

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Chandler Inc.  
24865 Detroit Rd.  
Westlake, OH 44145

:  
:  
:

Director's Final Findings  
and Orders

Respondent

ENTERED DIRECTOR'S JOURNAL

AUG - 4 2005

OHIO E.P.A.

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Chandler Inc. (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 Riverside Drive Estates (Site), a 3.3-acre residential subdivision in the City of Rocky River, Cuyahoga County.
2. Storm water from the Site discharges to Spencer Creek. Spencer Creek constitutes "waters of the state," as defined by ORC Chapter 6111.01 (H). Sediment contained in said storm water constitutes "other wastes," as defined in ORC Chapter 6111.01

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: Michael A. Shapiro Date 8/4/05

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- (0). Placement of this waste into waters of the state constitutes "pollution," as defined in ORC Chapter 6111.01 (A).
3. Because the Site is a construction site which disturbs more than one (1) acre of land, Respondent was required 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 Activity (NPDES Storm Water General Permit) and to develop and implement a Storm Water Pollution Prevention Plan (SWP3) specific to the Site.
  4. On August 17, 2004, Cuyahoga Soil and Water Conservation District conducted an inspection at the Site and determined that the site had disturbed more than one acre of land. Ohio EPA estimates that 3.0 acres have been disturbed. The inspection confirmed that construction activities at the Site had commenced prior to the submission of an NOI, in violation of ORC Chapter 6111.07.
  5. On January 26, 2004, March 22, 2004, April 26, 2004, May 10, 2004, June 7, 2004, July 15, 2004, August 17, 2004, September 13, 2004, October 19, 2004, and November 8, 2004 Ohio EPA and/or Cuyahoga Soil and Water Conservation District conducted inspections at the Site for compliance with Ohio's water pollution control laws, documenting the violations described below.
  6. Part II.A of the NPDES Storm Water General Permit requires that an operator submit a complete and accurate NOI application form and appropriate fee at least 21 days prior to the commencement of construction activity. Pursuant to Part II.B, an operator who fails to notify the Director of their intent to be covered and who discharges pollutants to surface waters of the state without an NPDES permit is in violation of ORC Chapter 6111.
  7. Part III.G of the NPDES Storm Water General Permit requires all temporary and permanent control practices and sediment control practices are to be maintained and repaired as needed to ensure continued performance in accordance with weekly and post-rainfall event inspections. Respondent failed to conduct weekly and post-rainfall event inspections, failed to maintain and repair temporary and permanent control practices and sediment control practices, all violations of ORC Chapter 6111.
  8. Part III.G of the NPDES Storm Water General Permit requires that all disturbed areas that will remain dormant for more than twenty-one (21) days and within fifty (50) feet of a stream be temporarily stabilized within two (2) days of the most recent disturbance. Respondent has failed to implement the required temporary stabilization at the Site, a violation of ORC Chapter 6111.

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9. Part III.G of the NPDES Storm Water General Permit requires that all disturbed areas that will remain dormant for more than twenty-one (21) days, but less than one year, and not within fifty (50) feet of a stream be temporarily stabilized within seven (7) days of the most recent disturbance. Respondent has failed to implement the required temporary stabilization at the Site, a violation of ORC Chapter 6111.
10. By letters dated January 28, 2004, March 23, 2004, April 26, 2004, May 12, 2004, June 9, 2004, July 20, 2004, August 18, 2004, September 14, 2004, October 21, 2004, November 10, 2004, and November 18, 2004, Ohio EPA and/or Cuyahoga County sent inspection letters to Respondent via mail that the construction activities occurring at the Site were in violation of ORC Chapter 6111.
11. On November 26, 2004, Ohio EPA received a complete NOI from Respondent to obtain coverage under the NPDES Storm Water General Permit. Respondent was granted NPDES Storm Water General Permit coverage on December 7, 2004 under permit No. 3GC01281.
12. Pursuant to ORC Chapter 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.
13. 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 developed and implemented a SWP3 that satisfies all minimum criteria listed in Part III of the NPDES Storm Water General Permit and obtained an NPDES Storm Water General Permit. 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 immediately comply with the Site's SWP3 and prevent any

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encroachment, including, but not limited to, the placement of soil, into the area designated as "Riparian Setback Flood Plain Easement" during the construction stage of homebuilding at the Site.

3. Within seven (7) days of the effective date of these Orders, Respondent shall assign a qualified employee to conduct the inspections of the sediment and erosion control practices, verify if the sediment and erosion control practices are functional, and determine if the Site's SWP3 is adequate and has been properly implemented, in accordance with Part III.G.2(i) of the NPDES Storm Water General Permit.
  - A. Once assigned, the qualified employee shall immediately commence the inspections of the sediment and erosion control practices, verify if the sediment and erosion control practices are functional, and determine if the Site's SWP3 is adequate and has been properly implemented, in accordance with Part III.G.2(i) of the NPDES Storm Water General Permit.
  - B. The qualified employee shall maintain a record of all the inspections conducted at the Site. The inspection record shall be kept at the Site in the same location as the SWP3.
  - C. Respondent shall maintain the Site's inspection record for a period of three years after the Notice of Termination for the Site has been approved by Ohio EPA.
4. Within two (2) days of the effective date of these Orders, Respondent shall temporary stabilize all disturbed areas on the Site that have remained idle for more than 21 days and are located within fifty (50) feet of Spencer Creek. Respondent will utilize seeding and mulching or seeding and matting to prevent soil erosion.
5. Within seven (7) days of the effective date of these Orders, Respondent shall temporary stabilize all disturbed areas on the Site that have remained idle for more than 21 days and are not located within fifty (50) feet of Spencer Creek. Respondent will utilize seeding and mulching or seeding and matting to prevent soil erosion.
6. Within seven (7) days of the effective date of these Orders, Respondent shall implement individual lot Best Management Practices. At a minimum, Respondent shall install rock construction entrances, utilizing non-woven geotextile fabric beneath rip-rap, to access each lot, install silt fence around each lot perimeter, utilize dumpsters for trash and debris disposal, designate and utilize washout pits for cement trucks, implement overlot seeding and mulching after basement excavation, and perform weekly regular street sweeping to prevent sediment laden storm water from entering the storm sewer system.

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7. Within seven (7) days of the effective date of these Orders, Respondent will install and maintain inlet protection at all inlets located at the Site to prevent sediment-laden runoff from entering the storm water collection system and discharging untreated into Spencer Creek.
8. From the effective date of these Orders and until all disturbed areas on the Site meet the criteria for final stabilization, as outlined in the NPDES Storm Water General Permit, Respondent shall comply with the current SWP3 and/or any future amendments to the SWP3, in accordance with Part III.D of the NPDES Storm Water General Permit.
9. Respondent shall pay to the Ohio EPA the amount of six thousand dollars (\$6,000.00) in settlement of the 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 one thousand dollars (\$1,000.00) 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 Site.

A photocopy of the check shall be sent to Ohio EPA Northeast District Office, in accordance with Section X. of these Orders.

10. To aid in the improvement of water quality within the Spencer Creek watershed and in lieu of payment of the remaining five thousand dollars (\$5,000.00) of the civil penalty settlement, Respondent shall, as a Supplemental Environmental Project (SEP), develop a plan, to be approved by Ohio EPA Northeast District Office, for the construction of a wetland treatment cell to be located in the riparian area of Spencer Creek within the current easement that has been designated on Lot No. 1. Should the current easement be determined not to be adequate for an appropriately sized wetland treatment cell, Respondent shall secure an additional easement required from the Lot No. 1 property owner for the construction of an appropriately sized wetland treatment cell. The design and construction of the wetland treatment cell shall occur in accordance with the following schedule:
  - A. Within thirty (30) days of the effective date of these Orders, Respondent shall develop a Constructed Wetland Plan (CWP) for a wetland treatment cell that shall, at a minimum, include the following:
    - i. A calculated water quality volume (WQV) required to detain storm water runoff entering the Site's storm water collection system and to improve water quality discharging to Spencer Creek. The WQV shall

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be calculated using a 0.75 inch rainfall event and the equation located in Part III.G.2.e.ii. of the the NPDES Storm Water General Permit;

- ii. A targeted storm water draw down time of twenty-four (24) hours;
  - iii. CWP specifications to illustrate the size, shape, and depth variation of the wetland treatment cell. The CWP shall not designate more than ten percent (10%) of the wetland treatment cell area as "unvegetated open water," defined as "inundated areas where there is no or minimal emergent, rooted aquatic bed vegetation (e.g. *Nuphar adevna Nymphaeae odorata*, or *Potamogeton spp.*), or submersed or floating non-rooted aquatic bed vegetation (e.g. *Ultricularia spp.*, *Ceratophyllum spp.*, excluding species in the *Lemnaceae*) growing in the area of inundation; and
  - iv. A planting plan that shall include native Ohio woody wetland species that shall be planted at a rate of 2,400 plants per acre.
- B. Within thirty (30) days of the effective date of these Orders, Respondent shall submit the CWP, developed in Order No. 10A. above, to Ohio EPA Northeast District Office, in accordance with Section X. of these Orders, for approval. Respondent shall also submit a copy of the CWP to the Cuyahoga Soil and Water Conservation District (Cuyahoga SWCD) in accordance with Section X. of these Orders. Should Respondent submit a deficient CWP to Ohio EPA Northeast District Office, within fourteen (14) days of receiving notice from Ohio EPA Northeast District Office of CWP deficiencies, Respondent shall revise the CWP to include Ohio EPA Northeast District Office's comments and resubmit the CWP to Ohio EPA Northeast District Office and Cuyahoga SWCD, in accordance with Section X. of these Orders. Upon CWP approval by Ohio EPA Northeast District Office, Respondent shall immediately implement the CWP.
- C. Within ninety (90) days of Ohio EPA Northeast District Office approval, Respondent shall have completed all construction activities associated with the CWP for the wetland treatment cell.
11. Should Respondent fail to secure an additional easement, if required for the construction of an appropriately sized wetland treatment cell, from the Lot No. 1 property owner, as stated in Order No. 10 above, Respondent shall, within seven (7) days of receiving said denial, provide written notification to Ohio EPA Northeast District Office and Cuyahoga SWCD, in accordance with Section X of these Orders.
  12. Should Respondent fail to secure an additional easement, if required, from the

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Lot No. 1 property owner, as stated in Order No. 10 above, for the construction of an appropriately sized wetland treatment cell, Respondent shall, within sixty (60) days of the effective date of these Orders submit, for approval, an alternative SEP proposal to Ohio EPA Northeast Office, in accordance with Section X of these Orders, to improve water quality within the Spencer Creek watershed. A copy of the SEP proposal shall also be submitted to Cuyahoga SWCD in accordance with Section X of these Orders. Should Respondent submit a deficient SEP proposal to Ohio EPA Northeast District Office, within fourteen (14) days of receiving notice from Ohio EPA Northeast District Office of SEP proposal deficiencies, Respondent shall revise the SEP proposal to include Ohio EPA Northeast District Office's comments and resubmit the SEP proposal to Ohio EPA Northeast District Office and Cuyahoga SWCD, in accordance with Section X. of these Orders. Upon SEP proposal approval by Ohio EPA Northeast District Office, Respondent shall immediately implement the SEP proposal. At a minimum the SEP proposal shall include a complete technical description and a schedule for the work to be performed. Upon approval of the SEP proposal by Ohio EPA Northeast District Office, the schedule for work to be performed shall become incorporated into these Orders by reference as if fully rewritten herein.

13. Within seven (7) days of the completion of Order No. 10C. or Order No. 12 above, Respondent shall submit written notification to Ohio EPA Northeast District Office and Cuyahoga SWCD, in accordance with Section X. of these Orders, of the completion of construction of the SEP.
14. Should Respondent fail to complete the SEP within the required time frame set forth in Order No. 10C. or Order No. 12 above, within fourteen (14) days of the date the SEP construction was due to be completed, Respondent shall pay to Ohio EPA five thousand dollars (\$5,000.00) as a civil penalty in accordance with the procedures in Order No. 9.

**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

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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**

All documents required to be submitted to Ohio EPA Northeast District Office in Order Nos. 9, 10B, 11, 12, and 13 by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Northeast District Office  
Division of Surface Water  
2110 E. Aurora Road  
Twinsburg, OH 44087  
Attn: DSW Enforcement Coordinator

All documents required to be submitted to Cuyahoga SWCD in Order Nos. 10B, 11, 12, and 13 by Respondent pursuant to these Orders shall be addressed to:

Cuyahoga Soil and Water Conservation District  
6100 West Canal Road  
Valley View, OH 44125-3330  
Attn: Lisa White

### **XI. 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.

### **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**

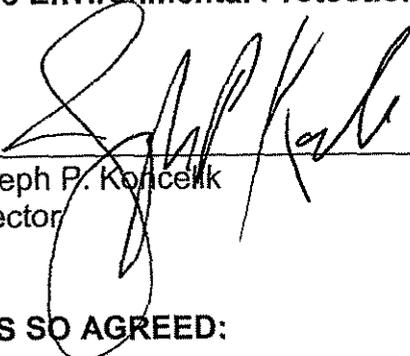
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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 ORDERED AND AGREED:**

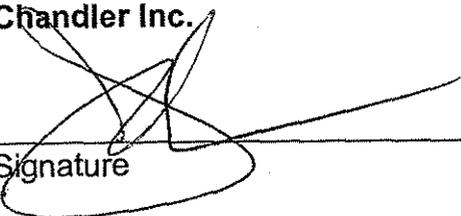
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Joseph P. Koncinski  
Director

Date 3/3/05

**IT IS SO AGREED:**

**Chandler Inc.**

  
\_\_\_\_\_  
Signature

Date 7/6/05

John R. Chandler  
Printed or Typed Name

PRESIDENT  
Title