prevent discharges of sediment to waters of the state. The activity described in Finding No. 12 is a violation of ORC 6111.04 and 6111.07.

13. By letter dated September 20, 2005, Respondent was again notified by DSW via mail that construction activities were in violation of ORC Chapter 6111.

14. On October 21, 2005, Ohio EPA received a complete NOI from Respondent to obtain coverage under the Ohio EPA NPDES Storm Water General Permit. Respondent was granted coverage on November 7, 2005 under Permit No.3GC02067*AG.

Wetland and Stream Impacts

15. On September 30, 2005, representatives from the Division of Surface Water's 401 Section, the Trumbull County SWCD and the U.S. Army Corps of Engineers inspected the Site and determined that illegal filling of wetlands and streams had occurred. By letter dated, November 9, 2005, Respondent was notified by Ohio EPA's 401 Section via certified mail of the violations.

16. On January 10, 2006, DSW conducted another inspection of the Site and, utilizing a portable Global Positioning System, initially determined that Respondent had impacted approximately 9.89 acres of wetlands, approximately 550 linear feet of stream was culverted and approximately 1,530 linear feet of stream was filled or relocated prior to receiving a Section 401 water quality certification or other authorization from Ohio EPA. These construction activities resulted in 1) the placement of fill into waters of the state; 2) the degradation of waters of the state; and 3) the failure to maintain and protect the existing uses and/or existing functions and value of waters of the state. It was later determined that Respondent impacted approximately 8.1 acres of wetlands, and approximately 1,000 linear feet of stream.

17. Respondent has not received a Section 401 water quality certification or other permit or authorization, from Ohio EPA to perform the activities described in Finding No. 16.

18. Pursuant to ORC § 6111.04, no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.

19. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.

20. Pursuant to OAC Rule 3745-1-54, where a wetland has been impacted without prior authorization, the wetland will be considered a category 3 wetland.

21. In impacting the wetlands and streams, as described in Finding No. 16 without a Section 401 water quality certification or other permit or authorization from Ohio EPA, Respondent has caused pollution by discharging or placing or causing to be placed other wastes into waters of the state. Respondent has violated ORC §§ 6111.04 and 6111.07.

22. 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 purpose of ORC Chapter 6111.

ORDERS

1. Respondent shall not initiate construction activities that disturb more than one acre of land at any location throughout Ohio without first obtaining an NPDES Storm Water General Permit for the disturbed area.

2. Respondent shall not alter, fill, dredge or otherwise degrade the uses and /or existing functions or values of any portion of a wetland or stream at any location in Ohio, without first receiving prior approval from the Director as and to the extent required by law.

Compensatory Mitigation for Wetland Impacts

3. Pursuant to OAC 3745-1-54(B)(6), Respondent shall restore thirteen (13) acres of wetlands consistent with a Palustrine, Forested, Broad-leaved Deciduous, Seasonally Saturated (PFO1Y) wetland. The restoration shall include one (1) acre of wetland restoration within the previously disturbed area. The other twelve (12) acres of restoration shall occur in an area currently being utilized for agricultural purposes along Warner Road. The wetland restoration areas shall ultimately achieve a Category 3 wetland status or be on a trajectory to achieving a Vegetation IBI score indicative of a Category 3 wetland status in the future as determined by Ohio EPA. In addition, Respondent shall identify and preserve an additional eleven (11) acres of Category 3 wetlands/upland buffer in areas on Respondent's property. The restored/preserved areas shall be preserved in perpetuity through either a conservation easement or an environmental covenant to be held by a third party entity, as detailed below.

A. Wetland Restoration

4. Within thirty (30) days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval, a Wetland Restoration Plan ("WRP") for both the 12 acres of proposed restoration as well as the 1 acre wetland to be restored.

5. Ohio EPA will review the WRP and may establish additional requirements to the WRP if the plan is deemed deficient. After review of the plan, Ohio EPA may approve the plan as submitted, or approve the plan with additional conditions. Upon the approval of the WRP by Ohio EPA, Respondent shall implement the plan and complete all necessary remediation requirements required by the plan within six (6) months from the date Ohio EPA approves the WRP or an alternate deadline approved by the Ohio EPA.

6. The wetland restoration shall achieve the following conditions:

a) Thirteen (13) acres of wetlands shall be established.

b) A minimum Vegetation IBI score indicative of a Category 3 wetland or the Respondent can demonstrate that the wetland is on a trajectory to achieving a score indicative of a Category 3 wetland in the future.

c) Less than 10% of the following invasive plant species are present in the wetland: *Typha angustifolia* (narrow-leaved cattail), *Lythrum salicaria* (purple loosestrife), *Rhamnus frangula* (glossy buckthorn), *Phalaris arundinacea* (reed canary grass), and *Phragmites australis* (common reed).

d) Less than 10% of its total area as "unvegetated open water." "Unvegetated open water" is defined as inundated areas where there is no or minimal emergent, rooted aquatic bed (e.g. Nuphar advena, Nymphaeae odorata, Potamogeton spp.), or submersed or floating non-rooted aquatic bed (e.g. Utricularia spp., Ceratophyllum spp. excluding species in the Lemnaceae) vegetation growing in the area of inundation.

e) The wetland restoration areas are on a trajectory to becoming forested as demonstrated by quantifiable forestry measurements.

7. The WRP shall at a minimum include a five (5) year monitoring plan that will focus on the re-establishment of habitat and other water quality functions of the restored wetlands. Ohio EPA will require additional monitoring if the wetland does not achieve Category 3 status on or before the fifth year of wetland monitoring. Respondents shall allow duly authorized representatives from the Ohio EPA access to the Site at all reasonable times to monitor the progress of the restoration and for compliance with these Orders.

8. The monitoring portion of the WRP shall meet the following requirements, at a minimum:

A. General Requirements:

1. Monitoring Reports: Annual reports containing the data listed in the appropriate subsections below shall be submitted to Ohio EPA for each of the five consecutive years following completion of mitigation construction. The first annual report is due to Ohio EPA by December 31 of the first full year following completion of mitigation construction. All subsequent reports shall be submitted by December 31st of each of the subsequent monitoring years.

Respondent may include any additional information that it believes relevant for Ohio EPA's consideration.

2. As-built Drawings: At a minimum, the first, third, and fifth year annual reports shall contain current drawings no larger than 11" by 17" of each wetland restoration project.

3. Photographs: Representative observation points shall be selected in each plant community type in each distinct mitigation area. This shall be a point which best represents the characteristics of the entire plant community. The observation points shall be marked on the base map.

   Respondent shall take photographs from these points annually for five years. Each color photo point shall be photo documented from the same position and angle during July/August of each monitoring year.

4. 4th Year Site Visit: Respondent shall arrange a meeting and site visit with Ohio EPA during the growing season after the third year report has been submitted. The purpose of this inspection is to determine if the restoration project has been constructed in accordance with the agreement between the applicant and Ohio EPA. If necessary, Ohio EPA may make recommendations to improve the restoration project. Respondent is responsible for undertaking any reasonable modifications identified by Ohio EPA that are necessary to achieve compliance with these Orders.

5. Hydrology Monitoring: Water level data shall be collected in May and late August of each monitoring year. Ground water levels shall be measured in the absence of inundated conditions.

6. Soils Monitoring: A minimum of one soil probe or test pit per acre of restored wetland shall be collected to describe the soil profile and hydric soil indicators. Indicate the soil map unit name (soil series and phase) and the taxonomic subgroup.

7. Vegetation Monitoring: The location and name of each plant community type within the restored wetland area and buffer area shall be marked on a scaled drawing or scaled aerial photograph (base map) and named.

8. A representative observation point shall be selected in each plant community type in each distinct restored wetland area. This shall be a point which best represents the characteristics of the entire plant community. The observation points shall be marked on the base

map.

9. The dominant plant species shall be visually determined in each vegetation layer of each community type, and the scientific names of these species shall be included in the report. Dominant species are those species which have the greatest relative basal area (woody overstory), greatest height (woody overstory), greatest percentage of aerial coverage (herbaceous understory), and/or greatest number of stems (woody vines).

10. Vegetation Index of Biotic Integrity (VIBI): Respondent shall assess the restored wetlands to obtain a VIBI score according to methods approved by Ohio EPA at a minimum during the growing seasons of the third and fifth year after completion of construction of the restored wetlands.

11. Wetland Delineation: Respondent shall conduct delineation of the restored wetlands during the growing seasons of the third and fifth years after completion of restoration of the wetlands using the United States Army Corps of Engineers 1987 Wetland Delineation Manual (or successor document).

9. Within sixty (60) days of the effective date of these Orders, Respondent shall submit a proposed conservation easement or environmental covenant for the thirteen (13) acres of wetlands to Ohio EPA for review and approval. The terms of the conservation easement shall be in accordance with the requirements of R.C. 5301.67 to R.C. 5301.70. In the alternative, Respondent shall enter into an environmental covenant for the thirteen (13) acres of wetlands pursuant to the requirements of R.C. 5301.80 to R.C. 5301.92. The easement or covenant shall be held by an appropriate third party other than Respondent. Upon approval of the terms of the conservation easement or environmental covenant by Ohio EPA, and after the completion of construction of the wetland restoration areas, Respondent shall execute the conservation easement or environmental covenant and file it with the Trumbull County Recorder. Respondent shall submit to Ohio EPA a certified copy of the conservation easement or environmental covenant as filed with the County Recorder.

B. Wetland Preservation

10. Respondent shall, within thirty (30) days of the effective date of these Orders, submit a preservation plan delineating eleven (11) acres of wetland and upland buffers along with information confirming the Category 3 status of the wetlands to be preserved.

11. Within sixty (60) days of the effective date of these Orders, Respondent shall submit a proposed conservation easement or environmental covenant for the eleven (11) acres of wetlands to Ohio EPA for review and approval. The terms of the conservation easement shall be in accordance with the requirements of R.C. 5301.67 to R.C. 5301.70. In the alternative, Respondent shall enter into an environmental covenant for the eleven (11) acres of wetlands pursuant to the requirements of R.C. 5301.80 to R.C. 5301.92. The easement or covenant shall be held by an appropriate third party other than Respondent. Upon approval of the terms of the conservation easement or environmental covenant by Ohio EPA, Respondent shall execute the conservation easement or environmental covenant and file it with the Trumbull County Recorder. Respondent shall submit to Ohio EPA a certified copy of the conservation easement or environmental covenant as filed with the County Recorder.

Compensatory Mitigation for Stream Impacts

12. Respondent shall restore 600 linear feet of stream from the pond outlet and continuing to Yankee Creek. In addition to the 600 linear feet of stream restoration, Respondent shall identify and preserve an additional 1,500 linear feet of stream corridor on Respondent's property. The restored/preserved stream corridors shall be preserved in perpetuity through either a conservation easement or an environmental covenant to be held by a third party entity. The conservation easement or environmental covenant shall at a minimum establish a one hundred foot (100') corridor on both sides of the restored/preserved stream corridors, as detailed below.

A. Stream Restoration

13. Within thirty (30) days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval, a Stream Restoration Plan ("SRP") for the 600 linear feet of stream to be restored between the pond outlet continuing to Yankee Creek.

14. Ohio EPA will review the SRP and may establish additional requirements to the SRP if the plan is deemed deficient. After review of the plan, Ohio EPA may approve the plan as submitted, or approve the plan with additional conditions. Upon the approval of the SRP by Ohio EPA, Respondent shall implement the plan and complete all necessary remediation requirements required by the plan within six (6) months from the date Ohio EPA approves the SRP or an alternate deadline approved by the Ohio EPA.

15. The stream restoration of the 600 linear feet of stream from the pond outlet leading to Yankee Creek shall achieve the following conditions:

    a) A minimum of 600 feet of stream is present on the site at the specified location with a minimum HHEI score of 60. The 600 feet of stream is exhibiting natural channel dimensions appropriate for the stream.

b) Areas within and up and downstream of the restored stream are not showing signs of excessive bank erosion, sedimentation, headcutting, aggradation, or degradation.

16. The SRP shall at a minimum include a five (5) year monitoring plan that will focus on the re-establishment of habitat and other water quality functions of the restored stream section. Ohio EPA will require additional monitoring or consider alternate performance criteria if the 600 feet of restored stream does not achieve a minimum HHEI score of 60 by the end of the initial five (5) year monitoring period. Respondents shall allow duly authorized representatives from the Ohio EPA access to the Site at all reasonable times to monitor the progress of the restoration and for compliance with these Orders.

17. The monitoring portion of the SRP shall meet the following requirements, at a minimum:

1. As-built Drawings: At a minimum, the first, third, and fifth year annual reports shall contain current drawings no larger than 11" by 17" of the stream restoration project.

2. Vegetation Monitoring: The location and name of each plant community type within the on-site restoration planting shall be marked on a scaled drawing or scaled aerial photograph (base map) and named.

3. The dominant plant species shall be visually determined in each vegetation layer of each community type, and the scientific names of these species shall be included in the report. Dominant species are those species which have the greatest relative basal area (woody overstory), greatest height (woody overstory), greatest percentage of aerial coverage (herbaceous understory), and/or greatest number of stems (woody vines).

4. Headwater Habitat Evaluation Index (HHEI) scores using the most current version of that document available at the time the assessment is performed, shall be completed during years one, three and five.

5. Physical Measurements - Bi-annual plan view, cross sectional, and longitudinal profile information is required for the restored stream as follows:

a) Plan view measurements shall be those measurements necessary to determine sinuosity, meander length, belt width, radius of curvature, and meander arc length.

b.) Cross-sectional measurements shall include those measurements necessary to determine bankfull width, bankfull mean depth, bankfull maximum depth, flood prone area width, entrenchment ratio, and bankfull cross-sectional area.

c.) Longitudinal profile measurements shall be those measurements necessary to determine average water surface slope, riffle slope, pool slope, and riffle/pool or step/pool sequences.

6. Respondent shall make visual observations of the restored stream channel and banks, and upstream and downstream of the restored stream channel, looking for signs of impact from the restoration work such as excessive bank erosion, sedimentation, headcutting, aggradation, or degradation.

18. Within sixty (60) days of the effective date of these Orders, Respondent shall submit a proposed conservation easement or environmental covenant for the 600 linear feet of stream to Ohio EPA for review and approval. The terms of the conservation easement shall be in accordance with the requirements of R.C. 5301.67 to R.C. 5301.70. In the alternative, Respondent shall enter into an environmental covenant for the 600 linear feet of stream pursuant to the requirements of R.C. 5301.80 to R.C. 5301.92. At a minimum the Conservation Easement or Environmental Covenant shall specify that the stream corridor to be preserved extends at least one-hundred feet on either side of the stream corridors being preserved. The easement or covenant shall be held by an appropriate third party other than Respondent. Upon approval of the terms of the conservation easement or environmental covenant by Ohio EPA, and after the completion of the construction of the stream restoration areas, Respondent shall execute the conservation easement or environmental covenant and file it with the Trumbull County Recorder. Respondent shall submit to Ohio EPA a certified copy of the conservation easement or environmental covenant as filed with the County Recorder.

B. Stream Preservation

19. Respondent shall, within thirty (30) days of the effective date of these Orders, submit a preservation plan delineating a minimum of 1,500 linear feet of stream corridor on Respondent's property and within the Yankee Creek watershed to be preserved.

20. Within sixty (60) days of the effective date of these Orders, Respondent shall submit a proposed conservation easement or environmental covenant for the 1,500 linear feet of stream to Ohio EPA for review and approval. The terms of the conservation easement

shall be in accordance with the requirements of R.C. 5301.67 to R.C. 5301.70. In the alternative, Respondent shall enter into an environmental covenant for the 1,500 linear feet of stream pursuant to the requirements of R.C. 5301.80 to R.C. 5301.92. At a minimum the Conservation Easement or Environmental Covenant shall specify that the stream corridor to be preserved extends at least one-hundred feet on either side of the stream corridors being preserved. The easement or covenant shall be held by an appropriate third party other than Respondent. Upon approval of the terms of the conservation easement or environmental covenant by Ohio EPA, Respondent shall execute the conservation easement or environmental covenant and file it with the Trumbull County Recorder. Respondent shall submit to Ohio EPA a certified copy of the conservation easement or environmental covenant as filed with the County Recorder.

21. Respondent shall pay to the Ohio EPA the amount of six hundred and fifty thousand dollars ($650,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the amount of fifty thousand dollars ($50,000.00) within thirty (30) days of the effective date of these Orders. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent and the Site, at the following address:

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

A copy of this check shall be sent to Ohio EPA, Northeast District Office in accordance with the provision set forth in Section IX of these Orders.

22. In lieu of paying the remaining six hundred thousand dollars ($600,000.00) of civil penalty, Respondent shall fund a Supplemental Environmental Project (SEP) by identifying and preserving an additional thirty (30) acres of Category 3 wetland/upland buffer on Respondent's property. Respondent shall, within thirty (30) days of the effective date of these Orders or an alternate extension date approved by the Ohio EPA, submit a preservation plan delineating the thirty (30) acres of wetland and upland buffers along with information confirming the Category 3 status of the wetlands. Within thirty (30) days of approval of the preservation plan by Ohio EPA or an alternate extension date approved by the Ohio EPA, Respondent shall submit a proposed conservation easement or environmental covenant for the thirty (30) acres of wetlands to Ohio EPA for review and approval. The terms of the conservation easement shall be in accordance with the requirements of R.C. 5301.67 to R.C. 5301.70. In the alternative, Respondent shall enter into an environmental covenant for the thirty (30) acres of wetlands pursuant to the requirements of R.C. 5301.80 to R.C. 5301.92. The easement or covenant shall be held by an appropriate third party other than Respondent. Upon approval of the terms of the

conservation easement or environmental covenant by Ohio EPA, Respondent shall execute the conservation easement or environmental covenant and file it with the Trumbull County Recorder. Respondent shall submit to Ohio EPA a certified copy of the conservation easement or environmental covenant as filed with the County Recorder. (Note: Respondent may elect to include this additional thirty (30) acres of preservation as part of a single conservation easement or environmental covenant along with the twenty four (24) acres of restoration/preservation of wetlands as described above and/or the 2,100 of restored/preserved stream corridor as described above.)

23. Should Respondent fail to fulfill the requirements of the SEP within the required time frames set forth in Order No. 22, Respondent shall immediately pay to Ohio EPA the full amount of the civil penalty in accordance with the procedures in Order No. 21.

24. Respondent shall not utilize any of the fifty-four (54) acres of wetlands/upland buffers, or any of the 2,100 linear feet of restored or preserved stream footage as part of a wetlands mitigation bank, or attempt to derive any monetary compensation or wetlands bank mitigation credit from the encumbrance of this restoration/preservation.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

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

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of the Respondent. For purposes of these Orders, a responsible official is as defined in Ohio Administrative Code Rule 3745-33-03(D).

VII. OTHER APPLICABLE LAWS

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

VIII. 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.

IX. NOTICE

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

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

and to:

Michael W. Smith
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
Environmental Mitigation and Transportation Permitting Section
P.O. Box 1049
Columbus, Ohio 43216-1049

All documents required to be submitted by the Ohio EPA pursuant to these Orders shall be addressed to:

Massasauga Rattlesnake Ranch, Inc.
P.O. Box 565
Dover, Ohio 44622
Attn: Chuck Matthews

and to:

Shane A. Farolino, Esq.
Roetzel & Andress
222 South Main Street
Suite 400
Akron, Ohio 44308-2098

X. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, defenses 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 law, fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

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

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

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

Chris Korleski
Director

Date 1/28/08

IT IS SO AGREED:
Massasagua Rattlesnake Ranch, Inc.

Signature

Date 1-4-08

CHARLES E. MATTHEWS
Printed or Typed Name

C.E.O.
Title