

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Ohio Department of Transportation
District 5
9600 Jackson Town Road
Jackson Town, Ohio 43030

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**Director's Final Findings
and Orders**

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Ohio Department of Transportation ("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 ownership or composition of Respondent or ownership of the Site (hereinafter defined) 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 Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent holds multiple Storm Water General Permits for the development of the Lancaster Bypass ("Site"), a 12.6 mile highway bypass around the City of Lancaster in Fairfield County, Ohio.
2. Storm water from the Site discharges to Hunter Run, Little Walnut Creek, Big Walnut Creek, the Hocking River and various tributaries of Hunter Run, Little Walnut

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

[Handwritten Signature]
6-7-05

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Creek, Big Walnut Creek, and the Hocking River, all of which constitute "waters of the state," as defined by ORC § 6111.01 (H). Sediment contained in said 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).

3. Ohio EPA estimates that approximately 500 acres have been disturbed at the Site. Because construction of the Site disturbs more than five acres of land, Respondent was required to submit to Ohio EPA a Notice of Intent (NOI) to obtain coverage under Ohio EPA's National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (Storm Water General Permit).
4. Ohio EPA received NOIs for the Site and granted Respondent coverage for Phase I of the Site under the Storm Water General Permit No. OHR 110242, effective on May 10, 2001, Phase II of the Site under the Storm Water General Permit No. OHR 110799, effective on December 7, 2001, Phase III of the Site under the Storm Water General Permit No. OHR 111387, effective on July 2, 2002, and Phase IV of the Site under the Storm Water General Permit No. OHR 111671, effective on September 30, 2002.
5. On October 13, 2004, Ohio EPA received verified complaint No. VC0410W01 alleging violations of ORC § 6111 relating to the failure of Respondent to comply with the Site's Storm Water Pollution Prevention Plan (SWP3) in accordance with the Storm Water General Permit.
6. On November 16, 2004, Ohio EPA met with Respondent to conduct an inspection of the Site for compliance with the Storm Water General Permit. The inspection revealed that the Site had been properly stabilized for winter. However, based on the compliance history Respondent has demonstrated at the Site and of violations documented in Finding No. 8, violations of ORC § 6111 and the Storm Water General Permit may continue once earth moving operations recommence in the spring of 2005.
7. On June 19, 2001, September 26, 2001, November 15, 2001, February 12, 2002, July 16, 2002, August 7, 2002, October 10, 2002, November 15, 2002, December 10, 2002, May 14 2003, June 16, 2003, September 10, 2003, January 8, 2004, January 16, 2004, February 11, 2004, July 14, 2004, and September 29, 2004, Ohio EPA staff conducted inspections at the Site for compliance with Ohio's Water Pollution Control Laws, documenting, in whole or in part, the violations described below.
 - a. Part III.C.5.b.i. of the Storm Water General Permit requires that all disturbed areas that will remain dormant for more than forty-five (45) days be stabilized within seven (7) days of the most recent disturbance. The Storm Water General Permit also requires that all disturbed areas within fifty (50) feet of

a stream be stabilized within two (2) days of the most recent disturbance. Respondent failed to implement the required vegetative stabilization practices on numerous disturbed areas at the Site, in violation of ORC §§ 6111.04 and 6111.07.

- b. Part III.C.5.b.i.(B)(1) of the Storm Water General Permit requires that sediment control structures be functional throughout earth disturbing activity, that sediment ponds and perimeter sediment barriers be implemented as the first step of grading and within seven days from the start of grubbing, and that the sediment ponds and perimeter sediment barriers shall be functional until the upslope development area has been restabilized. Respondent failed to implement many sediment ponds in numerous areas of the Site in accordance with the timing condition of the Storm Water General Permit to treat concentrated storm water runoff from disturbed areas flowing at rates which exceed the design capacity of sediment barriers, in violation of ORC §§ 6111.04 and 6111.07.
- c. Part III.C.5.b.i.(B)(2) of the Storm Water General Permit requires that concentrated storm water runoff from disturbed areas flowing at rates which exceed the design capacity of sediment barriers pass through a sediment settling pond. Respondent failed to have sediment ponds constructed in numerous areas at the Site to treat concentrated storm water runoff flowing at rates which exceed the design capacity of sediment barriers in accordance with the Storm Water General Permit, in violation of ORC §§ 6111.04 and 6111.07.
- d. Part III.C.5.b.i.(B)(2) of the Storm Water General Permit requires that a sediment settling pond have a storage capacity of sixty-seven (67) cubic yards per acre of total drainage area. Until the date the Site reached final stabilization, Respondent failed to construct the sediment settling pond at the Site to have a storage capacity of sixty-seven (67) cubic yards per acre of drainage area, in violation of ORC §§ 6111.04 and 6111.07.
- e. Part III.C.5.b.i.(B)(4) of the Storm Water General Permit requires that structural practices be designed and implemented on site to protect all adjacent streams from the impacts of sediment runoff. Respondent conducted dewatering activities that discharged sediment laden water directly into a tributary of Big Walnut Creek without proper treatment to prevent turbid discharges and failed to install sediment control barriers along various stream banks to prevent sediment-laden sheet flow runoff from discharging into waters of the state, in violation of ORC §§ 6111.04 and 6111.07.
- f. Part III.C.5.b.i.(B)(5) of the Storm Water General Permit requires that erosion control practices shall be installed to stabilize channels from erosive flows. Respondent failed to install erosion control practices at the Site to stabilize

13. These Orders address violations up to and including those dated July 22, 2004.

V. ORDERS

1. Within ten (10) days of the effective date of these Orders, Respondent shall inspect and repair all the Site's sediment control structures to ensure that they remain functional throughout earth disturbing activity. All temporary and permanent control practices are to be maintained and repaired as needed to ensure continued performance of their erosion and sediment control functions.
2. Within fourteen (14) days of the effective date of these Orders, Respondent shall submit to Ohio EPA, in accordance with Section X. of these Orders, for approval, a revised and current SWP3 for the Site. The revised and current SWP3 shall incorporate the comments and recommendations made by Ohio EPA in the correspondence dated June 27, 2001, October 1, 2001, November 27, 2001, February 12, 2002, July 25, 2002, August 26, 2002, October 21, 2002, December 12, 2002, May 23, 2003, June 26, 2003, September 18, 2003, January 15, 2004, January 29, 2004, February 20, 2004, June 22, 2004, September 29, 2004, and July 22, 2004, if still applicable at the Site, and satisfy all requirements of the Storm Water General Permit.
3. Within ninety (90) days of the effective date of these Orders, Respondent 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's staff and contractors on construction storm water issues and compliance under ORC Chapters 6111, 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 Project Manager or higher within all future Sites that will serve as a liaison to Ohio EPA staff to deal with regulatory and compliance issues commonly encountered in road development including storm water issues;
 - c. Response plans that Respondent will execute upon learning of or being informed of potential violations; and
 - d. An evaluation of Respondent's 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.

4. From the effective date of these Orders and until all disturbed areas on the Site meet the criteria for final stabilization, as established in the Storm Water General Permit, Respondent shall immediately comply with the Site's approved revised SWP3, any amendments to the SWP3, in accordance with Part III.C.5.b.i. of the Storm Water General Permit, and the Site's Storm Water General Permit.
5. Respondent shall pay or cause to be paid to the Ohio EPA the amount of twenty one thousand fifty two dollars (\$21,052.00) in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 6111. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the full amount within thirty (30) days of the effective date of these Orders, to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Site.

A photocopy of the check shall be sent to Ohio EPA, Central District Office, in accordance with Section X. of these Orders.

6. In lieu of the civil penalty assessed in Order No. 5, above, Respondent may implement the following supplemental environmental project ("SEP") in accordance with the following schedule:
 - A. To aid in the improvement of water quality within the Hocking River watershed, Respondent may allocate twenty one thousand and fifty two dollars (\$21,052.00) to Franklin County Metro Parks for the express purpose of purchasing land to be used in perpetuity as parkland or wetland mitigation sites within the Hocking River watershed, the purchasing of riparian property that will serve in perpetuity as a buffer to the Hocking River or its tributaries, or the purchasing of conservation easement rights along non-impacted segments of streams located within the Hocking River watershed to protect in perpetuity areas from development. Payment shall be made by tendering an official check within sixty (60) days made payable to "Franklin County Metro Parks" at the following address: Cindy Lynch, Franklin County Metro Parks, 1069 West Main Street, Westerville, Ohio 43081.
7. If Respondent fails to pay or cause to be paid the twenty one thousand and fifty two dollars (\$21,052.00) to Franklin County Metro Parks within the time frames established in Order No. 6 of these Orders, Respondent shall pay to Ohio EPA the full \$21,052.00 in accordance with the procedures set forth in Order No. 5 of these Orders. Payment shall be due no later than 7 days from the date the payment was due to Franklin County Metro Parks.

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 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 Respondent.

VII. OTHER CLAIMS

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

VIII. OTHER APPLICABLE LAWS

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

IX. MODIFICATIONS

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

X. NOTICE

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

Ohio Environmental Protection Agency
Central District Office
Division of Surface Water
3232 Alum Creek Drive
Columbus, Ohio 43207
Attn: DSW Enforcement Coordinator

XI. RESERVATION OF RIGHTS

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

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, 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.

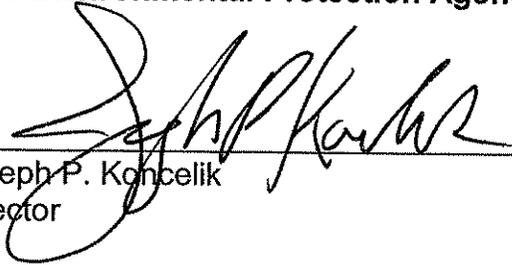
XIII. EFFECTIVE DATE

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

XIV. SIGNATORY AUTHORITY

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

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



Joseph P. Kancelik
Director

6/6/05
Date

**IT IS SO AGREED:
Ohio Department of Transportation
District 5**



Signature

5/17/05
Date

Gordon Proctor by Thomas P. Bennett
Printed or Typed Name

Director
Title