

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Coughlin Enterprises : Director's Final Findings and
P.O. Box 1474 : Orders
Pataskala, Ohio 43026 :

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Coughlin Enterprises (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, its parents, subsidiaries, affiliates, members, officers, agents, and successors in interest liable under Ohio law. No change in ownership of the Site described in Finding No. 1 of these Orders shall in any way alter Respondent's obligations under these Orders.

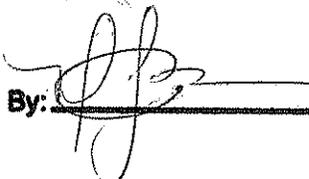
III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meanings as defined in ORC § 6111.01 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

- Respondent is the developer of a 57.0-acre commercial development project at 9000 East Broad Street located in Harrison Township, Licking County, Ohio (Site).

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: _____ Date: 7-28-07

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2. Storm water from the Site discharges to an unnamed tributary of the South Fork of the Licking River. The South Fork of the Licking River constitutes "waters of the state," as defined by ORC § 6111.01(H). Sediment contained in said storm water constitutes "other wastes," as defined in ORC § 6111.01(D). Placement of this waste into waters of the state constitutes "pollution," as defined in ORC § 6111.01 (A).
3. Ohio Administrative Code (OAC) § 3745-38 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 National Pollutant Discharge Elimination System (NPDES) individual permit in accordance with 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.
4. ORC § 6111.03(J)(1) authorizes the Director to set the terms and conditions of the permit. That section further provides that any permit terms and conditions set by the Director shall be designed to achieve and maintain full compliance with mandatory requirements of the Federal Water Pollution Control Act that are imposed by regulation of the Administrator of the United States Environmental Protection Agency. Pursuant to Section 402(p) of the federal act, the Administrator of USEPA imposed by regulation requirements to regulate storm water discharges. Under 40 C.F.R. 122.26, dischargers of storm water associated with construction activity that disturbs more than one (1) acre of land are required to obtain an individual NPDES permit or coverage under a storm water general permit.
5. 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 prior to initiating construction activity.
6. On September 9, 2004, September 16, 2004, October 25, 2004, January 5, 2005, and March 8, 2005, Ohio EPA conducted inspections at the Site and determined that an estimated 4.0 acres had been disturbed. The inspection confirmed that construction activities at the Site had commenced prior to the submission of an NOI and prior to completing and implementing an SWP3, in violation of Ohio Administrative Code (OAC) § 3745-38-06 and ORC § 6111.07.

7. By letters dated September 15, 2004, September 29, 2004, November 1, 2004, January 7, 2005, and March 14, 2005, Respondent was notified via certified or regular mail that the construction activities occurring at the Site were in violation of storm water permitting requirements. Respondent failed to respond until after the March 14, 2005, letter, which stated that Ohio EPA was pursuing enforcement action in relation to the Site.
8. Ohio EPA received an NOI for the Site from Respondent on March 15, 2005. Coverage under the NPDES Storm Water General Permit was granted for the Site on April 14, 2005.
9. On July 6, 2005, August 2, 2005, August 30, 2005, October 3, 2005, October 18, 2005, and October 25, 2005, Ohio EPA conducted inspections at the Site and determined that construction activities at the Site were continuing prior to the completion and implementation of an SWP3 for the Site and in violation of requirements in the NPDES Storm Water General Permit.
10. Respondent was notified of the continuing violations by letters from Ohio EPA dated July 11, 2005, August 15, 2005, September 1, 2005, and October 27, 2005.
11. An SWP3 for the Site was completed by Respondent in October 2005.
12. On May 4, 2006, and August 15, 2006, Ohio EPA conducted inspections at the Site and determined that violations of ORC Chapter 6111. were continuing.
13. By a Notice of Violation dated May 9, 2006, Ohio EPA notified Respondent that on May 4, 2006, a construction worker at the Site had been observed dumping grout waste into a storm drain in violation of Respondent's NPDES Storm Water General Permit and ORC § 6111.04.
14. Respondent's contractor contacted Ohio EPA and informed it that the grout waste was dumped by a sub-contractor and that appropriate steps were taken to clean up the grout waste.
15. Respondent was notified by letter dated August 29, 2006, that implementation of erosion protection was required in accordance with the NPDES Storm Water General Permit.
16. Respondent failed to implement sediment control practices as required by Part III.G.2.d. of the NPDES Storm Water General Permit.

17. Respondent failed to have qualified inspection personnel conduct inspections of all controls on the Site at least once every seven calendar days and within 24 hours of a storm event greater than one-half inch of rain in a 24 hour period, and/or has failed to maintain a record of such inspections, as required by Part III.G.2.i. of the NPDES Storm Water General Permit.
18. Storm water passed over all or part of the disturbed portions of this construction site 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 or gullies and/or trenches. The discharges from the construction site were point source discharges.
19. 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.
20. Pursuant to ORC § 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.
21. 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 in the state of Ohio that disturb more than one acre of land without having first developed and implemented an SWP3 for the construction site, and obtained coverage of the construction site under the NPDES Storm Water General Permit.
2. Within seven (7) days of the effective date of these Orders, Respondent shall submit the most recent SWP3 for the Site to Ohio EPA for review and approval. Respondent shall amend the SWP3 for the Site as required by Part III.D. of the

NPDES Storm Water General Permit, and shall submit a copy of any amendments or revisions of the SWP3 to Ohio EPA, in accordance with Section X. of these Orders. Respondent shall include post-construction storm water management requirements in the SWP3. Detail drawings and maintenance plans for all post-construction BMPs shall be provided by Respondent to the post-construction operator of the Site prior to termination of NPDES Storm Water General Permit coverage.

3. Respondent shall comply with the approved SWP3 for the Site until final stabilization is complete in all disturbed areas of the Site. To be considered complete, the stabilization practices must meet the definition of "final stabilization" under the NPDES Storm Water General Permit.
4. Respondent shall retain a copy of the SWP3 at the Site during the course of performing any earth disturbing activities as defined in the NPDES Storm Water General Permit, and during the installation, construction, or maintenance of Best Management Practices (BMPs) outlined within the SWP3. A copy of the current SWP3 shall be available at the site at all times during construction until the site reaches final stabilization.
5. Within seven (7) days of the effective date of these Orders, Respondent shall post a copy of the NOI application, and a copy of the April 14, 2005, approval of coverage under the NPDES Storm Water General Permit in a prominent place for public viewing (such as alongside a building permit).
6. Within seven (7) days of the effective date of these Orders, Respondent shall inform all contractors and sub-contractors who will be involved in the implementation of the SWP3 of the terms and conditions of the NPDES Storm Water General Permit for the Site. Respondent shall retain written documentation that this action has been completed.
7. Within twenty-one (21) days of the effective date of these Orders, Respondent shall complete all of the actions in Order Nos. 7.a. through 7.e., unless a different time limit is otherwise specified.
 - a. Respondent shall achieve final stabilization for the entire Site by September 15, 2007. Final stabilization is defined as 70 percent or greater density of vegetation established on all barren areas.
 - b. Respondent shall maintain erosion control practices at the Site to protect all channels, outfalls, and barren areas from erosion throughout the remainder of construction.

- c. Respondent shall maintain velocity dissipation devices at the outfalls of all detention and retention facilities and along the outfalls of any channels as necessary to provide non-erosive flow and/or minimize erosion at the Site.
 - d. Respondent shall take all necessary measures to ensure that all wash water associated with vehicle washing at the Site is collected and disposed to a publicly owned treatment works (POTW) or discharged from the Site in accordance with an approved individual NPDES permit.
 - e. Respondent shall provide that all erosion and sediment controls on the Site are inspected at least once every seven (7) calendar days and within 24 hours after any storm event greater than 0.5 inch of rain per 24 hour period. Respondent shall maintain a log of the inspections at the Site as required by the NPDES Storm Water General Permit.
8. Respondent shall pay the amount of thirty-one thousand eight hundred ten dollars (\$31,810.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for twenty-five thousand four hundred forty-eight dollars (\$25,448.00). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and the Site, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

9. In lieu of paying the remaining six thousand three hundred sixty-two dollars (\$6,362.00) of civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of six thousand three hundred sixty-two dollars (\$6,362.00) to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for six thousand three hundred sixty-two dollars (\$6,362.00). The official check, together with a letter identifying Respondent and the Site, shall be submitted to Brenda Case, or her successor, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of both checks shall be sent to Ohio EPA in accordance with Section X of these Orders and to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the address listed below:

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

10. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 9, Respondent shall immediately pay to Ohio EPA six thousand three hundred sixty-two dollars (\$6,362.00) of the civil penalty in accordance with the procedures in Order No. 8.

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 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 by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Central Office
Division of Surface Water
Storm Water Section
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn: Storm Water Coordinator

and to:

Ohio Environmental Protection Agency
Central District Office
Division of Surface Water
50 West Town Street
Columbus, Ohio 43215
Attn: DSW Enforcement Coordinator

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

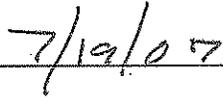
Each undersigned representative or a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



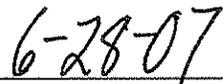
Chris Korleski
Director

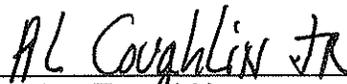

Date

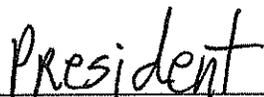
IT IS SO AGREED:

Coughlin Enterprises


Signature


Date


Printed or Typed Name


Title