

OHIO E.P.A.
DEC - 6 2007

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY
FILED DIRECTOR'S JOURNAL

In the Matter of: :
: Director's Final Findings
Weidle Corporation : and Orders
P.O. Box 247 :
Germantown, Ohio 45327 :
Respondent :

PREAMBLE

The parties hereto agree as follows:

I. JURISDICTION

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

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in the ownership or composition of Respondent or the ownership of the Subdivision (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 of Ohio EPA makes the following findings:

1. Respondent is the developer of the Ron Heights Subdivision, a residential development located on the north side of Germantown, Ohio, Montgomery County.

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: [Signature] Date: 12-6-07

2. At some time between July 7, 2000 and March 10, 2004, Respondent disturbed, or caused the disturbance of over five (5) acres of Section 10 of the Ron Heights Subdivision by the clearing, grading and excavating of vegetation and/or soils. Storm water passed over all or part of the disturbed portions of this disturbed construction area and picked up dirt and soil which was discharged off site to waters of the state. The discharge, at least in part, was from bulldozers and/or other earthmoving equipment, and/or from piles of earth and land clearing debris formed by such equipment and earthmoving activity and/or left the site in discrete conveyances such as drains, ditches, fissures, rills and gullies and/or trenches. These discharges from the construction site were point source discharges.
3. Storm water from section 10 of the Ron Heights subdivision discharges to a tributary to Little Twin Creek, an exceptional warmwater habitat stream. The tributary constitutes "waters of the state" and sediment contained in that storm water that entered the tributary constitutes "other wastes" as those terms are defined in ORC § 6111.01.

4. Placement of this waste-laden storm water into waters of the state constitutes "pollution," as defined in ORC § 6111.01(A).
5. 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.
6. OAC § 3745-33-02(A) provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without either applying for and obtaining an Ohio NPDES individual permit in accordance with the requirements of Chapter 3745-33 of the Administrative Code.
7. OAC § 3745-38-02(A) provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without applying for and obtaining an Ohio NPDES individual permit in accordance with the requirements of Chapter 3745-33 of the Administrative Code, complying with the indirect discharge permit program pursuant to Chapter 3745-36 of the Administrative Code or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of Chapter 3745-38 of the Administrative Code.
8. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any rule adopted by the Director pursuant to those sections.
9. Respondent disturbed the areas and caused or allowed the discharges described in paragraph 2 of these Findings, without first obtaining an Ohio NPDES individual permit in accordance with the requirements of Chapter 3745-33 of the Administrative Code, without first complying with the indirect discharge permit program pursuant to Chapter 3745-36 of the Administrative Code, without first obtaining authorization to

discharge under an Ohio NPDES general permit in accordance with requirements of Chapter 3745-38 of the Administrative Code, or without first obtaining any other valid, unexpired permit from the Director authorizing such activity. As a consequence, Respondent violated ORC § 6111.04, OAC § 3745-33-02(A), and OAC § 3745-38-02(A).

10. On or before March 10, 2004, within Section 10 Respondent filled, relocated, and placed within a culvert, approximately 548 feet of a tributary to Little Twin Creek. Respondent completed this activity without first obtaining from the Army Corps of Engineers a 404 permit or obtaining from the Director a 401 water quality certification.
11. The tributary referred to in paragraph 10 of these Findings and Orders constitutes "waters of the state" and fill material constitutes "other wastes" as those terms are defined in ORC § 6111.01.
12. Placement of other waste into waters of the state constitutes "pollution," as defined in ORC § 6111.01(A).
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. On April 29, 2004, the Army Corp of Engineers issued a letter to Respondent *provisionally* authorizing Respondent to conduct its fill activity, after the fact, with a Nationwide Permit 39. The *provision* on coverage under Nationwide Permit 39 was that Respondent first obtain a 401 water quality certification or waiver from the Director.
15. Ohio EPA sent a certified letter, dated May 20, 2004, to Respondent requesting a 401 application.
16. On October 10, 2004, Ohio EPA's 401 unit conducted an inspection, including a Headwater Habitat Evaluations Index forms both upstream and downstream of the culverted section of the tributary. The inspection revealed that the tributary, prior to being culverted and relocated, was an intermittent or perennial Class II headwater stream. A significant amount of sand and silt was also deposited in the downstream section of the tributary as a result of Respondent's construction activities.
17. On January 12, 2005, Ohio EPA sent a second certified letter to Respondent requesting a 401 application.
18. In placing fill material in the tributary as part of the process of relocating the tributary and placing it in a culvert, all done without a 404 permit from the Army Corps and without a water quality certification from the Director, Respondent has violated ORC § 6111.04(A)

19. On March 7, 2005, Respondent submitted a 401 application to the Ohio EPA. After review by Ohio EPA and the public, and revisions by Respondent, Ohio EPA approved the 401 water quality certification on April 27, 2006. The certification authorized the stream channel relocation and required stream mitigation.
20. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

1. Respondent shall not initiate construction activities that disturb more than one acre of land without having first receiving approval from the Director as required by law. Respondent may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondent has maintained compliance with this Order for a period of three hundred and sixty five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section VI. of these Orders.
2. Respondent shall perform all mitigation as required in Respondent's 401 Water Quality Certification issued April 27, 2006. Respondent's 401 Water Quality Certification is fully incorporated within these Orders as Attachment A.
3. Respondent shall pay to the Ohio EPA the amount of Seventeen Thousand Four Hundred Twenty-Nine Dollars (\$17,429.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment of the penalty shall be made in three installments: the first installment of Five Thousand Four Hundred Twenty-Nine Dollars (\$5,429.00) to be made within thirty (30) days of the effective date of these Orders; the second installment of Six Thousand Dollars (\$6,000.00) to be made within one hundred eighty (180) days of the effective date of these Orders; and the third and last installment of Six Thousand Dollars (\$6,000.00) to be made within three hundred sixty-five (365) days of the effective date of these Orders. Payment of all installments shall be made by tendering an official check made payable to "Treasurer, State of Ohio" in the full amount of the installment to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 432151049, together with a letter identifying Respondent and the site.
4. In lieu of paying Three Thousand Four Hundred Eighty-Six Dollars (\$3,486.00) of the first installment of the 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 Three Thousand Four Hundred Eighty-Six Dollars (\$3,486.00) 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 Three Thousand Four Hundred Eighty-Six Dollars (\$3,486.00). 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 Mark Mann, Environmental Manager, Storm Water and Enforcement Sections, or his successor, at the following address:

Ohio EPA
Division of Surface water
P.O. Box 1049
Columbus, Ohio 43216-1049

5. Should Respondent fail to fund the SEP within the required time frame established in Order No. 4, Respondent shall immediately pay to Ohio EPA the full amount of the civil penalty in accordance with the procedures in Order No. 3.

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 violations alleged in these Orders.

VIII. OTHER APPLICABLE LAWS

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

IX. MODIFICATIONS

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

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio EPA
401/Isolated Wetland Permitting Section
Lazarus Government Center
122 South Front Street
P.O. Box 1049
Columbus, Ohio 43215-1049

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 or 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:

Weidle Corporation

 10-23-07

Signature Date

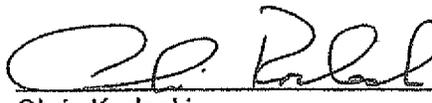
D.S. WEIDLE

Printed or Typed Name

VP

Title

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

 11/30/07

Chris Korleski Date
Director

