

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

APR 19 2001

ENTERED DIRECTOR'S JOURNAL

In the matter of:

Jay B. Writsel
9668 Gulick Road
Orient, Ohio 43146
Pickaway County

Director's Final Findings
and Orders

Jurisdiction

Pursuant to Ohio Revised Code ("R.C.") Chapter 6111 and Section 3745.01, and the rules of the Ohio Environmental Protection Agency, the Director of the Environmental Protection Agency ("Director") hereby makes the following Findings and issues the following Orders.

Parties Bound

These Orders shall apply to and be binding upon Mr. Jay Writsel, 9668 Gulick Road, Orient, Ohio, Pickaway County. The obligations under these Orders may be altered only by the written approval of the Director.

Findings

1. Since at least 1997, Mr. Writsel has owned, controlled and/or conducted operations on a parcel of real property located at 9668 Gulick Road, along the Big Darby Creek in Pickaway County, Ohio (hereinafter referred to as "the Property"). The Big Darby Creek is "waters of the State" as that term is defined in R.C. §6111.01(H). Under Ohio Administrative Code ("O.A.C.") Rule 3745-1-09 the Big Darby Creek is designated as an Exceptional Warm Water Habitat.
2. During the Fall of 1997, Mr. Writsel engaged in excavation activities that involved the reconstruction and repair of a levee on the Property. These activities resulted in the removal of a gravel bar in the Big Darby Creek and placement of the dredged or fill material below the ordinary high water elevation mark of the Big Darby Creek. This dredged or fill material constitutes "other wastes" as that term is defined in R.C. §6111.01(D).
3. Pursuant to R.C. §6111.04, no person shall discharge fill material into waters of the State of Ohio without obtaining a permit from Ohio EPA. Mr. Writsel has not obtained a 404

I certify this to be a true and accurate copy of the
official record of the proceedings of the Ohio
Environmental Protection Agency

By Donna Adams 4/19/01

Director's Final Findings and Orders

Mr. Jay Writsel

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- permit from the Department of the Army Corps of Engineers and a 401 certification from the Ohio EPA. Mr. Writsel's activities in 1997 of placing fill material below the ordinary high water elevation mark of the Big Darby Creek adjacent to the Property constitutes a violation of R.C. §6111.04.
4. O.A.C. Rule 3745-1-04 requires that all waters of the State shall be free from, without limitation, suspended solids or other materials resulting from human activity that are harmful to aquatic life. The introduction of fill below the ordinary high elevation water mark of the Big Darby Creek by Mr. Writsel will negatively impact aquatic life and aquatic habitat and was a violation of O.A.C. Rule 3745-1-04(A) and accordingly, R.C. §6111.04.
 5. Mr. Writsel's actions as described in Paragraphs 3 and 4, which constitute violations of R.C. §6111.04, subject Mr. Writsel to liability for injunctive relief pursuant to R.C. §6111.07(B) and a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each day of each violation pursuant to R.C. §6111.09(A).
 6. On January 30, 1998, Mr. Writsel submitted an application to the Department of the Army Corps of Engineers for a permit pursuant to §404 of the Clean Water Act ("CWA") for the placement of the dredged fill material placed below the ordinary high elevation water mark of the Big Darby Creek. This permit required an Ohio EPA water quality certification under §401 of the CWA.
 7. On February 17, 1999, the Director of the Ohio EPA issued as a proposed action the denial of Mr. Writsel's request for water quality certification under §401 of the CWA.
 8. On March 2, 1999, Mr. Writsel submitted a timely request for an adjudication hearing with the Ohio EPA regarding the Director's proposed action.
 9. Following the filing of the request for adjudication hearing, the parties engaged in settlement discussions. As a result of those discussions, the parties filed a Joint Stipulation and Settlement Agreement. According to the terms of the Stipulation and Settlement Agreement, Mr. Writsel dismissed his adjudication request and withdrew his application for §401 Certification. Under the same Stipulation and Settlement Agreement, the Director withdrew his proposed action.
 10. The parties agreed to settle the case through the issuance of the present Director's Final Findings and Orders.

Orders

1. Mr. Writsel shall not unlawfully discharge any additional fill material, pollution, or other wastes, into the Big Darby Creek or any other waters of the State on or adjacent to the Property.
2. Mr. Writsel shall comply with the requirements of R.C. Chapter 6111 and the terms and conditions of the rules and regulations adopted under that Chapter.
3. Mr. Writsel shall pay to the Ohio EPA the amount of ten thousand dollars (\$10,000.00) in settlement of the Ohio EPA's claim for civil penalties pursuant to R.C. §6111.09. This payment shall be made by tendering a certified check made payable to "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
Attn: Vicki Galilei
Ohio Environmental Protection Agency
Lazarus Government Center
122 South Front Street
P.O.Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Randy Bournique of Ohio EPA's division of surface water at the same address.

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. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Mr. Writsel.

Reservation of Rights

These Orders do not prevent the Ohio EPA from enforcing the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Mr. Writsel for noncompliance with these Orders. These Orders do not prevent the Ohio EPA from exercising its authority to require Mr. Writsel to perform additional activities pursuant to R.C. Chapter 6111 or any other applicable law in the future. These Orders do not restrict the right of Mr. Writsel to raise any administrative, legal or equitable claim or defense for any additional activities that the Ohio EPA may seek to require of Mr. Writsel. These Orders do not limit the authority of the Ohio EPA to seek relief for violations not cited in these Orders.

Termination

Mr. Writsel's obligations under these Orders shall be satisfied and terminate when Mr. Writsel demonstrates in writing and certifies to the satisfaction of the Ohio EPA that all obligations under these Orders have been performed and the Ohio EPA, Division of Surface Water acknowledges in writing this demonstration and certification.

This certification shall be signed and submitted by Mr. Writsel to Mr. Ric Queen of the Ohio EPA's Division of Surface Water. The certification shall contain the following attestation:

AI certify under the penalty of law that I have personally examined and am familiar with the information contained in or accompanying this certification, and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

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 alleged violations addressed in these Orders, Mr. Writsel agrees to comply with these Orders, and Mr. Writsel agrees that these Orders are lawful and reasonable, and that the times provided for compliance herein are reasonable. The Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph of these Orders. Compliance with these Orders shall be full accord and satisfaction for Mr. Writsel's liability for the violations cited herein.

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

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

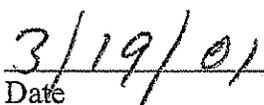
Signatory Authority

Each undersigned representative of a signatory to these Orders certifies that he is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO AGREED:



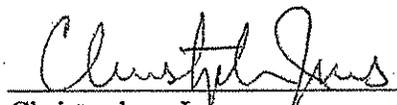
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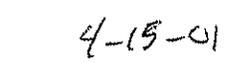
Date

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Christopher Jones
Director of Environmental Protection



Date