

IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIO

FILED
FULTON COUNTY
COMMON PLEAS COURT

2010 MAY 25 P 3: 46

PAUL E. MACDONALD
CLERK

STATE OF OHIO, ex rel.	:	CASE NO. 07 CV 214
RICHARD CORDRAY	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE BARBER
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
VREBA-HOFF DAIRY	:	
DEVELOPMENT, LLC,	:	
	:	
	:	
Defendant.	:	

CONSENT ORDER

The Complaint in the above-captioned matter having been filed with this Court, and Plaintiff, State of Ohio, by its Attorney General Richard Cordray (hereinafter "Plaintiff"), and Defendant Vreba-Hoff Dairy Development, LLC (hereinafter referred to as "Defendant" or "Vreba-Hoff"), having consented to the entry of this Order,

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has both personal and subject matter jurisdiction over the parties. The Complaint states a claim upon which relief can be granted against Defendant under Chapter 6111 of the Ohio Revised Code (hereinafter "R.C.") and the rules promulgated under that statute. Venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply to and be binding upon the

parties to this action, their agents, officers, directors, shareholders, members, partners, servants, employees, assigns, successors in interest, subsequent owners, transferees, purchasers, and any others who are acting in concert and/or in participation with them. Defendant shall provide a copy of this Consent Order to each general contractor and/or consultant it employs to perform work itemized herein, each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work, and Defendant shall be responsible for each general contractor's, consultant's, and subcontractor's compliance with this Consent Order. Defendant shall provide a copy of this Consent Order to any assigns, successors in interest, subsequent owners, transferees, or purchasers of an ownership interest in Defendant prior to the transfer of Defendant's interests. Defendant shall notify the Ohio EPA at least 30 days prior to the transfer of a majority of the ownership of Defendant.

III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendant has previously developed dairy farms without having first obtained coverage under the applicable Ohio EPA General National Pollutant Discharge Elimination System ("NPDES") Permit for storm water discharges from the construction activities at certain named Sites and/or has failed to comply with some of the terms and conditions of the applicable NPDES Permit at certain named Sites in such a manner as to violate R.C. Chapter 6111 and the water pollution control laws of the State of Ohio. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil or administrative liability by Defendant, its agents, officers, directors, shareholders, members, partners, servants, employees, assigns, successors in interest, subsequent owners, transferees,

purchasers, and any others who are acting in concert and/or in privity with Defendant for all claims alleged in the Complaint. Vreba-Hoff Dairy Leasing, LLC is hereby voluntarily dismissed from this lawsuit without prejudice.

4. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against Defendant or other appropriate persons for claims not alleged in the Complaint, including violations that occur after the filing of the Consent Order, nor shall anything in this Consent Order be construed to limit Defendant's defenses to such claims. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against appropriate persons other than Defendant, its agents, officers, directors, shareholders, members, partners, servants, employees, assigns, successors in interest, subsequent owners, transferees, purchasers, and any others who are acting in concert and/or in privity with Defendant for claims or conditions alleged in the Complaint. This Consent Order shall not be construed to limit the authority of the State to seek relief for violations not alleged in the Complaint, nor shall this Consent Order bar the State of Ohio from bringing any action against any person, including Defendant, for any violations that occur after the filing of this Consent Order.

IV. DEFINITIONS

5. The following Definitions shall govern the usage of these terms throughout the Consent Order unless otherwise specified:

- a. BMPs shall mean "Best Management Practices" which include schedules of activities, prohibitions of practices, maintenance procedures and other management

practices (both structural and non-structural) to prevent or reduce the pollution of surface waters of the state. BMPs also include treatment requirements, operating procedures and practices to control plant and/or construction site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

b. NOI shall mean Notice of Intent for coverage under the 2003 Permit or any other applicable NPDES Permit which informs the Ohio EPA of the applicant's intent to be covered under said permit authorizing discharges into state surface waters and which binds the applicant to compliance with the terms and conditions of said permit.

c. 2003 Permit shall mean the April 21, 2003 General NPDES Permit for Storm Water Discharges Associated with Construction Activity (Permit number OHC000002) attached hereto in Attachment A, together with the April 21, 2008 renewal (Permit number OHC000003) and any renewals or modifications thereof.

d. NPDES Permit shall mean any applicable statewide National Pollutant Discharge Elimination System permit, or any watershed and/or geographical specific permit, authorizing storm water discharges associated with construction activities that applies to Defendant's construction activities and any renewals or modifications of those permits.

e. Require, when used in the context of a contractual relationship between Defendant and its Responsible Contractors, shall mean to impose an obligation in contract between Defendant and its Responsible Contractor and to enforce such contractual obligations as necessary and appropriate to ensure that each Responsible

Contractor fully and timely meets the requirements imposed in the contract pursuant to this Consent Order and to prevent non-compliance with such requirements by the Defendant and its Responsible Contractor.

f. Responsible Contractor shall mean the general contractor hired by Defendant and charged with the supervision or completion of construction at a Site. If there is no general contractor for a Site, the Responsible Contractor shall be each contractor retained by Defendant responsible for ground-disturbing activities at the Site or for implementing elements of the Storm Water Pollution Prevention Plan (“SWPPP”).

g. Site or Sites shall mean any location or parcel of land in the State of Ohio for which Defendant previously had, currently have, or will in the future have either (i) operational control over construction plans and specifications or (ii) day-to-day operational control of those activities at a project which is necessary to ensure compliance with a SWPPP for the Site or other applicable NPDES Permit conditions (e.g., Defendant is authorized to direct workers at a site to carry out activities required by the SWPPP or to comply with other applicable NPDES Permit conditions). Operational control over construction plans and specifications includes the ability to make modifications to those plans and specifications. In order to qualify as a Site, the construction location must have ground-disturbing activities greater than or equal to one acre or which is otherwise subject to the NPDES storm water construction regulations set forth at 40 C.F.R. 122.26(b)(14)(x) or 40 C.F.R. 122.26(b)(15). The Site includes only the areas on which Defendant, or its Responsible Contractor conducting activities on

Defendant's behalf, is conducting activities subject to the applicable NPDES permit. Notwithstanding the foregoing sentence, a location ceases to be a Site once: (1) a Notice of Termination ("NOT") of coverage under the NPDES permit has been submitted along with evidence that final stabilization across the entire Site has been achieved meeting the applicable criteria in the NPDES permit on the date the NOT is filed. Attachment B is a list of all Sites that exist as of the date of this Consent Order. Such evidence of final stabilization shall be supported by adequately detailed written and dated photographic documentation. The NOT must be accepted by the Director of the Ohio EPA; or (2) a Notice of Transfer has been submitted and accepted by the Director of the Ohio EPA and the transferee has taken over responsibility for construction permit compliance and final stabilization. If Ohio EPA fails to act on an NOT or Notice of Transfer within 60 days after submission, the NOT or Notice of Transfer is deemed accepted. However, should Ohio EPA's failure to act be due to inclement weather, the NOT or Notice of Transfer shall not be deemed accepted until Ohio EPA has had reasonable time to inspect and act.

h. Storm Water Professional shall mean a person with knowledge and experience in the installation and maintenance of sediment and erosion controls. "Knowledge and experience" shall also include but not be limited to knowledge about the applicable NPDES Permit conditions, and the capability for identifying environmental problems relating to storm water at the specific project. A Storm Water Professional is an individual who is currently certified by either: (1) CPESC, Inc. under the Certified Professional in Erosion & Sediment Control program; (2) Stormwater USA under the

Certified Compliance Inspector of Stormwater program; (3) a storm water certification program provided by any other organization approved by Ohio EPA; or (4) a Storm Water Training Program provided by Defendant pursuant to a Training Plan approved by Ohio EPA pursuant to Paragraphs 21 f-h (Training Program) of this Order.

i. SWPPP shall mean Storm Water Pollution Prevention Plan developed for each Site as required by the applicable NPDES Permit.

j. Temporary Rolled Erosion Control Product ("TREC") shall mean a degradable manufactured material used to stabilize easily eroded areas while vegetation becomes established. TREC's are degradable products composed of biologically, photochemically, or otherwise degradable materials. TREC's consist of erosion control netting, open weave textiles, erosion control blankets and matting, or other materials designed to serve the same function. These products reduce soil erosion and assist vegetative growth by providing temporary cover from the erosive action of rainfall and runoff while providing soil-seed contact.

V. PERMANENT INJUNCTION

6. Defendant is hereby permanently enjoined and immediately ordered to comply with the requirements of R.C. Chapter 6111 and the rules adopted thereunder that pertain to the applicable NPDES Permit program as they relate to storm water compliance. Alternatively, Defendant is hereby enjoined and immediately ordered to comply with R.C. Chapter 903 and the rules adopted thereunder that pertain to the NPDES Permit program as they relate to storm water compliance, in the event that the Ohio Department of Agriculture is subsequently authorized to

administer the applicable NPDES Permit program. Where this Consent Order enjoins and/or orders Defendant to perform an action, Defendant may perform such an action through its own employees or by requiring its consultants, contractors, or their contractors' subcontractors to perform such an action.

7. Defendant is hereby permanently enjoined and immediately ordered to comply with the terms and conditions of the applicable NPDES Permit and any renewals, modifications, and/or reissuance of the applicable NPDES Permit at any and all times when engaged in construction activities at Sites, as required by law.

8. Defendant is hereby permanently enjoined and ordered to refrain from commencing or resuming clearing, grading, excavating, grubbing and/or filling activities or earthmoving, or otherwise developing or redeveloping any Site or portion of a Site in such a manner as to result in the disturbance of at least one or more acres of total land, until Defendant has timely submitted a NOI for coverage under the applicable NPDES Permit or under any renewals or modifications thereof in compliance with Part II. A. and Part I. E. 1. of the 2003 Permit and the Director has granted Defendant coverage to discharge under the terms of the applicable NPDES Permit for such NOI submitted.

9. Defendant is hereby permanently enjoined and ordered to refrain from unlawfully discharging storm water associated with construction activity to waters of the state at a Site after a NOT or a Notice of Transfer for that Site has been submitted and approved by the Director of the Ohio EPA.

10. Defendant is hereby permanently enjoined and ordered to comply with its

SWPPPs.

11. Defendant is hereby permanently enjoined and ordered to amend the SWPPP for a Site in accordance with Part III. D. of the 2003 Permit or the applicable NPDES Permit whenever there is a change in design, construction, operation or maintenance of any incomplete, current, or future construction activity which has a significant effect on the potential for the discharge of pollutants to surface waters of the state, or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity.

12. Defendant is hereby permanently enjoined and ordered to implement and maintain appropriate temporary stabilization for erosion control on all disturbed ground until seasonal conditions are conducive to initiating permanent stabilization pursuant to and where required by Part III.G.2.b.i. of the 2003 Permit or the applicable NPDES Permit at Sites where Defendant has not yet implemented temporary stabilization for erosion control.

13. Defendant is hereby permanently enjoined and ordered to implement and maintain appropriate permanent stabilization for erosion control on all disturbed ground, when seasonal conditions are conducive to initiating permanent stabilization, pursuant to Part III.G.2.b.i. of the 2003 Permit or the applicable NPDES Permit at Sites where Defendant has not yet implemented permanent stabilization for erosion control.

14. Defendant is hereby permanently enjoined and ordered to stabilize drainage channels by using special measures, such as TRECP, under the circumstances required by Paragraph 20 where Defendant has not yet stabilized drainage channels. Defendant shall initiate drainage

channel stabilization within 30 days of the entry of this Consent Order.

15. Defendant is hereby permanently enjoined and ordered not to initiate, to allow its contractors or subcontractors to initiate, or to direct any contractor or subcontractor to initiate ground-disturbing activities at a Site until all required storm water authorizations and applicable NPDES Permit coverage have been issued by Ohio EPA and any local, state, or federal agency with a lawful and applicable storm water program regarding discharges of storm water from construction activities, including erosion and sediment control plans and storm water management plans. Defendant and its Responsible Contractors shall obtain the applicable NPDES Permit coverage, transfer any NPDES Permit or terminate NPDES Permit coverage as required or authorized by the applicable NPDES Permit.

16. Except where the Director has accepted an NOT or Notice of Transfer, Defendant is hereby permanently enjoined and ordered to include a right of entry provision in any contracts executed after the entry of this Consent Order that transfer control and/or ownership, whether in whole or in part, of any Sites. The right of entry provision shall grant Defendant ongoing access to the property where another operator has assumed control. The purpose of the right of entry provision shall be solely for Defendant to comply with its applicable NPDES Permits.

17. Defendant is hereby permanently enjoined and ordered to create and maintain a record summarizing the results of the inspections per Paragraph 21. u. The record shall include the results of the inspection, the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, a certification as to whether the Site is in compliance with the SWPPP and the applicable NPDES

Permit, and shall identify any incidents of non-compliance. The record shall be maintained at each Site and made available for inspection by the Ohio EPA and any local, state, or federal agency with a lawful and applicable storm water program.

18. Defendant is hereby permanently enjoined and ordered to make any SWPPP available to Ohio EPA at the Site immediately during working hours or to submit any SWPPP to Ohio EPA within 10 days after written request.

19. Defendant is hereby permanently enjoined and ordered to maintain the SWPPP for any given Site at that Site.

20. Where stabilization cannot be accomplished through vegetation or other effective means, Defendant is hereby permanently enjoined and ordered to use TRECP as soon as practical to stabilize channels and outfalls and prevent erosive flows on the following areas requiring stabilization:

- a. Areas where erosion potential is high or a failure to establish vegetation is costly, such as constructed channels and stream banks;
- b. Areas where vegetation cannot be established, such as southern exposures or areas prone to drying;
- c. Areas of concentrated flow, especially where flows exceed 3.5 feet per second (e.g. near culverts);
- d. Problem areas with soils that are "highly erodible," as defined by the Natural Resources Conservation Service;
- e. Areas where mulch cannot be held in place due to wind or water;

f. Where slopes other than the inside slopes of manure storage or treatment facilities will be greater than 3:1 or where flows will exceed 3.5 feet per second.

The SWPPP will show the location and proper installation of these temporary stabilization methods. Other methods of permanent stabilization may be used where design discharges or runoff exert velocities and sheer stresses that exceed the ability of mature vegetation to withstand.

21. Defendant is hereby permanently enjoined and ordered to implement a Compliance Program as follows:

PROVIDING NOTICE OF THE CONSENT ORDER TO CONTRACTORS

a. Prior to negotiating contracts for construction at any Site with the general construction contractor, Defendant shall provide the general construction contractor with a copy of this Consent Order. Defendant shall incorporate the requirements of paragraphs 21 m. through cc. of the Consent Order into the construction contract or the special conditions to such contract.

SWPPPs

b. Defendant shall provide to Ohio EPA or cause to be provided to Ohio EPA a SWPPP for each Site that: (i) complies with the requirements of the applicable NPDES Permit; (ii) requires BMPs that are appropriate for the conditions of the Site; (iii) uses erosion management controls, including construction sequencing, and sediment management controls in tandem; and (iv) includes at a minimum: (A) an identification of Defendant's Director of Storm Water Compliance, as well as the Responsible

Contractor's Site Supervisor for the project, with a description of each person's duties; and (B) a description of the inspection procedures and documentation requirements set forth in Paragraphs 21 m-cc (Contractor Checklist, Provision of Guidance Materials, Designation of Responsible Contractor's Site Supervisor, Pre-Construction Meetings, Weekly Meetings, Availability of the SWPPP and the applicable NPDES Permit, Inspections, Defendant's Director of Storm Water Compliance Review and Report, Temporary Alteration of BMPs, Defendant's Final Inspection) of this Consent Order. The name of the Responsible Contractor's Site Supervisor for the project shall be added to the SWPPP prior to the pre-construction meeting.

c. For a period of one year after the entry of this Consent Order, Defendant shall submit a copy of the SWPPP to the Ohio EPA prior to beginning any construction activities at any Site. Defendant shall amend the SWPPP under the conditions cited in Part III. D. of the 2003 Permit. If, during this one year or thereafter, Ohio EPA requests that changes be made to a SWPPP as a condition for issuing approval for an NOI to start construction, Ohio EPA agrees to make any such request for amendments within 45 days after receiving the SWPPP so that construction will not be delayed. If Defendant amends a SWPPP in response to Ohio EPA request for changes, Ohio EPA agrees to approve the SWPPP or request additional changes within 14 days after receiving the amended SWPPP.

d. Defendant shall amend the SWPPP, including the Site Map, whenever there is a change in design, construction, operation, or maintenance at the construction

site that has or will have a significant effect on the potential for the discharge of pollutants to waters of the state that has not been previously addressed in the SWPPP. Defendant shall also amend the SWPPP whenever the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity. Further, for Sites at which activities subject to the applicable NPDES Permit have started, revisions to the SWPPP must be completed as soon as practical, and if possible, before the next storm event that discharges sediment into waters of the state. Defendant shall amend the SWPPP for a Site at which activities subject to the applicable NPDES Permit have started if notified by Ohio EPA that the SWPPP does not comply with Part III. C. of the 2003 Permit or the applicable NPDES Permit within 10 days after notification from the Ohio EPA.

POST NOTICE OF CONTACT INFORMATION

e. Defendant shall post in a conspicuous place at each Site a legible notice that: (i) provides the telephone number of Defendant's Director of Storm Water Compliance; and (ii) authorizes all employees and contractors to contact its Director of Storm Water Compliance with any questions or to report problems relating to sediment and erosion control at any Site. If Defendant's Director of Storm Water Compliance is not available to answer the phone at any time, Defendant shall ensure that a person or machine shall be available to answer or record a message and that such messages are retrieved and addressed by Defendant's Director of Storm Water Compliance in a timely fashion.

TRAINING PROGRAM

f. Defendant shall conduct an annual Storm Water Training Program on the applicable NPDES Permit requirements and BMPs for Defendant's Director of Storm Water Compliance, Site Supervisors of Responsible Contractors working at any Site, consulting engineers preparing the SWPPPs for the Sites, and others substantially involved in managing and supervising site planning, ground disturbance, construction phasing, site and ground stabilization (temporary and permanent), construction materials and equipment storage, storm water quality associated with construction activity, erosion management control and the like as a part of construction activity at Sites. Individuals hired after the annual training shall be trained within 45 days after hiring. Individuals who have completed the Storm Water Training Program must be able to adequately identify and implement storm water sediment and erosion control practices and effectively instruct employees and contractors in the implementation of such practices. The training shall be conducted by an employee or contractor of Defendant who is a Storm Water Professional.

g. Within 180 days of the entry of this Consent Order, Defendant shall submit to Ohio EPA for review and approval a proposed Training Plan for the Storm Water Training Program. The Storm Water Training Plan shall identify the following: (i) the syllabus, agenda, and training materials for the Storm Water Training Program that provide for at least 6 hours of classroom instruction focused on the following topics: (A) training objectives; (B) Defendant's storm water compliance mission statement; (C) an

overview of potential storm water pollution and other environmental impacts of Defendant's Site operations; (D) a review of the principles of erosion and sediment control; (E) selection and implementation of erosion and sediment controls; (F) maintenance requirements for erosion and sediment controls; (G) a review of storm water regulations and the applicable NPDES Permit; (H) a review of Defendant's typical SWPPP; (I) requirements for the design, installation and maintenance of BMPs (how to design, install, and maintain); (J) roles of Defendant's Director of Storm Water Compliance, and Responsible Contractors' Site Supervisor; (K) role of Defendant's individual employees and contractors at the Site (including potential regulatory and environmental consequences of departure from specified operating procedures, such as non-compliance and/or pollutant releases to the environment); (L) a review of the requirements of this Consent Order and Defendant's construction contract relating to storm water compliance; (ii) trainer qualifications; (iii) a description of how the training will be reinforced in the workplace and at Sites in order to maintain increased employee and contractor awareness and involvement in meeting the requirements of the SWPPP, the applicable NPDES Permit, and other requirements of law; (iv) a description of how a periodic (minimum of at least one annually) evaluation of the training program will occur and how Defendant plans to incorporate the results into program improvements; (v) record keeping procedures for documenting the training; and (vi) provide for a written exam designed to determine proficiency in the principles, practices, and legislation/regulation of erosion and sediment control and the requirements of this

Consent Order.

h. If Ohio EPA disapproves the Storm Water Training Plan, Defendant shall correct it as directed by Ohio EPA. Once Ohio EPA approves the Plan, Defendant shall implement it in accordance with its provisions and conduct its first annual training within 60 days after approval.

DIRECTOR OF STORM WATER COMPLIANCE

i. Within 30 days of entry of this Consent Order, Defendant shall submit in writing a Notice to Ohio EPA identifying one or more coordinators, managers, directors, consultants, or other employees of Defendant as Director(s) of Storm Water Compliance who will be responsible for coordinating oversight of storm water compliance by Defendant and its Responsible Contractors at each Site. The Director of Storm Water Compliance shall: (i) be a Storm Water Professional; (ii) be able to adequately identify and implement storm water sediment and erosion control practices and effectively instruct employees and contractors in the implementation of such practices. The Director of Storm Water Compliance shall maintain his or her status as a Storm Water Professional and shall take refresher courses at least once every 12 months or as required by the certifying organization. If, at any time, Defendant wishes to change its Director of Storm Water Compliance, Defendant shall notify Ohio EPA in writing and provide Ohio EPA with the identity of the replacement who shall: (i) be a Storm Water Professional or become a Storm Water Professional as soon as practical, but in no case later than one year after being identified as the Director of Storm Water Compliance; (ii) be able to

adequately identify and implement storm water sediment and erosion control practices and effectively instruct employees and contractors in the implementation of such practices. At the time Defendant identifies its Director of Storm Water Compliance, or any replacement thereof, Defendant shall also submit evidence that the person selected meets the criteria set forth in this Paragraph, including: (i) a copy of the certification demonstrating the individual is a Storm Water Professional (if the person becomes a Storm Water Professional after hiring, this certification may be submitted within 14 days after the person receives the certification); (ii) a copy of any other storm water training certificates that person has received; and (iii) a description of the storm water-related experience and educational background of the selected individual.

j. Defendant shall authorize the Director of Storm Water Compliance to correct any SWPPP design and/or storm water construction defects and to invoke contractual remedies to the full extent necessary to correct storm water design and construction defects. The Director of Storm Water Compliance shall also be responsible for conducting the weekly inspections required by Paragraph 21 w (Inspections) and for otherwise overseeing compliance with this Consent Order, the SWPPP, and the requirements of any applicable NPDES Permit at the Sites.

NOTICE OF CONSTRUCTION PROJECTS AND CONTACTS

k. Within 30 days following the date of entry of this Consent Order, Defendant shall provide to Ohio EPA consistent with the notice provisions specified in Paragraph 27 of this Order (Notices and Approvals), a list of all Sites for which

Defendant has awarded a construction contract, for which construction has not been completed, and for which final stabilization has not been achieved. By the 1st day of every month thereafter, Defendant shall provide Ohio EPA notice by fax to the number specified in Paragraph 27 (Notices and Approvals) of all Sites currently under construction or for which Defendant has awarded a construction contract. Each report required by this Paragraph shall include the following information for each Site: (i) Defendant's Facility ID number, if available; (ii) the name and phone number of Defendant's Director of Storm Water Compliance; (iii) the name and phone number of the Responsible Contractor(s), where applicable; (iv) the location of the Site including the physical address and the latitude and longitude; (v) a job site contact (include telephone number and/or e-mail); (vi) the best estimate for the start date of ground disturbing activities; and (viii) the best estimate for the completion or cessation of ground disturbing activities and final stabilization.

CONTRACTOR CHECKLIST

1. In awarding construction contracts to Responsible Contractors after the entry of this Consent Order, Defendant shall review a checklist of storm water requirements and issues with the Responsible Contractor. That checklist shall include the following: (i) an advisory to the Responsible Contractor of its obligation to obtain a copy of the applicable NPDES Permit(s); (ii) the requirement that Defendant and its contractors shall, as required by any applicable NPDES Permit, submit a Notice of Intent or a Co-NPDES Permittee Notice of Intent for each Site; (iii) the necessity for and

planning of the pre-construction meeting required by Paragraph 21 o (Pre-Construction Meetings); (iv) the requirement that all BMPs that are required by the SWPPP shall be implemented prior to the commencement of ground disturbing activities; (v) the requirement that the Responsible Contractor certify to Defendant that appropriate storm water controls are in place prior to the commencement of ground disturbing activity as required by Paragraph 21 o (Pre-Construction Meetings); and (vi) withholding progress payments for failure to adhere to BMPs.

PROVISION OF GUIDANCE MATERIALS

m. Defendant shall, or shall require the Responsible Contractor for each Site to, provide to each contractor responsible for ground disturbing activities the most current edition of the Rain Water and Land Development Manual or other equivalent storm water compliance guidance materials accepted by Ohio EPA and appropriate for the conditions at the Site.

DESIGNATION OF SITE SUPERVISOR

n. Defendant shall require the Responsible Contractor for each Site to designate a Site Supervisor who: (i) is responsible for overseeing activities and work at a Site; (ii) has the authority to direct employees and contractors to undertake actions to comply with the applicable NPDES Permit and the Site's SWPPP, and (iii) is responsible for communicating to the Director of Storm Water Compliance any SWPPP design and/or storm water construction defects. Defendant shall require the Responsible Contractor to certify to Defendant in writing before the initiation of ground-disturbing

activities that the Site Supervisor: (i) is a Storm Water Professional, or will become a Storm Water Professional as soon as practical after the beginning of ground-disturbing activity, but in no case later than one year after being identified as the Site Supervisor, and will be accompanied on the inspections every two weeks by Defendant's Director of Storm Water Compliance until becoming a Storm Water Professional; (ii) is able to adequately identify and implement storm water sediment and erosion control practices and effectively instruct employees and contractors in the implementation of such practices.

PRE-CONSTRUCTION MEETINGS

o. Defendant shall require the Site Supervisor to hold a pre-construction meeting with either the foremen or the supervisor of the foremen of the contractors involved in ground-disturbing activities prior to initiation of ground-disturbing activities at the Site. In the event that the Site Supervisor is not a Storm Water Professional at the time of the meeting, the meeting will be conducted by the Defendant's Director of Storm Water Compliance. The engineer who provided Ohio EPA with the SWPPP, or any engineer retained by Defendant who reviews and becomes familiar with the SWPPP, shall also attend this meeting. At such meeting, Defendant shall require the Site Supervisor (or the Director of Storm Water Compliance if the Site Supervisor is not yet a Storm Water Professional) and the engineer who provided Ohio EPA with the SWPPP, or any engineer retained by Defendant who reviews and becomes familiar with the SWPPP, to explain the applicable NPDES Permit requirements, the SWPPP and drawings, and

other environmental requirements for the Site. Defendant shall require that at the conclusion of the meeting, the Site Supervisor shall require each attendee to sign a certification that they understand the terms and conditions of the applicable NPDES Permit and the SWPPP. If the foremen of the excavators do not attend the meeting, the supervisor of the foremen shall meet with the foremen to explain the applicable NPDES Permit requirements, the SWPPP and drawings, and other environmental requirements for the Site. If a contractor involved in ground-disturbing activities begins work after the pre-construction meeting has occurred, Defendant shall require the Site Supervisor (or the Director of Storm Water Compliance if the Superintendent is yet not a Storm Water Professional) to brief the contractor before the contractor begins work at the Site. Such briefing shall meet the requirements for a pre-construction meeting.

p. Prior to the initiation of ground-disturbing activities at any Site, except for activities associated with the installation of BMPs at a Site, Defendant shall require the engineer who provided Ohio EPA with the SWPPP, or another engineer retained by Defendant who reviews and becomes familiar with the SWPPP, and the Site Supervisor to inspect the Site to determine that all BMPs that are required by the SWPPP to be installed prior to the start of construction have been installed correctly and in the correct locations. Defendant shall require the engineer who conducts this inspection and the Site Supervisor to certify on or before the commencement of ground disturbing activity that the BMPs required by the SWPPP have been installed correctly and in the correct locations.

WEEKLY MEETINGS

q. In addition to the pre-construction meeting, Defendant shall, during weeks in which ground-disturbing activities occur, require its Responsible Contractor to hold weekly meetings with persons involved in ground-disturbing activities at each Site to review the requirements of any applicable NPDES Permits, the SWPPP, and this Consent Order and to address any problems that have arisen in implementing the SWPPP or maintaining BMPs. If such a meeting is not held during a week in which earth-disturbing activities do not occur, such a meeting must be held prior to the resumption of earth-disturbing activities. A log of the dates on which the weekly meetings were held shall be kept, retained, and made available at the Site for inspection by the Ohio EPA and any local, state, or federal agency with a lawful and applicable storm water program regarding discharges of storm water from construction activities, including erosion and sediment control plans and storm water management plans.

AVAILABILITY OF SWPPP AND APPLICABLE NPDES PERMIT

r. Throughout pre-construction, construction, and post-construction activity at any Site, Defendant shall ensure that the applicable NPDES Permit and SWPPP are readily available at the Site, or at a location designated pursuant to the applicable NPDES Permit, for review by any contractor or employee, as well as any inspector for Ohio EPA or any local, state, or federal agency with a lawful and applicable storm water program regarding discharges of storm water from construction activities, including erosion and sediment control plans and storm water management plans.

INSPECTIONS

s. Defendant shall require, with respect to construction contracts issued after entry of this Consent Order, that each Site Supervisor conduct at least two inspections per week in which construction activity has occurred at a Site for which that Site Supervisor is responsible, and inspect within 24 hours after any storm event greater than one-half inch of rain per 24-hour period. Defendant shall require the Site Supervisor to inspect the entire Site to: (i) determine whether construction is being conducted in accordance with the requirements of applicable NPDES Permits and the applicable SWPPP; (ii) observe and, if necessary, improve the effectiveness of all BMPs and record any corrections made or needed; and (iii) evaluate whether the SWPPP is adequate and properly implemented in accordance with the SWPPP's schedule or whether additional control measures are required, and, if necessary, take steps to eliminate or reduce to the extent required by the applicable NPDES Permit any discharges of pollutants from the Site into waters of the state. The Site Supervisor shall also re-inspect any area in which a previous inspection has revealed noncompliance in order to confirm that corrections have been made. At Defendant's option, Defendant's Director of Storm Water Compliance may perform any inspections in lieu of the Site Supervisor.

t. Defendant shall require the Site Supervisor to record the results of each inspection in the form set forth in Attachment C ("Inspection Report Form") and to sign the Inspection Report Form to certify the accuracy of the information contained therein. Defendant shall require that once each week, the Site Supervisor shall provide copies of

the completed Inspection Report Forms to Defendant's Director of Storm Water Compliance. Inspection Report Forms shall be retained at the Site and made available for inspection by Ohio EPA and any local, state, or federal agency with a lawful and applicable storm water program regarding discharges of storm water from construction activities, including erosion and sediment control plans and storm water management plans.

The Inspection Report Form must contain a summary of the results of the inspection, the inspector's name, the date of inspection, the major observations relating to the implementation of the SWPPP, a certification as to whether the Site is in compliance with the SWPPP and the applicable NPDES Permit; and must identify incidents of non-compliance. Since inspections are required within 24 hours after any storm event greater than 0.5 inch of rain per 24-hour period, a precipitation record is to be included in the Inspection Report Form to demonstrate compliance. "Observations" in the Inspection Report Form include evidence of or the potential for pollutants entering the drainage system in disturbed areas and areas used for storage of materials exposed to precipitation, including areas other than where BMPs are installed. "Observations" in the Inspection Report Form also include changes in control measures necessary to address any change in the design, construction, operation, or maintenance of any construction activity which has significant potential for the discharge of pollutants to surface waters of the state. The Inspection Report Form shall document any condition of the storm water control measures on the Sites that do not comply with the SWPPP. Along with a narrative of

observations, the inspector shall use a sketch or a reduced photocopy of the site plan showing the location and type of control measures. Non-compliant storm water control measures observed at these locations, locations in need of control measures at other disturbed areas on the construction site, and any corrective measures undertaken must be drawn in and noted on the sketch or site map or described in the narrative portion of the inspection form with a cross-reference identifying the location on the site map.

u. Defendant shall require its Responsible Contractor to complete all repairs or modifications to the BMPs identified as necessary during each inspection as soon as practical, but no later than 3 days after the inspection. Notwithstanding the foregoing sentence, repairs or modifications of a sediment settling pond shall be completed as soon as practical, but no later than 10 days after the inspection. Defendant shall also require its contractors to record such repairs and modifications in the SWPPP in accordance with Paragraph 21 b (SWPPPs). Defendant shall apply contractual remedies, such as withholding progress payments, to the Responsible Contractor for any failure to meet the deadlines imposed in this subparagraph.

v. At least once every two weeks, Defendant's Director of Storm Water Compliance shall perform an inspection of each Site. Prior to the inspection, Defendant shall not notify the Site Supervisor or any other person at the Site or employed by the Responsible Contractor or a subcontractor of the day on which the Director of Storm Water Compliance will perform the inspection. In addition, the Director of Storm Water Compliance shall review the Inspection Report Forms prepared since the Director of

Storm Water Compliance's previous inspection and ensure that all corrective actions noted as necessary and appropriate on the Inspection Reports Forms have been completed as required by Paragraph 21 u. The Defendant's Director of Storm Water Compliance shall identify on the Inspection Report Form any changes in Defendant's inspection and oversight procedures that are necessary to ensure compliance with this Consent Order and any applicable NPDES Permits and address any pattern of deficiencies identified in the Responsible Contractor's implementation of the SWPPP or maintenance of the BMPs. Defendant's Director of Storm Water Compliance shall certify compliance with the requirements of this Paragraph by signing in the area provided on the Inspection Report Form.

w. If, during an inspection, Defendant's Director of Storm Water Compliance determines that any BMP requires repair or that the Site is not in compliance with the requirements of this Consent Order or any applicable NPDES Permit, Defendant's Director of Storm Water Compliance shall identify on his/her Inspection Report Form the actions necessary to repair the BMP or bring the Site into compliance with the requirements of this Consent Order and any applicable NPDES Permit or to address any deficiencies identified by the Director of Storm Water Compliance. The Director of Storm Water Compliance shall certify compliance with the requirements of this Paragraph by signing in the area provided on his/her Inspection Report Form no later than 3 days (or 10 days for a sediment settling pond) after the inspection that the Responsible Contractor has taken all actions identified by the Director of Storm Water Compliance as

necessary to repair the BMP or bring the Site into compliance with the requirements of this Consent Order and any applicable NPDES Permit or to address any deficiencies identified by the Director of Storm Water Compliance.

x. If, during an inspection, the Site Supervisor or Defendant's Director of Storm Water Compliance identifies a deficient BMP or other condition that must be corrected to comply with this Consent Order or the applicable NPDES Permit, and the Responsible Contractor fails to certify correction within 3 days (or 10 days for a sediment settling pond) of the inspection in which the need for correction was identified, in addition to imposing the contractual remedies required by Paragraph 21 v., Defendant shall take the steps set forth in this subparagraph. First, within 3 days (or 10 days for a sediment settling pond) after the first observation of the deficiency, the Site Supervisor shall notify the Defendant's Director of Storm Water Compliance. Second, within 5 days after receiving the notice, the Defendant's Director of Storm Water Compliance shall contact the owner or chief executive officer of the general contractor at such Site, demand immediate compliance, and apply available economic and other incentives such as withholding progress payments as provided in Paragraph 21. v. Third, if the deficiency has not been corrected within 30 days after the inspection giving rise to the notice, the Defendant's Director of Storm Water Compliance or his designee shall contact the owner or chief executive officer of the general contractor, and invoke such additional contractual measures as are necessary to obtain correction, including the withholding of contractor progress payments, hiring of additional contractors to perform such correction

at the general contractor's expense, termination of the construction contract, or other remedies.

y. If at any time during the procedures set forth in Paragraph 20 aa (Defendant's Director of Storm Water Compliance Review and Report) there are actual discharges of pollutants from the Site resulting from a deficiency observed during an inspection, Defendant shall ensure that such discharges are eliminated or reduced to the extent required by the applicable NPDES Permit as soon as practical but no later than 24 hours after the onset of the discharges (except where modifications to a sediment settling pond are required, which shall occur no later than 10 days after an inspection notes that repairs or modifications are required). Further, nothing in this Paragraph shall be construed to limit the authority of any state, local, or federal agency to enforce any applicable NPDES Permit or to issue orders to Defendant or its contractors to take immediate corrective action.

**DEFENDANT'S DIRECTOR OF STORM WATER COMPLIANCE
REVIEW AND REPORT**

z. The Site Supervisor shall submit each Inspection Report Form signed by the Site Supervisor for the Site to the Director of Storm Water Compliance within 5 days of completing the inspection. The Director of Storm Water Compliance shall review the submitted Inspection Report Forms and forward a copy to Ohio EPA at least monthly. Inspection Report Forms may be submitted electronically to Ohio EPA on a daily, weekly or monthly basis.

TEMPORARY ALTERATION OF BMPs

aa. If, during the course of construction at a Site, the temporary removal or alteration of a BMP is necessary to accomplish the construction or to protect health and safety, Defendant shall require the Site Supervisor to note such removal or alteration on an Inspection Report Form, including specific information regarding the changes made and the date and time such changes were made. Defendant shall require its Responsible Contractor to restore the BMP as soon as practicable but in no case later than 24 hours after the completion of the activity that required the change. Defendant shall require the Site Supervisor to note the restoration on the Inspection Report Form, including specific information regarding the date and time at which the restoration was begun and completed. Defendant shall take all reasonable measures to minimize discharges to the waters of the state resulting from the removal or alteration of the BMP as required by the applicable NPDES Permit during the time that the BMP has been altered or removed, including, but not necessarily limited to timing the removal or alteration of the BMP so that it occurs when precipitation is not forecast if feasible, and installing new or alternate BMPs outside the affected area. Should any such discharges occur, Defendant shall notify the Ohio EPA within 24 hours.

DEFENDANT'S FINAL INSPECTION

bb. The Defendant's Director of Storm Water Compliance shall perform an inspection of the Site at the conclusion of the construction project to ascertain whether all areas of the Site have been stabilized in accordance with the applicable NPDES Permit and the Site is eligible to terminate NPDES Permit coverage. Defendant's Director of

Storm Water Compliance shall sign and certify an Inspection Report Form for the inspection. The certified Inspection Report Form shall be retained by Defendant with the SWPPP as required by this Consent Order and any applicable NPDES Permit or other requirement of law. If all areas of the Site have been finally stabilized in accordance with applicable NPDES Permit conditions and requirements, Defendant and the Responsible Contractor (when a Co-NPDES Permittee) shall file a NOT of NPDES Permit coverage as required by the applicable NPDES Permit. If the Site has not been stabilized in accordance with the applicable NPDES Permit, Defendant shall ensure that all stabilization has been completed and that the final inspection is repeated before a NOT is filed.

VI. CIVIL PENALTY

22. Defendant shall pay to the State of Ohio pursuant to R.C. 6111.09 a civil penalty of Eighty-Seven Thousand Five Hundred Dollars (\$87,500). The civil penalty shall be paid in 18 monthly installments starting with an initial payment of Four Thousand Eight Hundred and Eighty Dollars (\$4880) which shall be paid within six months after the entry of this Consent Order. The remaining 17 monthly installments shall be Four Thousand Eight Hundred and Sixty Dollars (\$4860) each and each such installment payment shall be paid on or before the 19th of the month of each month after the initial payment. If the Defendant fails to make a monthly civil penalty payment on or before the date specified by this paragraph for such payment on four occasions, the total outstanding balance of the civil penalty of \$87,500 ordered to be paid by the Defendant shall be immediately due and payable to the State of Ohio. Defendant shall pay

\$87,500 less any amount of the civil penalty that has already been paid to the State of Ohio pursuant to this paragraph of this Consent Order.

All penalty payments shall be paid by delivering certified checks for the appropriate amounts, made payable to "Treasurer, State of Ohio." Said checks shall be mailed to the following address:

State of Ohio Attorney General's Office
State Office Tower
30 E. Broad Street, 25th Floor
Environmental Enforcement Section
Columbus, Ohio 43215 - 3400
Attention: Karen Pierson

VII. STIPULATED PENALTIES

23. In the event that Defendant fails to meet any requirement of this Consent Order, and/or any term or condition of the NPDES Permit, Defendant shall immediately and automatically be liable for and shall pay a stipulated penalty according to the following payment schedule:

a. Failure to meet a requirement of this Consent Order and/or failure to comply with the applicable NPDES Permit, from the 1st to the 30th violation which occurs after the effective date of this Consent Order: **\$250** per violation per day.

b. Failure to meet a requirement of this Consent Order and/or failure to comply with the applicable NPDES Permit, from the 31st to the 60th violation which occurs after the effective date of this Consent Order: **\$500** per violation per day.

c. Failure to meet a requirement of this Consent Order and/or failure to comply with the applicable NPDES Permit, from the 61st to the 90th violation which occurs after the effective date of this Consent Order: **\$750** per violation per day.

d. Failure to meet a requirement of this Consent Order and/or failure to comply with the applicable NPDES Permit, for all violations after and including the 91st violation

which occurs after the effective date of this Consent Order: **\$1,000** per violation per day.

Solely for the purposes of calculating stipulated penalties due and owing under this Consent Order, if there is a violation of the Consent Order discovered during any of the inspections conducted by the Site Supervisor, if the violation is corrected within the next business day, and if Defendant can demonstrate there was no storm water discharge to waters of the state, then no stipulated penalties shall be due and owing for those violations. Otherwise, stipulated penalties shall be enforced as stated herein.

24. Any stipulated penalty required to be paid pursuant to the provisions of Paragraph 23 of this Consent Order shall be made by delivering a certified check or checks for the appropriate amounts, to the order of "Treasurer, State of Ohio" within 45 days from the date of the failure to comply with this Consent Order. Said check shall be mailed to the address previously listed in Paragraph 22 (Civil Penalty) of this Consent Order. The requirement to pay any stipulated penalty as set forth herein is self-executing upon the failure of Defendant to meet any requirement of this Consent order. No further demand need be made by Plaintiff. Defendant shall also state in writing the specific failure to comply with the Consent Order and/or the applicable NPDES Permit term and condition that was not complied with, and the dates of non-compliance. Payment of stipulated penalties and acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to this Section of the Consent Order shall not be construed to limit Plaintiff's authority to seek additional relief pursuant to R.C. Chapter 6111 or to otherwise seek judicial enforcement of this Consent Order.

VIII. POTENTIAL FORCE MAJEURE

25. If any event occurs which causes or may cause a delay of compliance with any the requirements of this Consent Order, Defendant shall notify the Ohio EPA in writing, at the address listed in Paragraph 27 (Notices and Approvals) below, within 10 days of the event. This notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize any such delay.

26. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitation, acts of God, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, the Parties do agree that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that the State's filed Complaint is litigated. At that time, Defendant will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of this Section shall render this paragraph void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its

obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendant qualify for an extension of a subsequent date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order with a Potential Force Majeure Clause does not constitute a waiver by Defendant of any rights or defenses they may have under applicable law.

IX. NOTICES AND APPROVALS

27. For all notices, submittals, and approvals required under the terms of this Consent Order, Defendant shall send them to:

Mark Mann
Enforcement Manager
Division of Surface Water
Central Office Ohio EPA
50 West Town St., Suite 700
Columbus, Ohio 43215
Tel. 614-644-2001
Fax. 614-644-2745

The State may substitute a new contact person by providing Defendant with 21 days notice of the name and address of the new contact person.

X. EFFECT OF CONSENT ORDER

28. This Consent Order does not constitute an authorization, permit, or approval for the construction or modification of any physical structure, facility, disposal system, treatment works or sewerage system, or for the placement of fill in streams, wetlands, or other “waters of the state.”

XI. RETENTION OF JURISDICTION

29. This Court shall retain jurisdiction of this action for the purpose of enforcing Defendant's compliance with this Consent Order.

XII. COSTS

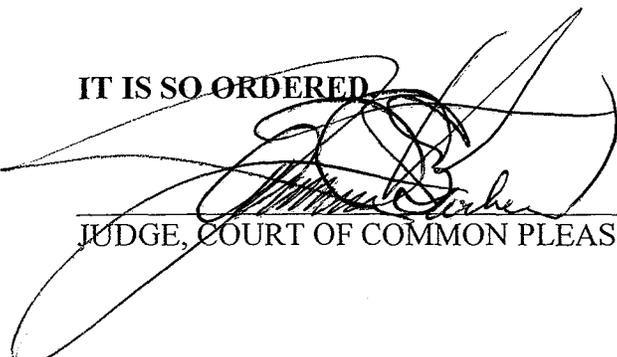
30. Defendant is hereby ordered to pay the costs of this action.

XIII. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

31. The Parties agree and acknowledge that final approval by the Plaintiff and Defendant and entry of this Consent Order are subject to the requirement of 40 C.F.R. 123.27(d)(2)(iii), which provides for notice of the lodging of this Consent Order, opportunity for public comment, and the consideration of any public comment. The Plaintiff and Defendant reserve the right to withdraw consent to this Consent Order based on comments received during the public comment period. Defendant shall pay the cost of publishing the public notice within 30 days of receipt of a bill or notice from the Director.

32. Upon the signing of this Consent Order by the Court, the Clerk is hereby directed to enter it upon the journal. Within 3 days of entering the judgment upon the journal, the Clerk is hereby directed to serve notice of the judgment upon all parties, and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED



JUDGE, COURT OF COMMON PLEAS

5/25/10
Date

Copies Served 5/26/10
Paul E. MacDonald, Clerk
By CW

APPROVED:

STATE OF OHIO, ex rel. RICHARD CORDRAY
ATTORNEY GENERAL OF OHIO

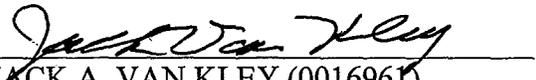
VAN KLEY & WALKER, LLC



MARGARET A. MALONE(0021770)
BRIDGET C. COONTZ (0072919)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Facsimile: (614) 644-1926

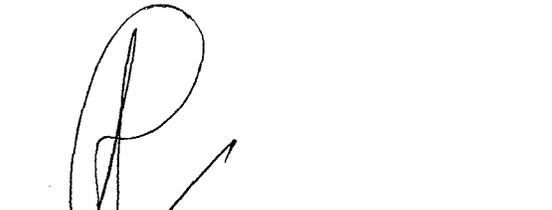
E-
Mail:margaret.malone@ohioattorneygeneral.gov
bridget.coontz@ohioattorneygeneral.gov

Counsel for Plaintiff



JACK A. VAN KLEY (0016961)
Van Kley & Walker, LLC
132 Northwoods Blvd.,
Suite C-1
Columbus, Ohio 43235
Telephone: (614) 431-8900
Facsimile: (614) 431-8905
E-Mail: jvankley@vankleywalker.com

Counsel for Defendant

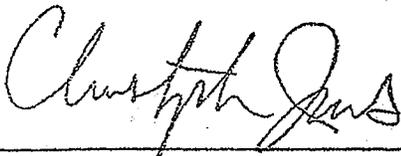


Willy van Bakel, Manager
Vreba-Hoff Dairy Development, LLC
1290 N. Shoop Avenue, Suite 140
Wauseon, OH 43567

OHIO ENVIRONMENTAL PROTECTION AGENCY
AUTHORIZATION FOR STORM WATER DISCHARGES ASSOCIATED
WITH CONSTRUCTION ACTIVITY UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et. seq. hereafter referred to as "the Act") and the Ohio Water Pollution Control Act [Ohio Revised Code ("ORC") Chapter 6111], dischargers of storm water from sites where construction activity is being conducted, as defined in Part I.B of this permit, are authorized by the Ohio Environmental Protection Agency, hereafter referred to as "Ohio EPA," to discharge from the outfalls at the sites and to the receiving surface waters of the state identified in their Notice of Intent ("NOI") application form on file with Ohio EPA in accordance with the conditions specified in Parts I through VII of this permit.

This permit is conditioned upon payment of applicable fees, submittal of a complete NOI application form and written approval of coverage from the director of Ohio EPA in accordance with Ohio Administrative Code ("OAC") Rule 3745-38-06.



Christopher Jones
Director

OHIO E.P.A.
APR 21 2003
ENTERED DIRECTOR'S JOURNAL

- M. Transfers
- N. Environmental laws
- O. Proper operation and maintenance
- P. Inspection and entry

PART VI. REOPENER CLAUSE

PART VII. DEFINITIONS

Part I.B

2. Limitations on coverage. The following storm water discharges associated with construction activity are not covered by this permit:
 - a. Storm water discharges that originate from the site after construction activities have been completed, including any temporary support activity, and the site has achieved final stabilization. Industrial post-construction storm water discharges may need to be covered by an NPDES permit;
 - b. Storm water discharges associated with construction activity that the director has shown to be or may reasonably expect to be contributing to a violation of a water quality standard; and
 - c. Storm water discharges authorized by an individual NPDES permit or another NPDES general permit;
3. Waivers. After March 10, 2003, sites whose larger common plan of development or sale have at least one, but less than five acres of land disturbance, which would otherwise require permit coverage for storm water discharges associated with construction activities, may request that the director waive their permit requirement. Entities wishing to request such a waiver must certify in writing that the construction activity meets one of the two the waiver conditions:
 - a. **Rainfall erosivity waiver.** For a construction site to qualify for the rainfall erosivity waiver, the cumulative rainfall erosivity over the project duration must be five or less and the site must be stabilized with at least a 70 percent vegetative cover or other permanent, non-erosive cover. The rainfall erosivity must be calculated according to the method in U.S. EPA Fact Sheet 3.1 Construction Rainfall Erosivity Waiver dated January 2001. If it is determined that a construction activity will take place during a time period where the rainfall erosivity factor is less than five, a written waiver certification must be submitted to Ohio EPA at least 21 days before construction activity is scheduled to begin. If the construction activity will extend beyond the dates specified in the waiver certification, the operator must either: (a) recalculate the waiver using the original start date with the new ending date (if the R factor is still less than five, a new waiver certification must be submitted) or (b) submit an NOI application form and fee for coverage under this general permit at least seven days prior to the end of the waiver period (see Attachment A); or

Part I.B

5. Spills and unintended releases (Releases in excess of Reportable Quantities). This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302. In the event of a spill or other unintended release, the discharge of hazardous substances in the storm water discharge(s) from a construction site must be minimized in accordance with the applicable storm water pollution prevention plan for the construction activity and in no case, during any 24-hour period, may the discharge(s) contain a hazardous substance equal to or in excess of reportable quantities.

40 CFR Part 117 sets forth a determination of the reportable quantity for each substance designated as hazardous in 40 CFR Part 116. The regulation applies to quantities of designated substances equal to or greater than the reportable quantities, when discharged to surface waters of the state. 40 CFR Part 302 designates under section 102(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, those substances in the statutes referred to in section 101(14), identifies reportable quantities for these substances and sets forth the notification requirements for releases of these substances. This regulation also sets forth reportable quantities for hazardous substances designated under section 311(b)(2)(A) of the Clean Water Act (CWA).

C. Requiring an individual NPDES permit or an alternative NPDES general permit.

1. The director may require an alternative permit. The director may require any operator eligible for this permit to apply for and obtain either an individual NPDES permit or coverage under an alternative NPDES general permit in accordance with OAC Rule 3745-38-04. Any interested person may petition the director to take action under this paragraph.

The director will send written notification that an alternative NPDES permit is required. This notice shall include a brief statement of the reasons for this decision, an application form and a statement setting a deadline for the operator to file the application. If an operator fails to submit an application in a timely manner as required by the director under this paragraph, then coverage, if in effect, under this permit is automatically terminated at the end of the day specified for application submittal.

Part I

E. Authorization

1. Obtaining authorization to discharge. Operators that discharge storm water associated with construction activity must submit an NOI application form in accordance with the requirements of Part II of this permit to obtain authorization to discharge under this general permit. As required under OAC Rule 3745-38-06(E), the director, in response to the NOI submission, shall notify the applicant in writing that he/she has been granted general permit coverage to discharge storm water associated with construction activity under the terms and conditions of this permit or that the applicant must apply for an individual NPDES permit or coverage under an alternate general NPDES permit as described in Part I.C.1.
2. No release from other requirements. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations. Other permit requirements commonly associated with construction activities include, but are not limited to, section 401 water quality certifications, isolated wetland permits, permits to install sanitary sewers or other devices that discharge or convey polluted water, permits to install drinking water lines, single lot sanitary system permits and disturbance of land which was used to operate a solid or hazardous waste facility (i.e., coverage under this NPDES general permit does not satisfy the requirements of OAC Rule 3745-27-13 or ORC Section 3734.02(H)). This permit does not relieve the permittee of other responsibilities associated with construction activities such as contacting the Ohio Department of Natural Resources, Division of Water, to ensure proper well installation and abandonment of wells.

Part II. NOTICE OF INTENT REQUIREMENTS

A. Deadlines for notification.

Initial coverage: Operators who intend to obtain initial coverage for a storm water discharge associated with construction activity under this general permit must submit a complete and accurate NOI application form and appropriate fee at least 21 days prior to the commencement of construction activity. If more than one operator, as defined in Part VII of this general permit, will be engaged at a site, each operator shall seek coverage under this general permit. Where one operator has already submitted an NOI prior to other operator(s) being identified, the additional operator shall request modification of coverage to become a co-permittee. In such instances, the co-permittees shall be covered under the same facility permit number. No additional permit fee is required.

PART III. STORM WATER POLLUTION PREVENTION PLAN (SWP3)**A. Storm Water Pollution Prevention Plans.**

A SWP3 shall be developed for each site covered by this permit. For a multi-phase construction project, a separate NOI shall be submitted when a separate SWP3 will be prepared for subsequent phases. SWP3s shall be prepared in accordance with sound engineering and/or conservation practices by a professional experienced in the design and implementation of standard erosion and sediment controls and storm water management practices addressing all phases of construction. The SWP3 shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with construction activities. In addition, the SWP3 shall describe and ensure the implementation of best management practices (BMPs) that reduce the pollutants in storm water discharges during construction and pollutants associated with post-construction activities to ensure compliance with ORC Section 6111.04, OAC Chapter 3745-1 and the terms and conditions of this permit.

B. Timing

A SWP3 shall be completed prior to the timely submittal of an NOI and updated in accordance with Part III.D. Upon request and good cause shown, the director may waive the requirement to have a SWP3 completed at the time of NOI submission. If a waiver has been granted, the SWP3 must be completed prior to the initiation of construction activities. The SWP3 must be implemented upon initiation of construction activities.

Permittees continuing coverage from the previous generation of this permit (OHR100000) that have initiated construction activity prior to the receipt of written notification from Ohio EPA to submit a letter of intent to continue coverage, as required in Part II.E, are not required to update their SWP3 as a result of this renewal (OHC000002). All permittees developing sites with coverage under OHR100000 that seek continuation of coverage do not need to update the post-construction section of their SWP3 as required in Part III.G.2.e of this permit.

C. SWP3 Signature and Review.

1. Plan Signature and Retention On Site. The SWP3 shall be signed in accordance with Part V.G. and retained on site during working hours.
2. Plan Availability
 - a. On-site: The plan shall be made available immediately upon request of the director or his authorized representative during working hours. A copy of the NOI and letter granting permit coverage under this general permit also shall be made available at the site.

Part III**E. Duty to inform contractors and subcontractors**

The permittee shall inform all contractors and subcontractors not otherwise defined as "operators" in Part VII of this general permit, who will be involved in the implementation of the SWP3, of the terms and conditions of this general permit. The permittee shall maintain a written document containing the signatures of all contractors and subcontractors involved in the implementation of the SWP3 as proof acknowledging that they reviewed and understand the conditions and responsibilities of the SWP3. The written document shall be created and signatures shall be obtained prior to commencement of work on the construction site.

F. Total Maximum Daily Load (TMDL) allocations

If a TMDL is approved for any waterbody into which the permittee's site discharges and requires specific BMPs for construction sites, the director may require the permittee to revise his/her SWP3.

G. SWP3 Requirements

Operations that discharge storm water from construction activities are subject to the following requirements and the SWP3 shall include the following items:

1. Site description. Each SWP3 shall provide:
 - a. A description of the nature and type of the construction activity (e.g., low density residential, shopping mall, highway, etc.);
 - b. Total area of the site and the area of the site that is expected to be disturbed (i.e., grubbing, clearing, excavation, filling or grading, including off-site borrow areas);
 - c. A calculation of the runoff coefficients for both the pre-construction and post construction site conditions;
 - d. An estimate of the impervious area and percent imperviousness created by the construction activity;
 - e. Existing data describing the soil and, if available, the quality of any discharge from the site;
 - f. A description of prior land uses at the site;

Part III.G.1.I

- iv. Surface water locations including springs, wetlands, streams, lakes, water wells, etc., on or within 200 feet of the site, including the boundaries of wetlands or stream channels and first subsequent named receiving water(s) the permittee intends to fill or relocate for which the permittee is seeking approval from the Army Corps of Engineers and/or Ohio EPA;
 - v. Existing and planned locations of buildings, roads, parking facilities and utilities;
 - vi. The location of all erosion and sediment control practices, including the location of areas likely to require temporary stabilization during the course of site development;
 - vii. Sediment and storm water management basins noting their sediment settling volume and contributing drainage area;
 - viii. Permanent storm water management practices to be used to control pollutants in storm water after construction operations have been completed.
 - ix. Areas designated for the storage or disposal of solid, sanitary and toxic wastes, including dumpster areas, areas designated for cement truck washout, and vehicle fueling;
 - x. The location of designated construction entrances where the vehicles will access the construction site;
 - xi. The location of any in-stream activities including stream crossings;
2. **Controls.** The SWP3 must contain a description of the controls appropriate for each construction operation covered by this permit and the operator(s) must implement such controls. The SWP3 must clearly describe for each major construction activity identified in Part III.G.1.g: (a) appropriate control measures and the general timing (or sequence) during the construction process that the measures will be implemented; and (b) which contractor is responsible for implementation (e.g., contractor A will clear land and install perimeter controls and contractor B will maintain perimeter controls until final stabilization). Ohio EPA recommends that the erosion, sediment, and storm water management practices used to satisfy the conditions of this permit, should meet the standards and specifications in the current edition of Ohio's Rainwater and Land Development (see definitions) manual or other standards acceptable to Ohio EPA. The controls shall include the following minimum components:

Part III.G.2.b.i

Table 2: Temporary Stabilization

Area requiring temporary stabilization	Time frame to apply erosion controls
Any disturbed areas within 50 feet of a stream and not at final grade	Within two days of the most recent disturbance if the area will remain idle for more than 21 days
For all construction activities, any disturbed areas that will be dormant for more than 21 days but less than one year, and not within 50 feet of a stream	Within seven days of the most recent disturbance within the area For residential subdivisions, disturbed areas must be stabilized at least seven days prior to transfer of permit coverage for the individual lot(s).
Disturbed areas that will be idle over winter	Prior to the onset of winter weather

Where vegetative stabilization techniques may cause structural instability or are otherwise unobtainable, alternative stabilization techniques must be employed.

- ii. **Permanent stabilization of conveyance channels.** Operators shall undertake special measures to stabilize channels and outfalls and prevent erosive flows. Measures may include seeding, dormant seeding (as defined in the 1996 edition of the Rainwater and Land Development manual), mulching, erosion control matting, sodding, riprap, natural channel design with bioengineering techniques or rock check dams.
- c. **Runoff Control Practices.** The SWP3 shall incorporate measures which control the flow of runoff from disturbed areas so as to prevent erosion from occurring. Such practices may include rock check dams, pipe slope drains, diversions to direct flow away from exposed soils and protective grading practices. These practices shall divert runoff away from disturbed areas and steep slopes where practicable.
- d. **Sediment Control Practices.** The plan shall include a description of structural practices that shall store runoff allowing sediments to settle and/or divert flows away from exposed soils or otherwise limit runoff from exposed areas. Structural practices shall be used to control erosion and trap sediment from a site remaining disturbed for more than 14 days. Such practices may include, among others: sediment settling ponds, silt fences, earth diversion dikes or channels which direct runoff to a sediment settling pond and storm drain inlet protection. All sediment control practices must be capable of ponding runoff in order to be considered functional. Earth diversion dikes or channels alone are not considered a sediment control practice unless those are used in conjunction with a sediment settling pond.

Part III.G.2.d

- iii. Silt Fence and Diversions. Sheet flow runoff from denuded areas shall be intercepted by silt fence or diversions to protect adjacent properties and water resources from sediment transported via sheet flow. Where intended to provide sediment control, silt fence shall be placed on a level contour. This permit does not preclude the use of other sediment barriers designed to control sheet flow runoff. The relationship between the maximum drainage area to silt fence for a particular slope range is shown in the table below.

Maximum drainage area (in acres) to 100 linear feet of silt fence	Range of slope for a particular drainage area (in percent)
0.5	< 2%
0.25	≥ 2% but < 20%
0.125	≥ 20% but < 50%

Storm water diversion practices shall be used to keep runoff away from disturbed areas and steep slopes where practicable. Such devices, which include swales, dikes or berms, may receive storm water runoff from areas up to 10 acres.

- iv. Inlet Protection. Other erosion and sediment control practices shall minimize sediment laden water entering active storm drain systems, unless the storm drain system drains to a sediment settling pond.
- v. Stream Protection. If construction activities disturb areas adjacent to streams, structural practices shall be designed and implemented on site to protect all adjacent streams from the impacts of sediment runoff. No structural sediment controls (e.g., the installation of silt fence or a sediment settling pond in-stream) shall be used in a stream. For all construction activities immediately adjacent to surface waters of the state, it is recommended that a setback of at least 25-feet, as measured from the ordinary high water mark of the surface water, be maintained in its natural state as a permanent buffer. Where impacts within this setback area are unavoidable due to the nature of the construction activity (e.g., stream crossings for roads or utilities), the project shall be designed such that the number of stream crossings and the width of the disturbance within the setback area are minimized.
- vi. Modifying Controls. If periodic inspections or other information indicates a control has been used inappropriately or incorrectly, the permittee must replace or modify the control for site conditions.

Part III.G.2.e

Large Construction Activities. For all large construction activities (involving the disturbance of five or more acres of land or will disturb less than five acres, but is a part of a larger common plan of development or sale which will disturb five or more acres of land), the post construction BMP(s) chosen must be able to detain storm water runoff for protection of the stream channels, stream erosion control, and improved water quality. Structural (designed) post-construction storm water treatment practices shall be incorporated into the permanent drainage system for the site. The BMP(s) chosen must be sized to treat the water quality volume (WQ_v) and ensure compliance with Ohio's Water Quality Standards in OAC Chapter 3745-1. The WQ_v shall be equivalent to the volume of runoff from a 0.75-inch rainfall and shall be determined according to one of the two following methods:

- i. Through a site hydrologic study approved by the local municipal permitting authority that uses continuous hydrologic simulation and local long-term hourly precipitation records or
- ii. Using the following equation:

$$WQ_v = C * P * A / 12$$

where:

WQ_v = water quality volume in acre-feet

C = runoff coefficient appropriate for storms less than 1 inch (see Table 1)

P = 0.75 inch precipitation depth

A = area draining into the BMP in acres

**Table 1
Runoff Coefficients Based on the Type of Land Use**

Land Use	Runoff Coefficient
Industrial & Commercial	0.8
High Density Residential (>8 dwellings/acre)	0.5
Medium Density Residential (4 to 8 dwellings/acre)	0.4
Low Density Residential (<4 dwellings/acre)	0.3
Open Space and Recreational Areas	0.2

Where the land use will be mixed, the runoff coefficient should be calculated using a weighted average. For example, if 60% of the contributing drainage area to the storm water treatment structure is Low Density Residential, 30% is High Density Residential, and 10% is Open Space, the runoff coefficient is calculated as follows (0.6)(0.3) + (0.3)(0.5) + (0.1)(0.2) = 0.35.

Part III.G.2.e

Small Construction Activities. For all small land disturbance activities (which disturb one or more, but less than five acres of land and is not a part of a larger common plan of development or sale which will disturb five or more acres of land), a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed must be included in the SWP3. Structural measures should be placed on upland soils to the degree attainable.

- i. Such practices may include, but are not limited to: storm water detention structures (including wet basins); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). The SWP3 shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed pre-development levels.
 - ii. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).
- f. **Surface Water Protection.** If the project site contains any streams, rivers, lakes, wetlands or other surface waters, certain construction activities at the site may be regulated under the CWA and/or state isolated wetland permit requirements. Sections 404 and 401 of the Act regulate the discharge of dredged or fill material into surface waters and the impacts of such activities on water quality, respectively. Construction activities in surface waters which may be subject to CWA regulation and/or state isolated wetland permit requirements include, but are not limited to: sewer line crossings, grading, backfilling or culverting streams, filling wetlands, road and utility line construction, bridge installation and installation of flow control structures. If the project contains streams, rivers, lakes or wetlands or possible wetlands, the permittee must contact the appropriate U.S. Army Corps of Engineers District Office. (CAUTION: Any area of seasonally wet hydric soil is a potential wetland - please consult the Soil Survey and list of hydric soils for your County, available at your county's Soil and Water Conservation District. If you have any questions about Section 401 water quality certification, please contact the Ohio Environmental Protection Agency, Section 401 Coordinator.)

Part III.G.2

- h. **Maintenance.** All temporary and permanent control practices shall be maintained and repaired as needed to ensure continued performance of their intended function. All sediment control practices must be maintained in a functional condition until all up slope areas they control are permanently stabilized. The SWP3 shall be designed to minimize maintenance requirements. The applicant shall provide a description of maintenance procedures needed to ensure the continued performance of control practices.
- i. **Inspections.** At a minimum, procedures in an SWP3 shall provide that all controls on the site are inspected at least once every seven calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24 hour period. The permittee shall assign qualified inspection personnel (those with knowledge and experience in the installation and maintenance of sediment and erosion controls) to conduct these inspections to ensure that the control practices are functional and to evaluate whether the SWP3 is adequate and properly implemented in accordance with the schedule proposed in Part III.G.1.g of this permit or whether additional control measures are required. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWP3 shall be observed to ensure that those are operating correctly. Discharge locations shall be inspected to ascertain whether erosion and sediment control measures are effective in preventing significant impacts to the receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site vehicle tracking.

The permittee shall maintain for three years following the submittal of a notice of termination form, a record summarizing the results of the inspection, names(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWP3 and a certification as to whether the facility is in compliance with the SWP3 and the permit and identify any incidents of non-compliance. The record and certification shall be signed in accordance with Part V.G. of this permit.

- i. **When practices require repair or maintenance.** If the inspection reveals that a control practice is in need of repair or maintenance, with the exception of a sediment settling pond, it must be repaired or maintained within three days of the inspection. Sediment settling ponds must be repaired or maintained within 10 days of the inspection.

PART IV. NOTICE OF TERMINATION REQUIREMENTS**A. Failure to notify.**

The terms and conditions of this permit shall remain in effect until a signed Notice of Termination (NOT) form is submitted. Failure to submit an NOT constitutes a violation of this permit and may affect the ability of the permittee to obtain general permit coverage in the future.

B. When to submit an NOT

1. Permittees wishing to terminate coverage under this permit must submit an NOT form in accordance with Part V.G. of this permit. Compliance with this permit is required until an NOT form is submitted. The permittee's authorization to discharge under this permit terminates at midnight of the day the NOT form is submitted.
2. All permittees must submit an NOT form within 45 days of completing all permitted land disturbance activities. Enforcement actions may be taken if a permittee submits an NOT form without meeting one or more of the following conditions:
 - a. Final stabilization (see definition in Part VII) has been achieved on all portions of the site for which the permittee is responsible (including, if applicable, returning agricultural land to its pre-construction agricultural use);
 - b. Another operator(s) has assumed control over all areas of the site that have not been finally stabilized;
 - c. For residential construction only, temporary stabilization has been completed and the lot, which includes a home, has been transferred to the homeowner. (Note: individual lots without housing which are sold by the developer must undergo final stabilization prior to termination of permit coverage.); or
 - d. An exception has been granted under Part III.G.4.

C. How to submit an NOT

Permittees must use Ohio EPA's approved NOT form. The form must be completed and mailed according to the instructions and signed in accordance with Part V.G of this permit.

Part V

G. Signatory requirements.

All NOIs, NOTs, SWP3s, reports, certifications or information either submitted to the director or that this permit requires to be maintained by the permittee, shall be signed.

1. These items shall be signed as follows:
 - a. For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - i. A president, secretary, treasurer or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation; or
 - ii. The manager of one or more manufacturing, production or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
 - b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
 - c. For a municipality, State, Federal or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA).
2. All reports required by the permits and other information requested by the director shall be signed by a person described in Part V.G.1 of this permit or by a duly authorized representative of that person. A person is a duly authorized representative only if:

Part V

J. Property rights.

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

K. Severability.

The provisions of this permit are severable and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

L. Transfers.

Ohio NPDES general permit coverage is transferable. Ohio EPA must be notified in writing sixty days prior to any proposed transfer of coverage under an Ohio NPDES general permit. The transferee must inform Ohio EPA it will assume the responsibilities of the original permittee transferor.

M. Environmental laws.

No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

N. Proper operation and maintenance.

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of SWP3s. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

O. Inspection and entry.

The permittee shall allow the director or an authorized representative of Ohio EPA, upon the presentation of credentials and other documents as may be required by law, to:

Part VII

- F. "Discharge" means the addition of any pollutant to the surface waters of the state from a point source.
- G. "Disturbance" means any clearing, grading, excavating, filling, or other alteration of land surface where natural or man-made cover is destroyed in a manner that exposes the underlying soils.
- H. "Final stabilization" means that either:
1. All soil disturbing activities at the site are complete and a uniform perennial vegetative cover (e.g., evenly distributed, without large bare areas) with a density of at least 70 percent cover for the area has been established on all unpaved areas and areas not covered by permanent structures or equivalent stabilization measures (such as the use of mulches, rip-rap, gabions or geotextiles) have been employed. In addition, all temporary erosion and sediment control practices are removed and disposed of and all trapped sediment is permanently stabilized to prevent further erosion; or
 2. For individual lots in residential construction by either:
 - a. The homebuilder completing final stabilization as specified above or
 - b. The homebuilder establishing temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for and benefits of, final stabilization. (Homeowners typically have an incentive to put in the landscaping functionally equivalent to final stabilization as quick as possible to keep mud out of their homes and off sidewalks and driveways.); or
 3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its pre-construction agricultural use. Areas disturbed that were previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters of the state and which are not being returned to their pre-construction agricultural use, must meet the final stabilization criteria in (1) or (2) above.
- I. "Individual Lot NOI" means a Notice of Intent for an individual lot to be covered by this permit (see parts I and II of this permit).
- J. "Larger common plan of development or sale"- means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

Part VII

- Q. "Permanent stabilization" means the establishment of permanent vegetation, decorative landscape mulching, matting, sod, rip rap and landscaping techniques to provide permanent erosion control on areas where construction operations are complete or where no further disturbance is expected for at least one year.
- R. "Percent imperviousness" means the impervious area created divided by the total area of the project site.
- S. "Point source" means any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or the floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.
- T. "Rainwater and Land Development" is a manual describing construction and post-construction best management practices and associated specifications. A copy of the manual may be obtained by contacting the Ohio Department of Natural Resources, Division of Soil & Water Conservation.
- U. "Riparian area" means the transition area between flowing water and terrestrial (land) ecosystems composed of trees, shrubs and surrounding vegetation which serve to stabilize erodible soil, improve both surface and ground water quality, increase stream shading and enhance wildlife habitat.
- V. "Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.
- W. "Sediment settling pond" means a sediment trap, sediment basin or permanent basin that has been temporarily modified for sediment control, as described in the latest edition of the Rainwater and Land Development manual.
- X. "State isolated wetland permit requirements" means the requirements set forth in Sections 6111.02 through 6111.029 of the ORC.
- Y. "Storm water" means storm water runoff, snow melt and surface runoff and drainage.
- Z. "Surface waters of the state" or "water bodies" means all streams, lakes, reservoirs, ponds, marshes, wetlands or other waterways which are situated wholly or partially within the boundaries of the state, except those private waters which do not combine or effect a junction with natural surface or underground waters. Waters defined as sewerage systems, treatment works or disposal systems in Section 6111.01 of the ORC are not included.



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Ohio EPA Permit No.: OHC000003

APPROVED DIRECTOR'S JOURNAL

Effective Date: April 21, 2008

Expiration Date: April 20, 2013

OHIO ENVIRONMENTAL PROTECTION AGENCY

**AUTHORIZATION FOR STORM WATER DISCHARGES ASSOCIATED
WITH CONSTRUCTION ACTIVITY UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provisions of the federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et. seq. hereafter referred to as "the Act") and the Ohio Water Pollution Control Act [Ohio Revised Code ("ORC") Chapter 6111], dischargers of storm water from sites where construction activity is being conducted, as defined in Part I.B of this permit, are authorized by the Ohio Environmental Protection Agency, hereafter referred to as "Ohio EPA," to discharge from the outfalls at the sites and to the receiving surface waters of the State identified in their Notice of Intent ("NOI") application form on file with Ohio EPA in accordance with the conditions specified in Parts I through VII of this permit.

It has been determined that a lowering of water quality of various waters of the State associated with granting coverage under this permit is necessary to accommodate important social and economic development in the state of Ohio. In accordance with OAC 3745-1-05, this decision was reached only after examining a series of technical alternatives, reviewing social and economic issues related to the degradation, and considering all public and intergovernmental comments received concerning the proposal.

This permit is conditioned upon payment of applicable fees, submittal of a complete NOI application form and written approval of coverage from the director of Ohio EPA in accordance with Ohio Administrative Code ("OAC") Rule 3745-38-06.

Laura H. Powell
Assistant Director

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.

By: Date: 4-21-08

PART I. COVERAGE UNDER THIS PERMIT**A. Permit Area.**

This permit covers the entire State of Ohio.

B. Eligibility.

1. Construction activities covered. Except for storm water discharges identified under Part I.B.2, this permit may cover all new and existing discharges composed entirely of storm water discharges associated with construction activity that enter surface waters of the State or a storm drain leading to surface waters of the State.

For the purposes of this permit, construction activities include any clearing, grading, excavating, grubbing and/or filling activities that disturb one or more acres of land. Discharges from trench dewatering are also covered by this permit as long as the dewatering activity is carried out in accordance with the practices outlined in Part III.G.2.g.iv of this permit. The threshold acreage includes the entire area disturbed in the larger common plan of development or sale.

This permit also authorizes storm water discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

- a. The support activity is directly related to a construction site that is required to have NPDES permit coverage for discharges of storm water associated with construction activity;
- b. The support activity is not a commercial operation serving multiple unrelated construction projects and does not operate beyond the completion of the construction activity at the site it supports;
- c. Appropriate controls and measures are identified in a storm water pollution prevention plan (SWP3) covering the discharges from the support activity; and
- d. The support activity is on or contiguous with the property defined in the NOI (off-site borrow pits and soil disposal areas, which serve only one project, do not have to be contiguous with the construction site);

Part I.B.3

- b. **TMDL (Total Maximum Daily Load) waiver.** Storm water controls are not needed based on a TMDL approved or established by U.S. EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. The pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the director of Ohio EPA that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis. A written waiver certification must be submitted to Ohio EPA at least 21 days before the construction activity is scheduled to begin.
4. Prohibition on non-storm water discharges. All discharges covered by this permit must be composed entirely of storm water with the exception of the following: discharges from fire fighting activities; fire hydrant flushings; potable water sources including waterline flushings; irrigation drainage; lawn watering; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water from trench or well point dewatering and foundation or footing drains where flows are not contaminated with process materials such as solvents. Dewatering activities must be done in compliance with Part III.G.2.g.iv of this permit. Discharges of material other than storm water or the authorized non-storm water discharges listed above must comply with an individual NPDES permit or an alternative NPDES general permit issued for the discharge.

Except for flows from fire fighting activities, sources of non-storm water listed above that are combined with storm water discharges associated with construction activity must be identified in the SWP3. The SWP3 must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

Part I.C

2. Operators may request an individual NPDES permit. Any owner or operator eligible for this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application with reasons supporting the request to the director in accordance with the requirements of 40 CFR 122.26. If the reasons adequately support the request, the director shall grant it by issuing an individual NPDES permit.
3. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit or the owner or operator is approved for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of approval for coverage under the alternative general permit, whichever the case may be.

D. Permit requirements when portions of a site are sold

If an operator obtains a permit for a development, and then the operator (permittee) sells off lots or parcels within that development, permit coverage must be continued on those lots until a Notice of Termination (NOT) in accordance with Part IV.B is submitted. For developments which require the use of centralized sediment and erosion controls (i.e., controls that address storm water runoff from one or more lots) for which the conveyance of permit coverage for a portion of the development will either prevent or impair the implementation of the controls and therefore jeopardize compliance with the terms and conditions of this permit, the permittee will be required to maintain responsibility for the implementation of those controls. For developments where this is not the case, it is the permittee's responsibility to temporarily stabilize all lots sold to individual lot owners unless an exception is approved in accordance with Part III.G.4. In cases where permit coverage for individual lot(s) will be conveyed, the permittee shall inform, in writing, the individual lot owner of the obligations under this permit and ensure that the Individual Lot NOI application is submitted to Ohio EPA.

E. Authorization

1. Obtaining authorization to discharge. Operators that discharge storm water associated with construction activity must submit an NOI application form in accordance with the requirements of Part II of this permit to obtain authorization to discharge under this general permit. As required under OAC Rule 3745-38-06(E), the director, in response to the NOI submission, shall notify the applicant in writing that he/she has been granted general permit coverage to discharge storm water associated with construction activity under the terms and conditions of this permit or that the applicant must apply for an individual NPDES permit or coverage under an alternate general NPDES permit as described in Part I.C.1.

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Part II

C. Where to submit an NOI.

Operators seeking coverage under this permit must submit a signed NOI form, provided by Ohio EPA, to the address found in the associated instructions.

D. Additional notification.

The permittee shall make NOIs and SWP3s available upon request of the director of Ohio EPA, local agencies approving sediment and erosion control plans, grading plans or storm water management plans, local governmental officials, or operators of municipal separate storm sewer systems (MS4s) receiving drainage from the permitted site. Each operator that discharges to an NPDES permitted MS4 shall provide a copy of its Ohio EPA NOI submission to the MS4 in accordance with the MS4's requirements, if applicable.

E. Renotification.

Upon renewal of this general permit, the permittee is required to notify the director of his intent to be covered by the general permit renewal. Permittees covered under the previous NPDES general permits for storm water discharges associated with construction activity (NPDES permit numbers OHR100000 and OHC000002) shall have continuing coverage under this permit. The permittees covered under OHR100000 or OHC000002 shall submit a letter within 90 days of receipt of written notification by Ohio EPA expressing their intent that coverage be continued. There is no fee associated with these letters of intent for continued coverage. Permit coverage will be terminated after the 90-day period if the letter is not received by Ohio EPA. Ohio EPA will provide instructions on the contents of the letter and where it is to be sent within the notification letter.

Part III.C**2. Plan Availability**

- a. On-site: The plan shall be made available immediately upon request of the director or his authorized representative during working hours. A copy of the NOI and letter granting permit coverage under this general permit also shall be made available at the site.
 - b. By written request: The permittee must provide a copy of the SWP3 within 10 days upon written request by any of the following:
 - i. The director or the director's authorized representative;
 - ii. A local agency approving sediment and erosion plans, grading plans or storm water management plans; or
 - iii. In the case of a storm water discharge associated with construction activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the operator of the system.
 - c. To the public: All NOIs, general permit approval for coverage letters, and SWP3s are considered reports that shall be available to the public in accordance with the Ohio Public Records law. The permittee shall make documents available to the public upon request or provide a copy at public expense, at cost, in a timely manner. However, the permittee may claim to Ohio EPA any portion of an SWP3 as confidential in accordance with Ohio law.
3. Plan Revision. The director or authorized representative, may notify the permittee at any time that the SWP3 does not meet one or more of the minimum requirements of this part. Within 10 days after such notification from the director (or as otherwise provided in the notification) or authorized representative, the permittee shall make the required changes to the SWP3 and, if requested, shall submit to Ohio EPA the revised SWP3 or a written certification that the requested changes have been made.

D. Amendments

The permittee shall amend the SWP3 whenever there is a change in design, construction, operation or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the State or if the SWP3 proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity. Amendments to the SWP3 may be reviewed by Ohio EPA in the same manner as Part III.C.

Part III.G.1

- g. An implementation schedule which describes the sequence of major construction operations (i.e., grubbing, excavating, grading, utilities and infrastructure installation) and the implementation of erosion, sediment and storm water management practices or facilities to be employed during each operation of the sequence;
- h. The name and/or location of the immediate receiving stream or surface water(s) and the first subsequent named receiving water(s) and the areal extent and description of wetlands or other special aquatic sites at or near the site which will be disturbed or which will receive discharges from disturbed areas of the project. For discharges to an MS4, the point of discharge to the MS4 and the location where the MS4 ultimately discharges to a stream or surface water of the State must be indicated;
- i. For subdivided developments where the SWP3 does not call for a centralized sediment control capable of controlling multiple individual lots, a detail drawing of a typical individual lot showing standard individual lot erosion and sediment control practices.

This does not remove the responsibility to designate specific erosion and sediment control practices in the SWP3 for critical areas such as steep slopes, stream banks, drainage ways and riparian zones.

- j. Location and description of any storm water discharges associated with dedicated asphalt and dedicated concrete plants covered by this permit and the best management practices to address pollutants in these storm water discharges;
- k. A copy of the permit requirements (attaching a copy of this permit is acceptable);
- l. A cover page or title identifying the name and location of the site, the name and contact information of all construction site operators, the name and contact information for the person responsible for authorizing and amending the SWP3, preparation date, and the estimated dates that construction will start and be complete;
- m. A log documenting grading and stabilization activities as well as amendments to the SWP3, which occur after construction activities commence; and
- n. Site map showing:

Part III.G

2. **Controls.** The SWP3 must contain a description of the controls appropriate for each construction operation covered by this permit and the operator(s) must implement such controls. The SWP3 must clearly describe for each major construction activity identified in Part III.G.1.g: (a) appropriate control measures and the general timing (or sequence) during the construction process that the measures will be implemented; and (b) which contractor is responsible for implementation (e.g., contractor A will clear land and install perimeter controls and contractor B will maintain perimeter controls until final stabilization). The SWP3 shall identify the subcontractors engaged in activities that could impact storm water runoff. The SWP3 shall contain signatures from all of the identified subcontractors indicating that they have been informed and understand their roles and responsibilities in complying with the SWP3. Ohio EPA recommends that the primary site operator review the SWP3 with the primary contractor prior to commencement of construction activities and keep a SWP3 training log to demonstrate that this review has occurred.

Ohio EPA recommends that the erosion, sediment, and storm water management practices used to satisfy the conditions of this permit should meet the standards and specifications in the current edition of Ohio's Rainwater and Land Development (see definitions) manual or other standards acceptable to Ohio EPA. The controls shall include the following minimum components:

- a. **Non-Structural Preservation Methods.** The SWP3 must make use of practices which preserve the existing natural condition as much as feasible. Such practices may include: preserving riparian areas adjacent to surface waters of the State, preserving existing vegetation and vegetative buffer strips, phasing of construction operations in order to minimize the amount of disturbed land at any one time and designation of tree preservation areas or other protective clearing or grubbing practices. The recommended buffer that operators should leave undisturbed along a surface water of the State is 25 feet as measured from the ordinary high water mark of the surface water.
- b. **Erosion Control Practices.** The SWP3 must make use of erosion controls that are capable of providing cover over disturbed soils unless an exception is approved in accordance with Part III.G.4. A description of control practices designed to restabilize disturbed areas after grading or construction shall be included in the SWP3. The SWP3 must provide specifications for stabilization of all disturbed areas of the site and provide guidance as to which method of stabilization will be employed for any time of the year. Such practices may include: temporary seeding, permanent seeding, mulching, matting, sod stabilization, vegetative buffer strips, phasing of construction operations, use of construction entrances and the use of alternative ground cover.

Part III.G.2

- c. **Runoff Control Practices.** The SWP3 shall incorporate measures which control the flow of runoff from disturbed areas so as to prevent erosion from occurring. Such practices may include rock check dams, pipe slope drains, diversions to direct flow away from exposed soils and protective grading practices. These practices shall divert runoff away from disturbed areas and steep slopes where practicable. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.
- d. **Sediment Control Practices.** The plan shall include a description of structural practices that shall store runoff allowing sediments to settle and/or divert flows away from exposed soils or otherwise limit runoff from exposed areas. Structural practices shall be used to control erosion and trap sediment from a site remaining disturbed for more than 14 days. Such practices may include, among others: sediment settling ponds, silt fences, earth diversion dikes or channels which direct runoff to a sediment settling pond and storm drain inlet protection. All sediment control practices must be capable of ponding runoff in order to be considered functional. Earth diversion dikes or channels alone are not considered a sediment control practice unless those are used in conjunction with a sediment settling pond.

The SWP3 must contain detail drawings for all structural practices.

- i. Timing. Sediment control structures shall be functional throughout the course of earth disturbing activity. Sediment basins and perimeter sediment barriers shall be implemented prior to grading and within seven days from the start of grubbing. They shall continue to function until the up slope development area is restabilized. As construction progresses and the topography is altered, appropriate controls must be constructed or existing controls altered to address the changing drainage patterns.
- ii. Sediment settling ponds. A sediment settling pond is required for any one of the following conditions:
- concentrated storm water runoff (e.g., storm sewer or ditch);
 - runoff from drainage areas, which exceed the design capacity of silt fence or other sediment barriers;
 - runoff from drainage areas that exceed the design capacity of inlet protection; or
 - runoff from common drainage locations with 10 or more acres of disturbed land.

Part III.G.2.d.iii

Maximum drainage area (in acres) to 100 linear feet of silt fence	Range of slope for a particular drainage area (in percent)
0.5	< 2%
0.25	≥ 2% but < 20%
0.125	≥ 20% but < 50%

Placing silt fence in a parallel series does not extend the size of the drainage area. Storm water diversion practices shall be used to keep runoff away from disturbed areas and steep slopes where practicable. Such devices, which include swales, dikes or berms, may receive storm water runoff from areas up to 10 acres.

- iv. Inlet Protection. Other erosion and sediment control practices shall minimize sediment laden water entering active storm drain systems, unless the storm drain system drains to a sediment settling pond. All inlets receiving runoff from drainage areas of one or more acres will require a sediment settling pond.
- v. Surface Waters of the State Protection. If construction activities disturb areas adjacent to surface waters of the State, structural practices shall be designed and implemented on site to protect all adjacent surface waters of the State from the impacts of sediment runoff. No structural sediment controls (e.g., the installation of silt fence or a sediment settling pond) shall be used in a surface water of the State. For all construction activities immediately adjacent to surface waters of the State, it is recommended that a setback of at least 25-feet, as measured from the ordinary high water mark of the surface water, be maintained in its natural state as a permanent buffer. Where impacts within this setback area are unavoidable due to the nature of the construction activity (e.g., stream crossings for roads or utilities), the project shall be designed such that the number of stream crossings and the width of the disturbance within the setback area are minimized.
- vi. Modifying Controls. If periodic inspections or other information indicates a control has been used inappropriately or incorrectly, the permittee must replace or modify the control for site conditions.

Part III.G.2.e

Construction activities that do not include the installation of any impervious surface (e.g., soccer fields), abandoned mine land reclamation activities regulated by the Ohio Department of Natural Resources, stream and wetland restoration activities, and wetland mitigation activities are not required to comply with the conditions of Part III.G.2.e of this permit. Linear construction projects, (e.g., pipeline or utility line installation), which do not result in the installation of additional impervious surface, are not required to comply with the conditions of Part III.G.2.e of this permit. However, linear construction projects must be designed to minimize the number of stream crossings and the width of disturbance and achieve final stabilization of the disturbed area as defined in Part VII.H.1.

Large Construction Activities. For all large construction activities (involving the disturbance of five or more acres of land or will disturb less than five acres, but is a part of a larger common plan of development or sale which will disturb five or more acres of land), the post construction BMP(s) chosen must be able to detain storm water runoff for protection of the stream channels, stream erosion control, and improved water quality. The BMP(s) chosen must be compatible with site and soil conditions. Structural (designed) post-construction storm water treatment practices shall be incorporated into the permanent drainage system for the site. The BMP(s) chosen must be sized to treat the water quality volume (WQv) and ensure compliance with Ohio's Water Quality Standards in OAC Chapter 3745-1. The WQv shall be equivalent to the volume of runoff from a 0.75-inch rainfall and shall be determined according to the following equation:

$$WQv = C * P * A / 12$$

where:

WQv = water quality volume in acre-feet

C = runoff coefficient appropriate for storms less than 1 inch

(Either use the following formula: $C = 0.858i^3 - 0.78i^2 + 0.774i + 0.04$, where i = fraction of post-construction impervious surface or use Table 1)

P = 0.75 inch precipitation depth

A = area draining into the BMP in acres

Part III.G.2.e

**Table 2
Structural Post-Construction BMPs & Associated Drain (Drawdown) Times**

Best Management Practice	Drain Time of WQv
Infiltration Basin [^]	24 - 48 hours
Enhanced Water Quality Swale	24 hours
Dry Extended Detention Basin [*]	48 hours
Wet Extended Detention Basin ^{**}	24 hours
Constructed Wetland (above permanent pool) ⁺	24 hours
Sand & Other Media Filtration	40 hours
Bioretention Cell [^]	40 hours
Pocket Wetland [#]	24 hours
Vegetated Filter Strip	24 hours

* Dry basins must include forebay and micropool each sized at 10% of the WQv
 ** Provide both a permanent pool and an EDv above the permanent pool, each sized at 0.75 * WQv
 + Extended detention shall be provided for the full WQv above the permanent water pool.
 ^ The WQv shall completely infiltrate within 48 hours so there is no standing or residual water in the BMP.
 # Pocket wetlands must have a wet pool equal to the WQv, with 25% of the WQv in a pool and 75% in marshes. The EDv above the permanent pool must be equal to the WQv.

The permittee may request approval from Ohio EPA to use alternative post-construction BMPs if the permittee can demonstrate that the alternative BMPs are equivalent in effectiveness to those listed in Table 2 above. Construction activities shall be exempt from this condition if it can be demonstrated that the WQv is provided within an existing structural post-construction BMP that is part of a larger common plan of development or if structural post-construction BMPs are addressed in a regional or local storm water management plan. A municipally operated regional storm water BMP can be used as a post-construction BMP provided that the BMP can detain the WQv from its entire drainage area and release it over a 24 hour period.

Transportation Projects The construction of new roads and roadway improvement projects by public entities (i.e., the state, counties, townships, cities, or villages) may implement post-construction BMPs in compliance with the current version (as of the effective date of this permit) of the Ohio Department of Transportation's "Location and Design Manual, Volume Two Drainage Design" that has been accepted by Ohio EPA as an alternative to the conditions of this permit.

Part III.G.2.e

Use of Alternative Post-Construction BMPs This permit does not preclude the use of innovative or experimental post-construction storm water management technologies. However, the Director may require these practices to be tested using the protocol outlined in the Technology Acceptance Reciprocity Partnership's (TARP) Protocol for Stormwater Best Management Practice Demonstrations (see <http://www.dep.state.pa.us/dep/deputate/pollprev/techservices/tarp>).

The Director may require discharges from such structures to be monitored to ensure compliance with Part III.G.2.e of this permit. Permittees must request approval from Ohio EPA to use alternative post-construction BMPs if the permittee can demonstrate that the alternative BMPs are equivalent in effectiveness to those listed in Table 2 above. To demonstrate this equivalency, the permittee must show that the alternative BMP has a minimum total suspended solids (TSS) removal efficiency of 80 percent. Also, the WQv discharge rate from the practice must be reduced to prevent stream bed erosion and protect the physical and biological stream integrity unless there will be negligible hydrological impact to the receiving surface water of the State. The discharges will have a negligible impact if the permittee can demonstrate that one of the following four conditions exist:

- i. The entire WQv is recharged to groundwater;
- ii. The larger common plan of development or sale will create less than one acre of impervious surface;
- iii. The project is a redevelopment project within an ultra-urban setting (i.e., a downtown area or on a site where 100 percent of the project area is already impervious surface and the storm water discharge is directed into an existing storm sewer system); or
- iv. The storm water drainage system of the development discharges directly into a large river (fourth order or greater) or to a lake and where the development area is less than 5 percent of the watershed area upstream of the development site, unless a TMDL identified water quality problems in the receiving surface waters of the State.

Part III.G.2.f

U.S. Army Corps of Engineers (Section 404 regulation):
Huntington, WV District (304) 399-5210 (Muskingum River, Hocking River,
Scioto River, Little Miami River, and Great Miami River Basins)
Buffalo, NY District (716) 879-4191 (Lake Erie Basin)
Pittsburgh, PA District (412) 395-7154 (Mahoning River Basin)
Louisville, KY District (502) 315-6733 (Ohio River)

Ohio EPA 401/404 and non-jurisdictional stream/wetland coordinator can be contacted at (614) 644-2001 (all of Ohio)

Concentrated storm water runoff from BMPs to natural wetlands shall be converted to diffuse flow before the runoff enters the wetlands. The flow should be released such that no erosion occurs downslope. Level spreaders may need to be placed in series, particularly on steep sloped sites, to ensure non-erosive velocities. Other structural BMPs may be used between storm water features and natural wetlands, in order to protect the natural hydrology, hydroperiod, and wetland flora. If the applicant proposes to discharge to natural wetlands, a hydrologic analysis shall be performed. The applicant shall attempt to match the pre-development hydroperiods and hydrodynamics that support the wetland. The applicant shall assess whether their construction activity will adversely impact the hydrologic flora and fauna of the wetland. Practices such as vegetative buffers, infiltration basins, conservation of forest cover, and the preservation of intermittent streams, depressions, and drainage corridors may be used to maintain wetland hydrology.

- g. **Other controls.** The SWP3 must also provide BMPs for pollutant sources other than sediment. Non-sediment pollutant sources, which may be present on a construction site, include paving operations, concrete washout, structure painting, structure cleaning, demolition debris disposal, drilling and blasting operations, material storage, slag, solid waste, hazardous waste, contaminated soils, sanitary and septic wastes, vehicle fueling and maintenance activities, and landscaping operations.
- i. **Non-Sediment Pollutant Controls.** No solid or liquid waste, including building materials, shall be discharged in storm water runoff. The permittee must implement all necessary BMPs to prevent the discharge of non-sediment pollutants to the drainage system of the site or surface waters of the State. Under no circumstance shall concrete trucks wash out directly into a drainage channel, storm sewer or surface waters of the State. No exposure of storm water to waste materials is recommended.
- ii. **Off-site traffic.** Off-site vehicle tracking of sediments and dust generation shall be minimized.

Part III.G.2

- i. **Inspections.** At a minimum, procedures in an SWP3 shall provide that all controls on the site are inspected at least once every seven calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24 hour period. The inspection frequency may be reduced to at least once every month if the entire site is temporarily stabilized or runoff is unlikely due to weather conditions (e.g., site is covered with snow, ice, or the ground is frozen). A waiver of inspection requirements is available until one month before thawing conditions are expected to result in a discharge if all of the following conditions are met: the project is located in an area where frozen conditions are anticipated to continue for extended periods of time (i.e., more than one month); land disturbance activities have been suspended; and the beginning and ending dates of the waiver period are documented in the SWP3. Once a definable area has been finally stabilized, you may mark this on your SWP3 and no further inspection requirements apply to that portion of the site. The permittee shall assign "qualified inspection personnel" to conduct these inspections to ensure that the control practices are functional and to evaluate whether the SWP3 is adequate and properly implemented in accordance with the schedule proposed in Part III.G.1.g of this permit or whether additional control measures are required.

Following each inspection, a checklist must be completed and signed by the qualified inspection personnel representative. At a minimum, the inspection report must include:

- i. the inspection date;
- ii. names, titles, and qualifications of personnel making the inspection;
- iii. weather information for the period since the last inspection (or since commencement of construction activity if the first inspection) including a best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches), and whether any discharges occurred;
- iv. weather information and a description of any discharges occurring at the time of the inspection;
- v. location(s) of discharges of sediment or other pollutants from the site;
- vi. location(s) of BMPs that need to be maintained;
- vii. location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;
- viii. location(s) where additional BMPs are needed that did not exist at the time of inspection; and
- ix. corrective action required including any changes to the SWP3 necessary and implementation dates.

Part III.G

3. **Approved State or local plans.** All dischargers regulated under this general permit must comply, except those exempted under state law, with the lawful requirements of municipalities, counties and other local agencies regarding discharges of storm water from construction activities. All erosion and sediment control plans and storm water management plans approved by local officials shall be retained with the SWP3 prepared in accordance with this permit. Applicable requirements for erosion and sediment control and storm water management approved by local officials are, upon submittal of a NOI form, incorporated by reference and enforceable under this permit even if they are not specifically included in an SWP3 required under this permit. When the project is located within the jurisdiction of a regulated municipal separate storm sewer system (MS4), the permittee must certify that the SWP3 complies with the requirements of the storm water management program of the MS4 operator.

4. **Exceptions.** If specific site conditions prohibit the implementation of any of the erosion and sediment control practices contained in this permit or site specific conditions are such that implementation of any erosion and sediment control practices contained in this permit will result in no environmental benefit, then the permittee shall provide justification for rejecting each practice based on site conditions. Exceptions from implementing the erosion and sediment control standards contained in this permit will be approved or denied on a case-by-case basis.

The permittee may request approval from Ohio EPA to use alternative methods to satisfy conditions in this permit if the permittee can demonstrate that the alternative methods are sufficient to protect the overall integrity of receiving streams and the watershed. Alternative methods will be approved or denied on a case-by-case basis.

PART IV. NOTICE OF TERMINATION REQUIREMENTS**A. Failure to notify.**

The terms and conditions of this permit shall remain in effect until a signed Notice of Termination (NOT) form is submitted. Failure to submit an NOT constitutes a violation of this permit and may affect the ability of the permittee to obtain general permit coverage in the future.

B. When to submit an NOT

1. Permittees wishing to terminate coverage under this permit must submit an NOT form in accordance with Part V.G. of this permit. Compliance with this permit is required until an NOT form is submitted. The permittee's authorization to discharge under this permit terminates at midnight of the day the NOT form is

Part V

C. Need to halt or reduce activity not a defense.

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to mitigate.

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty to provide information.

The permittee shall furnish to the director, within 10 days of written request, any information which the director may request to determine compliance with this permit. The permittee shall also furnish to the director upon request copies of records required to be kept by this permit.

F. Other information.

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the NOI, SWP3, NOT or in any other report to the director, he or she shall promptly submit such facts or information.

G. Signatory requirements.

All NOIs, NOTs, SWP3s, reports, certifications or information either submitted to the director or that this permit requires to be maintained by the permittee, shall be signed.

1. These items shall be signed as follows:

- a. For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - i. A president, secretary, treasurer or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation; or

Part V.G

3. Changes to authorization. If an authorization under Part V.G.2 of this permit is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.G.2 of this permit must be submitted to the director prior to or together with any reports, information or applications to be signed by an authorized representative.

H. Certification.

Any person signing documents under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

I. Oil and hazardous substance liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject under section 311 of the CWA or 40 CFR Part 112. 40 CFR Part 112 establishes procedures, methods and equipment and other requirements for equipment to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable surface waters of the State or adjoining shorelines.

J. Property rights.

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

K. Severability.

The provisions of this permit are severable and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

PART VII. DEFINITIONS

- A. "Act" means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117 and Pub. L. 100-4, 33 U.S.C. 1251 et. seq.
- B. "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices (both structural and non-structural) to prevent or reduce the pollution of surface waters of the State. BMP's also include treatment requirements, operating procedures and practices to control plant and/or construction site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.
- C. "Commencement of construction" means the initial disturbance of soils associated with clearing, grubbing, grading, placement of fill or excavating activities or other construction activities.
- D. "Concentrated storm water runoff" means any storm water runoff which flows through a drainage pipe, ditch, diversion or other discrete conveyance channel.
- E. "Director" means the director of the Ohio Environmental Protection Agency.
- F. "Discharge" means the addition of any pollutant to the surface waters of the State from a point source.
- G. "Disturbance" means any clearing, grading, excavating, filling, or other alteration of land surface where natural or man-made cover is destroyed in a manner that exposes the underlying soils.
- H. "Final stabilization" means that either:
1. All soil disturbing activities at the site are complete and a uniform perennial vegetative cover (e.g., evenly distributed, without large bare areas) with a density of at least 70 percent cover for the area has been established on all unpaved areas and areas not covered by permanent structures or equivalent stabilization measures (such as the use of landscape mulches, rip-rap, gabions or geotextiles) have been employed. In addition, all temporary erosion and sediment control practices are removed and disposed of and all trapped sediment is permanently stabilized to prevent further erosion; or
 2. For individual lots in residential construction by either:
 - a. The homebuilder completing final stabilization as specified above or

Part VII

- M. "NOI" means notice of intent to be covered by this permit.
- N. "NOT" means notice of termination.
- O. "Operator" means any party associated with a construction project that meets either of the following two criteria:
1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
 2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with an SWP3 for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).
- As set forth in Part II.A, there can be more than one operator at a site and under these circumstances, the operators shall be co-permittees.
- P. "Owner or operator" means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.
- Q. "Permanent stabilization" means the establishment of permanent vegetation, decorative landscape mulching, matting, sod, rip rap and landscaping techniques to provide permanent erosion control on areas where construction operations are complete or where no further disturbance is expected for at least one year.
- R. "Percent imperviousness" means the impervious area created divided by the total area of the project site.
- S. "Point source" means any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or the floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.
- T. "Qualified inspection personnel" means a person knowledgeable in the principles and practice of erosion and sediment controls, who possesses the skills to assess all conditions at the construction site that could impact storm water quality and to assess the effectiveness of any sediment and erosion control measures selected to control the quality of storm water discharges from the construction activity.

Attachment B

Active Dairy Construction Sites

At the following dairy sites, construction is in various stages of completion:

Dairy

Hillbex	Excavation work started – no buildings
New IJsselstein	Some minor excavation work started
Green	Excavation work started; project is about 75% complete
Five Points	Excavation work started – no buildings
Reyskens	Construction completed
Van Deurzen	Construction completed

Dairies With Open CGP In Receivership

At the following dairies, the coverage under the General Stormwater Permit (CGP) is still open but the dairies are in receivership and as a result Vreba-Hoff Dairy Development does not have access to the sites:

Dairy

Chesterfield	Is still open because of ODA requirements to complete construction projects
Hopewell	Construction completed
Oolman	Construction completed

Dairy Site With CGP But No Construction Started

Dairy

Naomi	Open fields. No construction started.
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Attachment C

Storm Water Inspection Report

Project Name	Date of Inspection
Weather During Inspection	
Inspector's Name	
Inspector's Title	
Inspector's Qualifications	
Dates of Precipitation Since Last Inspection and Total Precipitation on Each Such Day	

<u>Construction Stage</u> (circle all that apply)		
Clearing/Grubbing	Rough Grading	Infrastructure
Building Construction	Final Grading	Final Stabilization

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Type of Control	Location of Control Each control should be given its own number on the site map for ease of reference: SF1, SF2, Trap1, Trap2, etc.	Describe Status Good or Bad. Identify Problems or Maintenance Needs	Problem Addressed Date and Description of Corrective Action
Structural:			
Silt Fence		<input type="checkbox"/> Good <input type="checkbox"/> Bad	
Storm Drain Inlet Protection		<input type="checkbox"/> Good <input type="checkbox"/> Bad	
Sediment Settling Pond		<input type="checkbox"/> Good <input type="checkbox"/> Bad	
Vehicle Construction Entrance		<input type="checkbox"/> Good <input type="checkbox"/> Bad	
Other Structural Controls		<input type="checkbox"/> Good <input type="checkbox"/> Bad	
Non-Structural:			
Minimizing Off-Site Tracking of Sediments (e.g. Street Cleaning)		<input type="checkbox"/> Good <input type="checkbox"/> Bad	
Material Storage (Good Housekeeping/Waste Disposal)		<input type="checkbox"/> Good <input type="checkbox"/> Bad	
Concrete Washout Area		<input type="checkbox"/> Good <input type="checkbox"/> Bad	
Equipment Fueling, Maintenance, Storage Area (indicate which)		<input type="checkbox"/> Good <input type="checkbox"/> Bad	

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Erosion Controls:			
Temporary Stabilization: Seed w/ mulch, Mulch, Erosion Control Blankets, Rip Rap (indicate which)		<input type="checkbox"/> Good	<input type="checkbox"/> Bad
Permanent Stabilization: Seed w/ mulch, Rip Rap (indicate which)		<input type="checkbox"/> Good	<input type="checkbox"/> Bad
Rock Check Dams		<input type="checkbox"/> Good	<input type="checkbox"/> Bad

Miscellaneous:	
List Revisions to SWP3 to Reflect BMP Additions or Modifications	
Discharges Occurring During Inspection	
Describe Any Evidence That Pollutants Have Entered Streams or the Drainage System in Areas That Are Disturbed or That Store Materials Exposed to Precipitation	
Describe Any Evidence That a Potential Exists for Pollutants To Enter Streams or the Drainage System in Areas That Are Disturbed or That Store Materials Exposed to Precipitation	

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List Any Noncompliance with the SWPPP or General Permit that has Occurred since the last Inspection	
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I certify under the penalty of law, that I personally conducted this inspection and prepared this inspection report. Based upon my observations during the inspection, I certify that the information in this inspection report is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Inspector's Signature and Date

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