

MAY 25 2007

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

River Run of Powell, LLC  
10534 Churchill Drive  
Powell, Ohio 43065

: Director's Final  
: Findings and Orders  
:

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.

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

By Jonny Jackson Date: 5-25-07

These Director's Final Findings and Orders ("Orders") are issued to River Run of Powell, LLC ("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 of the Respondent or the Site described in Finding No. 1 of these Orders 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 made the following findings:

1. Respondent is the developer of an approximately twenty-five (25) acre residential development project located northwest of State Route 315 and Jewett Road, Powell, Delaware County, Ohio (the "Site").
2. Storm water from the Site discharges to Bartholomew Run, a tributary to the Olentangy River. Bartholomew Run and the Olentangy River constitute "waters of the state," as defined by ORC § 6111.01(H). Sediment contained in 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 Administrative Code ("OAC") Rule 3745-38 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 National Pollutant Discharge Elimination System ("NPDES") individual permit in accordance with OAC Rule 3745-33, complying with the indirect discharge permit program pursuant to OAC Rule 3745-36, or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with OAC Rule 3745-38.
  4. Because the Site is a construction site which disturbs more than one (1) acre of land, Respondent was required to submit a Notice of Intent (NOI) to obtain coverage under the Ohio EPA National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity OHC000002 (Construction Storm Water NPDES Permit) and to develop and implement a Storm Water Pollution Prevention Plan (SWP3) specific to the Site prior to initiating construction activity.
  5. On October 26, 2006, Ohio EPA conducted an inspection at the Site and determined that an estimated seven (7) acres had been disturbed. The inspection confirmed that construction activities at the Site had commenced prior to the submission of an NOI for Construction Storm Water General NPDES Permit coverage and prior to completing and implementing an SWP3.
  6. A Notice of Violation ("NOV") letter was sent to Respondent on November 1, 2006. The NOV documented Respondent's failure to submit an NOI and obtain coverage under the Construction Storm Water General NPDES Permit prior to commencing construction activities at the Site. The NOV also noted that Respondent had immediately undertaken corrective measures which were completed by October 30, 2006.
  7. No construction activity has occurred at the Site since October 30, 2006.
  8. 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. The discharges from the Site were point source discharges.

9. Respondent is an "operator" as defined in the NPDES Storm Water General Permit.
10. Ohio Administrative Code (OAC) § 3745-38-06 requires that an operator submit a complete and accurate NOI application form and appropriate fee at least twenty-one (21) days prior to the commencement of construction activities.
11. Respondent failed to notify the Director of its intent to be covered for construction activity at the Site by submission of an NOI at least twenty-one (21) days prior to the commencement of construction activities at the Site in violation of OAC § 3745-38-06 and R.C. § 6111.07(A).
12. Ohio EPA received a complete NOI for the Site on October 27, 2006, and granted Respondent coverage under Construction Storm Water General NPDES Permit No. 4GC02045\*AG, effective November 2, 2006.
13. On November 15, 2006, Respondent submitted an SWP3 for the Site. The SWP3 was not acceptable to Ohio EPA. Respondent is in the process of revising the SWP3 in accordance with comments from Ohio EPA.
14. 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.
15. ORC § 6111.03(J)(1) authorizes the Director to set the terms and conditions of the permit. That section further provides that any 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. Pursuant to Section 402(p) of the federal act, the Administrator of USEPA imposed by regulation requirements to regulate storm water discharges. 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.
16. By way of storm water discharges Respondent is or was discharging wastes and pollutants into waters of the state without an appropriate permit or authorization in violation of ORC § 6111.04, OAC § 3745-38-02(A), and 40 C.F.R. 122.26.
17. 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.

18. The following Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Any such construction or modification is subject to the permit to install and plan approval requirements of R.C. §§ 6111.44 and 6111.45 and OAC Chapter 3745-42.
19. 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. Respondent shall not initiate construction activities in the state of Ohio that disturb more than one acre of land without having first developed and implemented an SWP3 for the construction site, and obtained coverage of the construction site under the Construction Storm Water General NPDES Permit.
2. From the effective date of these Orders and until all disturbed areas on the Site meet the criteria for final stabilization for the Site, Respondent shall comply with the requirements of the Construction Storm Water General NPDES Permit and the approved SWP3. To be considered complete, the stabilization practices must meet the definition of "final stabilization" under the Construction Storm Water General NPDES Permit. Respondent shall submit a copy of any revisions to the SWP3 to Ohio EPA, in accordance with Section X. of these Orders.
3. Respondent shall retain a copy of the SWP3 at the Site during the course of performing any earth disturbing activities as defined in the Construction Storm Water General NPDES Permit, and during the installation, construction, or maintenance of best management practices ("BMPs") outlined within the SWP3. A copy of the revised and current SWP3 shall be available at the site at all times during construction until the site reaches final stabilization.
4. Within seven (7) days of the effective date of these Orders, Respondent shall post a copy of the NOI application, and a copy of the November 2, 2006, approval of coverage under the Construction Storm Water General NPDES Permit in a prominent place for public viewing (such as alongside a building permit).
5. Within seven (7) days of the effective date of these Orders, Respondent shall inform all contractors and sub-contractors who will be involved in the implementation of the SWP3 of the terms and conditions of the Construction Storm Water General

NPDES Permit for the Site. Respondent shall retain written documentation that this action has been completed.

6. Within fourteen (14) days of the effective date of these Orders, Respondent shall complete all of the actions in Orders Nos. 6.a. through 6.f. unless a different time limit is otherwise specified.
  - a. Respondent shall submit an approvable SWP3 for the Site. The SWP3 must incorporate a centralized sediment basin addressing a sediment storage volume of one hundred four (104) cubic yards per acre of drainage. The sediment basin must be designed in accordance with the latest version of the "Rainwater and Land Development" manual.
  - b. Respondent shall initiate soil stabilization practices for any disturbed areas at the Site within fifty (50) feet of a stream.
  - c. Respondent shall perform maintenance to all perimeter sediment barriers at the Site as required to intercept sheet flow runoff from denuded areas. The sediment barriers shall protect adjacent properties, and waters of the state, from sediment transported by sheet flow. The controls shall be maintained to function as designed until the upslope development area is stabilized.
  - d. Respondent shall take all necessary measures to minimize the tracking of sediment off-site by vehicles leaving the Site.
  - e. Respondent shall inspect all erosion and sediment controls on the Site at least once every seven (7) calendar days and within 24 hours after any storm event greater than 0.5 inch of rain per 24-hour period. Respondent shall maintain a log of the inspections at the Site as required by the Construction Storm Water General NPDES Permit.
  - f. Respondent shall include post-construction storm water management requirements in the SWP3. Detail drawings and maintenance plans for all post-construction BMPs shall be provided by Respondent to the post-construction operator of the Site prior to termination of Construction Storm Water General NPDES Permit coverage.
7. Respondent shall install the centralized sediment basin in accordance with the requirements set forth in Order No. 6.a. prior to recommencing construction at the Site. The Respondent shall ensure all drainage from the Site is directed to the sediment basin with the installation of diversions or ditches. The Respondent shall not initiate any other earth disturbing activities until the sediment basin and associated diversions are inspected and approved by Ohio EPA.

8. Respondent shall pay the amount of two thousand eight hundred thirty-five dollars (\$2,835.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for two thousand eight hundred thirty-five dollars (\$2,835.00). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and the Site, at:

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

#### **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 Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(D).

#### **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-Surface Water  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, Ohio 43215  
Attn: Storm Water 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**

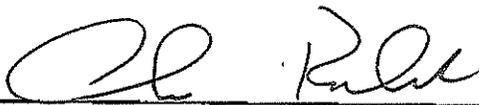
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**XIV. SIGNATORY AUTHORITY**

Each undersigned representative 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

5/24/07  
Date

**IT IS SO AGREED:**

River Run of Powell, LLC

  
\_\_\_\_\_  
Signature

4/12/07  
Date

DENIS R. KING  
Printed or Typed Name

MANAGING MEMBER  
Title