

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:
Oberer Development Company
2800 East River Road
Dayton, Ohio 45439

Director's Final Findings
and Orders

OHIO E.P.A.
MAY 15 2003
ENTERED DIRECTOR'S JOURNAL

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Oberer Development Company ("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 its successors in interest liable under Ohio law. No change in ownership of the Respondent or of the Shoppes at Northwoods (as described more fully below) 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 is the developer of the Shoppes at Northwoods, a commercial retail development on Northwoods Boulevard, Vandalia, Ohio. The project is being

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.
Zena J. Clements
May 15, 2003

developed in two phases. Phase I of the development encompasses approximately 20.7 acres while Phase II encompasses approximately 8.1 acres. Both Phase I and Phase II are collectively referred to herein as "the site".

2. Storm water from the site discharges to an unnamed tributary of the Great Miami River. This unnamed tributary and the Great Miami River constitute "waters of the state," as defined by ORC Section 6111.01(H). Sediment contained in said storm water constitutes "other wastes," as defined in ORC Section 6111.01(D). Placement of this waste into waters of the state constitutes "pollution," as defined in ORC Section 6111.01(A).
3. Because construction of Phase I is a construction site which disturbs more than five (5) acres of land, Respondent was required to submit a Notice of Intent (NOI) to obtain coverage under the Ohio EPA NPDES General Permit for Storm Water Discharges Associated with Construction Activity (Storm Water General Permit). On or about July 20, 2001, Respondent submitted a Notice of Intent (NOI) for Phase I of the site to obtain coverage under the Storm Water General Permit. Ohio EPA granted Respondent coverage for Phase I under Permit No. OHR110533, effective August 22, 2001. Respondent was required to comply with the terms and conditions of the Storm Water General Permit as of that date.
4. 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.
5. Pursuant to ORC Section 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC Sections 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.
6. 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 days if they are to remain dormant (undisturbed) for more than forty-five (45) days. Inspections conducted by Ohio EPA on June 3, 2002, June 14, 2002 and June 18, 2002 revealed that there were disturbed areas at Phase I which had been left dormant for more than 45 days without vegetative cover, in violation of ORC sections 6111.04 and 6111.07.
7. Part III.C.5.b.i.(A) of the Ohio EPA Storm Water General Permit requires that permanent or temporary soil stabilization be applied to disturbed areas within seven days after final grade is reached on any portion of the site. Inspections conducted by Ohio EPA on June 3, 2002, June 14, 2002 and June 18, 2002 of Phase I revealed there were areas of site that had reached final grade that had

not been stabilized, in violation of ORC sections 6111.04 and 6111.07.

8. Part III.C.5.b.i.(B)(1) of the Ohio EPA Storm Water General Permit requires that sediment control structures be functional throughout earth disturbing activity. Sediment ponds and perimeter sediment barriers are to be installed as the first step of grading and within seven (7) days from the start of grubbing. The controls are to continue to function until the up-slope development area is restabilized. Inspections conducted by Ohio EPA on June 3, 2002, June 14, 2002 and June 18, 2002 of Phase I revealed that perimeter sediment barriers at the site were not installed in the aforementioned time frame and/or did not remain functional throughout all earth-disturbing activity, in violation of ORC sections 6111.04 and 6111.07. Further, during the inspection of June 18, 2002, it was discovered that Respondent installed a false temporary riser thereby preventing the sediment pond from functioning, in violation of ORC sections 6111.04 and 6111.07.
9. Part III.C.5.b.i.(B)(3) of the Ohio EPA Storm Water General Permit requires that sheet flow run-off from denuded areas be intercepted by sediment barriers. The barriers are to protect adjacent properties and water resources from sediment transported by sheet flow. Inspections conducted by Ohio EPA on June 3, 2002, June 14, 2002 and June 18, 2002 of Phase I revealed Respondent failed to install the necessary sediment barriers at the Phase I site and failed to protect water resources, in violation of ORC sections 6111.04 and 6111.07.
10. Part III.C.5.b.vi of the Ohio EPA Storm Water General Permit requires that a qualified individual perform an inspection of the site once every seven (7) calendar days and within hours after any storm event greater than 0.5 inch of rain per 24-hour period. The permittee is required to keep an inspection log that summarizes the results of the inspection, name(s) and qualifications of the inspector, the dates of inspections, major observations relating to the implementation of the SWP3, a certification that the facility is in compliance with the SWP3 and permit, and an identification of any incidents of non-compliance. Respondent informed Ohio EPA inspectors June 3, 2002 that it had failed to complete the required inspections for Phase I and failed to maintain an inspection log, in violation of ORC sections 6111.04 and 6111.07.
11. Because construction of Phase II is a construction site which disturbs more than five (5) acres of land, Respondent was required to submit a new Notice of Intent (NOI) to obtain coverage under the Ohio EPA NPDES General Permit for Storm Water Discharges Associated with Construction Activity (Storm Water General Permit). On September 2, 2002, Ohio EPA received a Notice of Intent (NOI) for Phase II and Ohio EPA granted Respondent coverage for Phase II under Permit No. OHR111645 on September 10, 2002.

12. Respondent began construction of Phase II in late July, 2002 prior to receiving coverage under the NPDES Storm Water Permit in violation of ORC section 6111.07.
13. As of December 18, 2002, construction activities at the Phase II site are continuing.
14. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

- 1 As soon as expeditiously practicable but no later than fourteen (14) days from the effective date of these Findings and Orders, Respondent shall submit to Ohio EPA, Southwest District Office (Attn: Martyn Burt, DSW Enforcement Group Leader), a revised and current SWP3 for Phase II of the Shoppes at Northwoods construction site.
- 2 From the effective date of these Orders and until all disturbed areas on the Phase II site meet the criteria for final stabilization as outlined in the Storm Water General Permit, Respondent shall comply with the revised SWP3 and Permit No. OH111645.
- 3 Respondent shall pay to Ohio EPA fifteen thousand nine hundred and ninety-five dollars (\$15,995.00) in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to Chapter 6111 of the Ohio Revised Code. This payment shall be made by tendering a check payable to the "**Treasurer, State of Ohio**" for the full amount within thirty (30) days after the effective date of these Findings and Orders to the following address:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

A photo copy of the check shall be sent to Ohio EPA's Southwest District Office at:

Ohio Environmental Protection Agency
Southwest District Office
401 East Fifth Street
Dayton, Ohio 45402

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 defined in OAC Rule 3745-33-03(D)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole proprietorship, and 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 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. RESERVATION OF RIGHTS

Ohio EPA and Respondent 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, 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

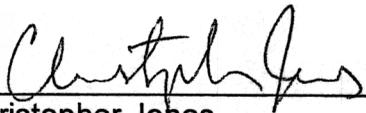
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

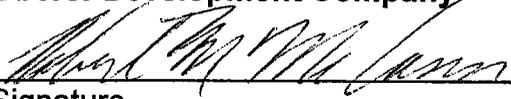


Christopher Jones
Director

5-12-03
Date

IT IS SO AGREED:

Oberer Development Company



Signature

4-30-03
Date

ROBERT M. MCCANN
Printed or Typed Name

TREASURER
Title