

OHIO E.P.A.

NOV -3 2004

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the matter of:**

BWS 1 LLC  
The Reserve at Waterford  
4081 Derrwood Drive  
Akron, Ohio 44333

**Director's Final Findings  
and Orders**

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders (Orders) are issued to BWS 1 LLC (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.

**III. DEFINITIONS**

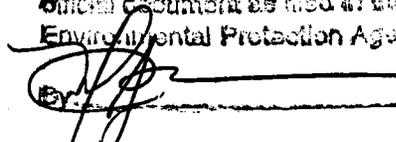
Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent is the developer of The Reserve at Waterford, a 43 unit single family subdivision located in Bath Township, Summit County, Ohio. Respondent is the

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.



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- developer of the sanitary sewer extension project to serve The Reserve at Waterford.
2. Ohio Administrative Code ("OAC") Rule 3745-42-02 requires the Director's issuance of a Permit to Install (PTI) prior to the installation of a new "disposal system" as defined in ORC Section 6111.01(G).
  3. ORC Section 6111.07 (A) prohibits any person from violating, or failing to perform, any duty imposed by ORC Sections 6111.01 to 6111.08, or violating any rule issued by the Director pursuant to those sections, including OAC Rule 3745-42-02.
  4. On November 12, 2003, Respondent submitted an application for a PTI for a sanitary sewer extension (PTI Application 02-18750).
  5. The sanitary sewer extension is a "disposal system" as defined in ORC Section 6111.01(G).
  6. On December 29, 2003, an inspection of The Reserve at Waterford was conducted by Ohio EPA Northeast District Office. The inspection confirmed that the installation of the sanitary sewer had begun prior to approval of the plans and issuance of a PTI by Ohio EPA.
  7. On January 6, 2004, Respondent was notified via certified mail that the sanitary sewer installation was in violation of ORC Chapter 6111, and OAC Chapter 3745-42.
  8. Respondent violated OAC Rule 3745-42-02, and ORC Section 6111.07 by installing a sanitary sewer extension without first receiving plan approval and a PTI from the Director.
  9. Part III.C.1. of the Authorization for Storm Water Discharges Associated with Construction Activity under the National Pollutant Discharge Elimination System (Storm Water General Permit) specifies that the Storm Water Pollution Prevention Plan (SWP3) be retained on site during working hours.
  10. Part III.G.2. of the Storm Water General Permit, and Respondent's SWP3, require that sediment control structures be functional throughout earth disturbing activity; and within seven (7) days from the start of grubbing; and that the controls continue to function until the upslope development area is restabilized.
  11. Inspections of The Reserve at Waterford construction site were conducted by the Summit Soil & Water Conservation District (Summit SWCD) for determination of

compliance with the Storm Water General Permit, and Respondent's SWP3, on November 4, 2003 and November 25, 2003. Notice of deficiency letters were sent by Summit SWCD to the Bath Township Zoning Inspector on November 5, 2003 and November 26, 2003, citing that an erosion control device was not installed within seven (7) days from the start of grubbing and/or did not remain functional. Lack of the erosion control device is a violation of the Storm Water General Permit, Respondent's SWP3, and ORC Sections 6111.04 and 6111.07.

12. Part III.G.2.g.ii. of the Storm Water General Permit and Respondent's SWP3, require that off-site vehicle tracking of sediments and dust generation be minimized. The November 25<sup>th</sup> inspection of the site revealed that mud had to be cleaned off Hametown Road. Mud on the road is a violation of the Storm Water General Permit, Respondent's SWP3, and ORC Section 6111.07.
13. Part III.G.2.h. of the Storm Water General Permit, and Respondent's SWP3, require that all temporary and permanent control practices shall be maintained and repaired as needed to ensure continued performance of their intended function.
14. Inspections of site conducted by the Summit Soil & Water Conservation District (Summit SWCD) for on November 26<sup>th</sup> and December 18<sup>th</sup> revealed that erosion control devices were not being maintained in violation of the Storm Water General Permit, Respondent's SWP3, and ORC Section 6111.07. Notice of deficiency letters were sent by Summit SWCD to the Bath Township Zoning Inspector on November 26, 2003 and December 18, 2003.
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 purposes of ORC Chapter 6111.

## V. ORDERS

1. Respondent shall not install sewerage or treatment works for sewage disposal or new disposal systems, including, but not limited to, sanitary sewers, at any location in Ohio without first receiving prior 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. Within thirty (30) days of the effective date of these Orders, Respondent shall pay the amount of four thousand six hundred thirty-two dollars (\$4,632.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed under ORC Chapter 6111. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the full amount within thirty (30) days of the effective date of these Orders, to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the project (BWC 1 LLC).

#### **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 Reserve at Waterford project.

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

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

### **XI. 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.

### **XII. EFFECTIVE DATE**

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

**XIII. 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:**

**BWS 1 LLC**

  
\_\_\_\_\_  
Signature

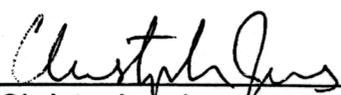
10/5/04  
Date

Michael L. Wojno  
Printed or Typed Name

Managing Partner (MEMBER)  
Title

**IT IS SO ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

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

11-2-04  
Date