

OHIO E.P.A.

AUG 11 2006

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Sluggers, Inc.
9862 South Ave. Ext.
Poland, OH 44514

Respondent

Director's Final
Findings and Orders

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Sluggers, 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. Respondent's obligations under these Orders may be altered only by written action of the Director of Ohio EPA.

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 real property located at 9862 South Avenue, Beaver Township, Poland, Ohio ("the Site.")

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

 8-11-06

2. 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 ("NPDES Storm Water General Permit") and to develop and implement a Storm Water Pollution Prevention Plan ("SWP3") specific to the Site.
3. On October 18, 2004, Respondent received coverage under the Ohio EPA National Pollutant Discharge Elimination System Permit for Construction Activities #OHC00002. The NOI indicated that construction activities would occur on 12.4 acres of the total 14.267-acre Site. Facility permit number 3GC01180*AG was assigned to the Site.
4. On December 27, 2005 and January 3, 2006, multiple verified complaints were received by Ohio EPA alleging that Respondent had violated, is violating or may in the future violate ORC Chapter 6111 for noncompliance with the terms and conditions of Respondent's NPDES Storm Water General Permit. The complaints were determined to be valid verified complaints pursuant to ORC § 3745.08 and were assigned Verified Complaint #VC0601W01.
5. On April 17, 2006, Ohio EPA conducted an onsite inspection to review the allegations set forth in the verified complaints. It was determined that a sediment basin had been completed and that trenches had been excavated along the north and south sides of the Site to create diversion channels, but that they had not yet been completed as required. Respondent was instructed to reshape the channels to comply with the Site's SWP3 and Respondent was further instructed to stabilize the diversion channels with rock check dams, seeding, mulching, and/or matting, as appropriate. Respondent was given until May 15, 2006, to complete these requirements.
6. On May 15, 2006, Ohio EPA performed a follow-up inspection with Respondent to confirm that Respondent had met the requirements noted during the April 17, 2006, inspection. Respondent had completed all outstanding items except for stabilization of the diversion channels. Respondent stated that he expected to complete stabilization of the diversion channels by June 15, 2006. To date, the diversion channels have not been stabilized.
7. 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.

8. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.
9. 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 in 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.

V. ORDERS

1. Within seven (7) days from the effective date of these Orders, Respondent shall complete stabilization of all storm water diversion channels at the Site per the specifications contained in the ***Rainwater and Land Development*** manual (ODNR, 1996), specifically the following requirements:
 - A) Seeding and mulching sections of the diversion channels where the flow velocity from a 10-year, 24-hour storm is less than 3.5 feet per second;
 - B) Seeding and matting sections of the diversion channels where flow velocity from a 10-year, 24-hour storm event are greater than 3.5 feet per second, but less than 5.0 feet per second;
 - C) Lining sections of the diversion channel with rock rip-rap where flow velocity exceeds 5.0 feet per second and at the bends of the channels where the direction of flow changes.

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. For purposes of these Orders, a responsible official is defined in OAC rule 3745-33-03.

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 Respondent's sewer system.

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. 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: Enforcement Unit Supervisor

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

X. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the

violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 6111 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

XI. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Joseph P. Kondelik
Director



Date

8/10/06