

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
MAR -5 2003

ENTERED DIRECTOR'S JOURNAL

In the Matter of  
Paul Beaver  
3803 Cottage Grove Road  
Akron, Ohio 44319

Director's Final Findings  
and Orders

Respondent

**JURISDICTION**

Pursuant to Ohio Revised Code (ORC) Chapter 6111.03 and Section 3745.01, the Director of the Ohio Environmental Protection Agency (Ohio EPA) hereby makes the following Findings and issues the following Orders.

**PARTIES BOUND**

These Orders shall apply to and be binding upon Paul Beaver, hereinafter, "Respondent", and his assigns and successors in interest liable under Ohio law. No change in ownership of the "Property" as hereinafter defined shall 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 the Ohio EPA.

**FINDINGS**

- 1 Respondent is the owner of real property located at the northwest corner of State Route 619 and Cottage Grove Road in the City of Green, Summit County, Ohio, hereinafter defined as the "Property".
2. Located on the Property are wetlands which constitute "waters of the state" as that term is defined in ORC Section 6111.01(H).
3. At various times beginning in 1995 and possibly earlier and continuing through April 2001, Respondent has discharged fill material into approximately 0.4 acres of wetlands on the Property. This fill material constitutes "other wastes" as that term is defined in ORC Section 6111.01(D).
4. Approximately 0.3 acres of fill material was placed into the wetland under authority

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.

By: Zona L. Clement Date: Mar 5, 03

granted pursuant to Nationwide Permit Number 26 issued by the Army Corps of Engineers (Corps). Respondent's Nationwide Permit for this activity expired on June 7, 2000.

5. In response to a United States Supreme Court decision in the matter of Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers et. al, 531 U.S. 159 (January 9, 2001), the Corps determined, on April 30, 2001, that Respondent's project did not require a Section 404 permit because the wetland in question was isolated.
6. By emergency rule effective April 17, 2001, the Director of Ohio EPA created a dredge and fill permit as the mechanism by which he would authorize the discharge of dredged or fill material to isolated waters, including isolated wetlands.
7. On April 30, 2001, Ohio EPA was informed that Respondent was filling the wetland at the Property.
8. In a telephone conversation between Respondent and Ohio EPA staff on May 1, 2001, Respondent indicated that he was unaware that his Nationwide Permit 26 had expired and indicated he would cease all filling until a permit from Ohio EPA was obtained.
9. On May 3, 2001, Ohio EPA sent a certified letter to Respondent stating that he needed to apply for a state isolated wetland permit. An application and related information were enclosed.
10. On June 14, 2001, Ohio EPA sent a certified letter to Respondent again requesting the submission of a state isolated wetland permit application. To date, no application has been received.
11. Effective July 17, 2001, ORC Section 6111.021 prohibits the filling of isolated wetlands without a state isolated wetland permit.
12. Pursuant to ORC § 6111.04, no person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state without a valid, unexpired permit.
13. Pursuant to ORC Section 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC Sections 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.

14. Respondent violated ORC Sections 6111.04, and 6111.07(A) by filling a wetland at the Property after the expiration of the Nationwide Permit 26 without first obtaining a state isolated wetland permit from Ohio EPA.
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.

### **ORDERS**

- 1 Respondent shall not discharge dredged or fill material into waters of the state, including but not limited to wetlands, at any location in Ohio, except as authorized by a Clean Water Act Section 404 permit and Section 401 water quality certification and/or a state isolated wetland permit, as applicable.
2. Respondent shall mitigate for the unauthorized filling activities in the following manner:
  - a. Within thirty (30) days of the effective date of these Orders, Respondent shall purchase 0.1 wetland mitigation credits at an Ohio EPA approved mitigation bank and provide Ohio EPA with a fully executed agreement with the mitigation bank to document the purchase of the credits; and
  - b. Within twelve (12) months of the effective date of these Orders, Respondent shall establish a perennial, vegetative cover (or other comparable permanent stabilization practice) to a 70% density throughout the entire disturbed area.

### **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 and its operation.

### **RESERVATION OF RIGHTS**

These Orders do not prevent Ohio EPA from enforcing the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders. These Orders do not prevent Ohio EPA from exercising its authority to require Respondent to perform additional activities pursuant to Chapter 6111 of the Ohio Revised Code or any other applicable law in the future. These Orders do not restrict the right of Respondent to raise any administrative, legal or equitable claim or defense for any additional activities that Ohio EPA may seek to require of Respondent. These Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

### **TERMINATION**

Respondent's obligations under these Orders shall be satisfied and terminate when Respondent demonstrates in writing and certifies to the satisfaction of the Ohio EPA that all obligations under these Orders have been performed and subsequent to the completion of the final requirement of these Orders and the Chief of Ohio EPA's Division of Surface Water acknowledges the termination of these Orders in writing.

This certification shall be submitted by Respondent to the Ohio EPA, Central Office (Attn. Manger, 401 Unit) 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 that 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."*

**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 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 in full accord and satisfaction of Respondent's liability for the violations specifically cited herein. Ohio EPA specifically does not waive its right 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 service of these Orders, and it 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.

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:**

**Paul Beaver**

Paul Beaver

By

2-16-03

Date

Owner

Name & Title

**IT IS SO ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

Christopher Jones

Christopher Jones  
Director

2-27-03

Date