

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JUN 29 2007

ENTERED DIRECTOR'S JOURNAL

In the matter of:

Snider-Cannata Interests  
5595 Transportation Blvd  
Garfield Heights, Ohio 44125

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:  
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Director's Final Findings and  
Orders

Respondent

:  
:

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Snider-Cannata Interests ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in the ownership or composition of Respondent or the ownership of the Site (defined below) shall in any way alter Respondent's obligations under these Orders.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111. and the rules promulgated thereunder.

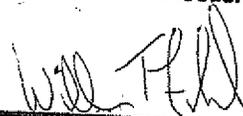
**IV. FINDINGS**

The Director has determined the following:

1. Respondent is owner and developer of the Bridgeview Crossing shopping center development, an approximately 75 acre property located near the intersection of Transportation Boulevard and Granger Road in Garfield Heights, Cuyahoga County, Ohio (the "Site").
2. By letter dated October 18, 2006, Professional Service Industries, Inc. ("PSI") submitted, on behalf of Respondent, an application for a Section 401 water quality certification to the Ohio EPA in connection with Respondent's construction

**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:

6/29/07

of the Site. The application requested authorization to impact potentially jurisdictional waters including what was believed to be approximately 370 linear feet of ephemeral stream, 270 linear feet of intermittent stream and 1,390 linear feet of perennial stream.

3. After submittal of the above-referenced application, Respondent determined that there was a need to re-design significant portions of the plan for the Site.
4. As a result, by letter dated December 15, 2006, Respondent withdrew the Section 401 water quality certification application that was previously submitted to the Ohio EPA. In doing so, Respondent indicated that it intended to strive to avoid all potentially jurisdictional waters in connection with the re-design of the plan for the Site.
5. Thereafter, Respondent alleges it received conflicting information as to whether jurisdictional waters were located on the Site. That being the case, Respondent conducted research in an effort to determine whether jurisdictional waters were located on the proposed Bridgeview Crossing property. In connection with its efforts to ascertain whether jurisdictional waters were located on the Site, Respondent reviewed various documents including, but not limited to, the following: City of Garfield Heights ordinance identifying the waterways and riparian setbacks throughout the City; Various soil survey documents for Cuyahoga County, Ohio; Sewer Distribution Map for the Village of Valley View; Regional Planning Commission Sewer and Water Plan; and a Right-of-Way agreement recorded at Volume 4215, Page 639 of the Cuyahoga County Records granting to the City of Garfield Heights a sewer easement across the Site.
6. After completing its review, Respondent concluded that the proposed Site did not contain jurisdictional waters. Therefore, Respondent was led to believe that there was no need to re-submit a Section 401 water quality certification application prior to initiating work on the proposed Bridgeview Crossing development.
7. Respondent then contracted with Independence Excavating for the preparation work associated with the construction of the Site. Independence Excavating initiated site preparation activities at the property on or about February 12, 2007.
8. On March 16, 2007, representatives of the Ohio EPA and the Cuyahoga County Soil & Water Conservation District conducted an inspection of the Site. Representatives of both Respondent and the City of Garfield Heights were present during the inspection. As a result of the inspection of the property, the Ohio EPA representatives identified certain violations of Ohio's water pollution control laws in connection with the construction of the Site. Specifically, the Ohio EPA officials that were present noted violations of Ohio's Section 401 water quality certification rules. The violations in question were delineated in Notice of

Violation ("NOV") letters dated March 20, 2007 and April 17, 2007 that were issued to Respondent by the Ohio EPA.

9. By letter dated April 25, 2007, Respondent corresponded with the Ohio EPA and requested that a meeting be scheduled at the Site with all pertinent regulatory agencies in order to review the environmental permitting and compliance requirements applicable to the construction of the Site.
10. On May 4, 2007, representatives of Respondent met with representatives of the United States Army Corps of Engineers, the Ohio EPA, the Cuyahoga County Soil & Water Conservation District and the City of Garfield Heights in order to inspect the proposed Bridgeview Crossing Site and discuss the regulatory requirements applicable to the construction of the Site.
11. On May 11, 2007, the United States Army Corps of Engineers issued a provisional Department of the Army Permit No. 2006-1942-11, Nationwide Permit No. 39 approval for the work that had previously been conducted and the remaining construction activities associated with the completion of the Bridgeview Crossing development at the Site. The provisional Department of the Army Permit indicated, however, that an activity specific water quality certification would need to be obtained from the Ohio EPA prior to the completion of the Site.
12. Upon issuance of these Orders, Respondent intends to conduct the remaining construction activities associated with the completion of the Bridgeview Crossing development at the Site pursuant to the Nationwide Permit No. 39 approval that was issued on May 11, 2007. These Orders are issued in lieu of, and shall be deemed to constitute, an activity specific water quality certification for the completion of the development at the Site.
13. Pursuant to ORC 6111.04, no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.
14. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
15. Respondent has caused pollution by discharging or placing or causing to be placed other wastes into waters of the state without a Section 401 water quality certification or other authorization from Ohio EPA, in violation of ORC §§ 6111.04 and 6111.07.
16. ORC Section 6111.04(A) prohibits any person from causing pollution or placing or causing to be placed any sewage, industrial waste or other waste in any location where they cause pollution to waters of the State of Ohio, except if such discharges occur in accordance with a permit issued by the Director. ORC

Section 6111.07(A) prohibits any person from violating, among other things, ORC Section 6111.04.

17. The term "pollution" as defined in R.C. 6111.01(A) includes, but is not limited to, the placing of "other wastes" in any "waters of the State", as those terms are defined under R.C. 6111.01(D) and 6111.01(H).
18. The terms "dredged material" or "fill material" are defined under OAC 3745-32-01(E) and 3745-32-01(G) and include, but are not limited to, material that is excavated or dredged from waters of the state (dredged material) and any pollutant used to create fill to replace an aquatic area with dry land or to change the bottom elevation of a water body for any purpose (fill material).
19. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to benefits to the people of the State to be derived from such compliance in accomplishing the purpose of ORC Chapter 6111.

#### **V. ORDERS**

1. Respondent shall not alter, fill, dredge or otherwise degrade the uses and /or existing functions or values of any portion of waters of the state, at other off-Site locations in Ohio, without first receiving prior approval from the Director of the Ohio EPA to the extent required by law.
2. Any additional impacts that occur in connection with the completion of the Bridgeview Crossing development on the Site must comply with the following conditions:
  - A. All water resources and their buffers which are to be avoided shall be clearly indicated on site drawings and demarcated in the field with suitable materials, prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process.
  - B. All water resources and their buffers which are to be avoided shall be adequately protected with suitable materials, including silt fencing if appropriate, prior to site disturbance. These materials shall remain in place and be maintained throughout any construction process.
  - C. Best Management Practices (BMPs) must be employed to avoid the creation of unnecessary turbidity which may degrade water quality or adversely affect aquatic life outside of the project area.
  - D. To the extent practicable, work shall only take place during low water conditions in order to minimize adverse impacts to water quality away from the project site.

- E. Temporary fill shall consist of suitable non-erodible material or shall be stabilized to prevent erosion.
- F. Materials used in this project for fill or bank protection shall consist of suitable material free from toxic contaminants in other than trace quantities. Broken asphalt is specifically excluded from use as bank protection.
- G. BMPs shall be used during construction to minimize erosion.
- H. Procedures shall be developed and implemented to eliminate the possibility of spills and to control dust that may enter the waterway by runoff or point discharge.
- I. Unpermitted impacts to surface water resources and/or their buffers occurring as a result of this project will be reported within 24 hours of occurrence to Ohio EPA for further evaluation.
- J. Stormwater basins on the site which have Extended Detention or Permanent Pool water quality features shall meet the design specifications in Ohio EPA Permit OHC000002. Stormwater basins on site which have water quality features ( Forebay, Aquatic Benches and Wetlands, Optimum Flow Length, Reverse Flow Pipe, Optimum Pool Depth, Shading and Buffer Plants, and Runoff Reuse) shall meet the design specifications contained in the Ohio Department of Natural Resources Rainwater and Land Development document, second edition, 1996, or successor document.
- K. Stormwater management measures shall be 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. Specifications for any necessary repairs and removal of sediment deposition shall be developed as needed in the Stormwater Pollution Prevention Plan for the site.
- L. Representatives from the Ohio EPA, Division of Surface Water will be allowed to inspect the authorized activity at any reasonable time deemed necessary to insure that it is being or has been accomplished in accordance with the terms and conditions of this water quality certification.
- M. No fuel storage or equipment refueling shall occur within the stream banks.
- N. Blasting will not be done within or near stream channels without prior consultation with the Ohio Department of Natural Resources, Division of Wildlife, to determine what protective measures should be taken to minimize damage to fish and other aquatic life.

- O. Cadmium chromium arsenate (CCA) and creosote treated lumber shall not be used in structures in contact with waters of the state.
- P. The applicant shall notify Ohio EPA in writing upon the start and completion of site development and mitigation.
- Q. This proposal may require other permits from Ohio EPA. For information concerning application procedures, contact the Ohio EPA District Office at the following address:

Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087.

- 3. Within sixty (60) days of the effective date of these Orders or an alternate extension date that has been approved by the Ohio EPA, Respondent shall submit evidence (copies of permanent deed restrictions/conservation easements) of completion of the following three mitigation projects:
  - A. Approximately 1,000 linear feet of Big Creek tributary in the City of Parma, will be acquired by West Creek Preservation Committee and protected through a permanent deed restriction. The approximate acreage to be permanently protected will be between 10 and 13 acres.
  - B. Approximately 350 linear feet of West Creek tributary will be acquired by West Creek Preservation Committee and protected through a permanent deed restriction. This is a 1.9 acre parcel.
  - C. Three parcels of land in the City of Parma, West Creek Watershed, comprising approximately 1,400 linear feet of a significant tributary to the West Creek headwaters area will be granted a conservation easement. This represents approximately 10 acres of riparian woodlands.

Respondent shall ensure that the referenced conservation easement and deed restrictions are executed and filed with the Cuyahoga County Recorder. Respondent shall submit to Ohio EPA certified copies of the Conservation Easement Agreement and deed restrictions as filed with the County Recorder within sixty (60) days of the effective date of these Orders or an alternate extension date that has been approved by the Ohio EPA. To the extent that Respondent is unable to ensure that the conservation easement and deed restrictions are executed and filed within sixty (60) days of the effective date of these Orders, Respondent shall submit to the Ohio EPA a written request for an extension of such deadline.

- 4. Respondent shall pay to the Ohio EPA the amount of fifty thousand (\$50,000) dollars in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the amount of

forty thousand (\$40,000) dollars within thirty (30) days of the effective date of these Orders. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent and the Site, at the following address:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 432151049

5. In lieu of paying the remaining ten thousand (\$10,000) dollars of civil penalty, Respondent shall within 30 days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of ten thousand (\$10,000) dollars to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for ten thousand (\$10,000) dollars. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 432151049

A copy of each check shall be sent to Ohio EPA, in accordance with Section X. of these Orders.

6. Should Respondent fail to fund the SEP within the required time frame established in Order No. 5, Respondent shall immediately pay to Ohio EPA ten thousand (\$10,000) dollars of the civil penalty in accordance with the procedures in Order No. 4.

## **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and Ohio EPA's Division of Surface Water acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent.

#### **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to the site.

#### **VIII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

#### **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

#### **X. NOTICE**

Unless otherwise stated herein, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Surface Water  
Attn: DSW 401 Unit Supervisor  
P.O. Box 1049  
Columbus, Ohio 43216-1049

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

Unless otherwise stated herein, all documents required to be submitted to Respondent pursuant to these Orders shall be addressed to:

Sam Cannata  
Snider-Cannata Interests  
5595 Transportation Boulevard  
Garfield Heights, Ohio 44125

and to:

Shane A. Farolino, Esq.  
Roetzel & Andress  
222 South Main Street  
Akron, Ohio 44308

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

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders.

#### **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

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

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

#### **XIII. EFFECTIVE DATE**

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

**XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO AGREED:**

Snider-Cannata Interests

Sam P. Cannata  
Signature

6/28/07  
Date

Sam P. Cannata  
Printed or Typed Name

Managing Member  
Title

**IT IS SO ORDERED AND AGREED:  
Ohio Environmental Protection Agency**

Chris Korleski  
Chris Korleski  
Director

6/29/07  
Date