

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

NOCA Retail Development Limited  
P.O. Box 18651  
Atlanta, Georgia 30326

Respondent

Director's Final Findings  
and Orders

ENTERED DIRECTOR'S JOURNAL

JUN 21 2002

OHIO E.P.A.

JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to NOCA Retail Development Limited ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Revised Code ("RC") Chapter 6111. and § 3745.01.

PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership relating to the Taylor Square Shopping Center will in any way alter Respondent's obligations under these Orders. Respondent's obligations under these Orders may be altered only by the written action of the Director of Ohio EPA.

FINDINGS

The Director finds the following:

1. Respondent is developing the 43-acre Taylor Square Shopping Center ("Taylor Square"), which is located in the northeast sector of the intersection of State Route 256 and Interstate 70, Reynoldsburg, Franklin County, Ohio.
2. Respondent, the entity surviving its April 20, 2000 merger with NOCA Retail One Limited, is an Ohio limited liability company.
3. Storm water from Taylor Square discharges to an unnamed tributary of Blacklick Creek, which constitutes "waters of the state," as defined in RC § 6111.01(H). Sediment contained in the storm water constitutes "other wastes," as defined in RC § 6111.01(D). Placement of waste into waters of the state constitutes "pollution," as defined in RC § 6111.01(A), and is prohibited by RC § 6111.04 without a permit.
4. The Taylor Square construction site disturbed more than 5 acres of land, which, therefore, required Respondent to submit a Notice of Intent ("NOI") to obtain coverage under the Ohio EPA National Pollutant Discharge Elimination System ("NPDES") general permit for storm water discharges associated with construction

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

*John A. [Signature]* 1/21/02

activity ("Storm Water General Permit"). The Storm Water General Permit must be obtained at least 45 days prior to the commencement of new construction activity. Respondent submitted a NOI on May 3, 1999, and on May 7, 1999, obtained complete coverage for Taylor Square under Storm Water General Permit No. OHR108042.

5. Ohio EPA inspected the Taylor Square project site on May 26, June 22, July 13, August 10, September 9, and September 29, 1999, for compliance with Ohio's water pollution control laws, documenting the violations described below. Ohio EPA sent inspection letters to Respondent dated May 28, June 9 and 24, July 16, August 23, 1999, outlining the results of the inspections, including deficiencies regarding compliance.
6. Condition III.C.5.b.i.(A) of the Storm Water General Permit requires the initiation of appropriate vegetative practices on all disturbed areas within 7 days if such areas are to remain dormant (undisturbed) for more than 45 days. There have been disturbed areas at Taylor Square that have been left dormant for more than 45 days without the required vegetative practices.
7. Condition III.C.5.b.i.(A) of the Storm Water General Permit requires that for areas within 50 feet of any first order or larger stream, soil stabilization practices must be applied within two days on all inactive, disturbed areas. There have been inactive, disturbed areas at Taylor Square, within 50 feet of a stream of the first order or larger, on which Respondent failed to apply soil stabilization practices.
8. Condition III.C.5.b.i.(B)(1) of the Storm Water General Permit requires that sediment control structures be functional throughout earth-disturbing activities. Perimeter sediment barriers shall be implemented as the first step of grading and within 7 days from the start of grubbing. The controls shall continue to function until the upslope development area is restabilized. Not all perimeter sediment barriers in areas of Taylor Square were implemented, and not all remained functional throughout all earth-disturbing activities.
9. Condition III.C.5.b.i.(B)(2) of the Storm Water General Permit requires that concentrated storm water runoff from disturbed areas flowing at rates that exceed the design capacity of sediment barriers pass through a sediment settling pond. The sediment pond is required to have a storage capacity of 67 cubic yards per acre of total drainage area. Respondent has failed to install a settling pond with the required sediment storage capacity at Taylor Square. On May 26, 1999, Ohio EPA inspectors documented concentrated storm water runoff from disturbed areas of Taylor Square, flowing at a rate that exceeded that design capacity of a sediment barrier. This concentrated storm water runoff did not pass through a sediment pond, and caused violations of Ohio Water Quality Standards in Blacklick Creek.

10. Condition III.C.5.b.i.(B)(5) of the Storm Water General Permit requires that structural practices prevent sediment-laden water from entering storm water drainage systems unless the storm water system drains to a settling pond. There are drainage systems on the Taylor Square site that do not drain to settling ponds.
11. Condition III.C.5.b.vi. of the Storm Water General Permit requires that a qualified inspector perform an inspection of the site once every 7 calendar days and within 24 hours after any storm event greater than 0.5 inches of rainfall per 24-hour period. An inspection log is required to be kept. Respondent has failed to complete the required inspections and maintain an inspection log.
12. Respondent is not in compliance with its Storm Water General Permit for at least the items listed in Finding Nos. 5 through No. 10, above. Each violation constitutes a separate violation of RC §§ 6111.04 and 6111.07.
13. Central District Office, Ohio EPA, inspected the site on September 7, 2000 and determined that all violations alleged above have been abated.
14. As a supplemental environmental project, Respondent conducted a one-day seminar on storm water permitting and compliance issues.
15. 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 purpose of RC Chapter 6111.

#### ORDERS

1. Respondent shall maintain compliance with Storm Water General Permit No. OHR108042, for Taylor Square Shopping Center.
2. Respondent shall pay to Ohio EPA the amount of twenty thousand dollars (\$20,000.00) in settlement of Ohio EPA's claims for civil penalties which may be assessed for noncompliance pursuant to RC Chapter 6111., pursuant to the following schedule:
  - a. Within thirty (30) days from the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of one thousand eight hundred sixty-three dollars (\$1,863.00). Payment shall be made by tendering a certified check for said amount, made payable to "Treasurer, State of Ohio," to:

Ohio Environmental Protection Agency  
Office of Fiscal Administration  
Lazarus Government Center  
P. O. Box 1049  
Columbus, Ohio 43216-1049

A copy of this check shall be submitted to the Ohio EPA District Office identified in Order No. 3, below.

- b. In lieu of payment of eighteen thousand, one hundred thirty-seven dollars (\$18,137.00), Respondent, in addition to the one-day storm water permitting and compliance seminar previously conducted, shall implement the following pollution prevention supplemental environmental project according to the following schedule:
- i. Respondent is to negotiate and convey a conservation slope easement to the Columbus and Franklin County Metropolitan Park District ("Park District") relating to Taylor Square and Blacklick Creek. Said easement shall approximate the easement descriptions set forth in Attachments 1 and 2, attached hereto, except that the easement shall extend an additional seven (7) feet from the ridge line depicted in the Attachments, so that said easement includes the ridge lines and not only the slope. Said easement shall be executed and filed with the County Recorder within two hundred twenty-five (225) days after the effective date of these Orders, with a certified copy of said executed and filed easement submitted to Ohio EPA within seven (7) days of said filing.
  - ii. Should such conservation slope easement not be executed and filed and timely submitted to Ohio EPA, or a deed and agreement executed, filed and submitted within the same time periods, which deed and agreement achieves the same conservation slope easement restriction, with said deed and agreement approved by Ohio EPA, \$11,137.00, [which is the amount of the civil penalty remaining (\$18,137.00), minus \$7,000.00, the amount credited to the storm water permitting and compliance seminar] shall be paid to the Ohio EPA within two hundred fifty-five (255) days after the effective date of these Orders. Payment shall be made by tendering a certified check for said amount, made payable to "Treasurer, State of Ohio," to:

Ohio Environmental Protection Agency  
Office of Fiscal Administration  
Lazarus Government Center  
P. O. Box 1049  
Columbus, Ohio 43216-1049

A copy of this check shall be submitted to the Ohio EPA district office identified in Order No. 3, below.

3. All documents, applications, and notifications required under these Orders, unless specified otherwise, shall be submitted to:

Ohio EPA  
Central District Office  
3232 Alum Creek Drive  
Columbus, Ohio 43207-3417

Attn. DSW Enforcement Group Leader

#### **OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Respondent's operation of its Taylor Square site.

#### **RESERVATION OF RIGHTS**

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against the Respondent for noncompliance with these Orders. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Respondent to perform additional activities pursuant to R.C. Chapter 6111, or any other applicable law in the future. Nothing herein shall restrict the right of the Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of the Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

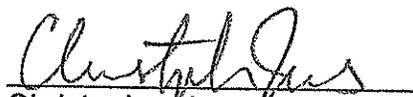
**TERMINATION**

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

This certification shall be submitted by Respondent to the Central District Office (Attention: DSW Enforcement Group Leader) and shall be signed by a responsible official of Respondent. A responsible official is as defined in OAC rule 3745-33-03(D)(1) for a corporation, OAC rule 3745-33-03(D)(2) for a partnership and OAC rule 3745-33-03(D)(3) for a sole proprietorship. The certification shall contain the following attestation:

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

**IT IS SO ORDERED:**

  
\_\_\_\_\_  
Christopher Jones  
Director

6-17-02  
Date

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

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

Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that 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 agrees to continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

**SIGNATORY AUTHORITY**

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

**IT IS SO AGREED:**

NOCA Retail Development Limited

ROBERT L. NELSON  
By NOBLE PROPERTIES, INC

5/29/02  
Date

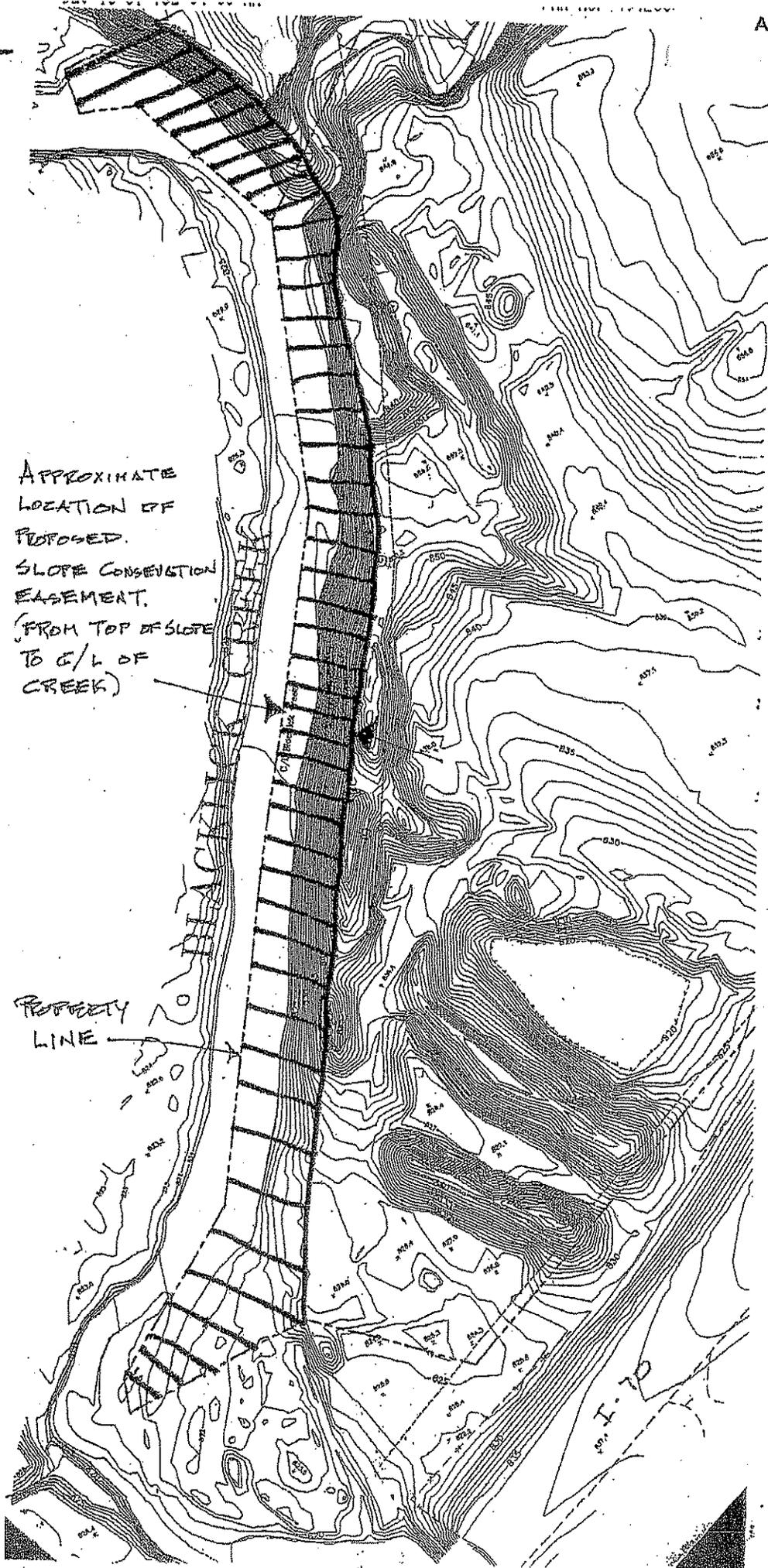
EXEC. VICE PRESIDENT  
Title

**IT IS SO AGREED:**

Ohio Environmental Protection Agency

Christopher Jones  
Christopher Jones  
Director

6-17-02  
Date



APPROXIMATE  
LOCATION OF  
PROPOSED  
SLOPE CONSERVATION  
EASEMENT.  
(FROM TOP OF SLOPE  
TO C/L OF  
CREEK)

PROPERTY  
LINE

I-70

