

MAR 12 2013

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY REGISTERED DIRECTOR'S JOURNAL

In the Matter of:

Lend Lease (US) Construction Inc.	:	Director's Final Findings and Orders
111 West Rich Street, Suite 280	:	
Columbus, Ohio 43215	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Lend Lease (US) Construction 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, its parents, subsidiaries, affiliates, members, officers, agents, 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 § 6111.01 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

- Respondent Lend Lease (US) Construction Inc. is a Florida corporation and is an operating entity of Lend Lease Corporation Limited, an Australia corporation which describes itself as "one of the world's leading project management and construction companies." Respondent Lend Lease (US) Corporation Inc., formerly known as Bovis Lend Lease, Inc., has an Ohio office located at 111

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

By: Angela Lassiter Date: 3-12-13

West Rich Street, Columbus, Ohio 43215.

2. Respondent has been and is the construction manager on several school construction projects through contracts with the Ohio School Facilities Commission ("OSFC"). Among those projects are construction of a high school and a middle school for the Fairfield Union Local Schools District at 6401 Cincinnati-Zanesville Road, Lancaster, Fairfield County, Ohio (the "Site").
3. Storm water from the Site discharges to Rush Creek. Rush Creek 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 other wastes into waters of the state constitutes "pollution," as defined in ORC § 6111.01 (A).
4. Ohio Administrative Code (OAC) § 3745-38-02(A) 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.
5. 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.
6. The OSFC's standard Agreement for Construction Management Services specifies among other things that the Construction Manager shall provide construction management services in accordance with applicable sections of the Ohio Revised Code.

7. ORC § 9.33(A) defines "construction manager" to mean:

a person with substantial discretion and authority to plan, coordinate, manage, and direct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement, but does not mean the person who provides the professional design services or who actually performs the construction, demolition, alteration, repair, or reconstruction work on the project.

8. Because the Site is a construction site which disturbs more than one (1) acre of land, 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 (Construction Storm Water NPDES General Permit) must be submitted in accordance with the requirements of Part II of the permit by operators that discharge storm water associated with construction activity and a Storm Water Pollution Prevention Plan (SWP3) specific to the Site is required prior to initiating construction activity by Part I.E.1. of the Construction Storm Water NPDES General Permit.

9. Pursuant to Part II.A. of the Construction Storm Water NPDES General Permit, each operator which will be engaged at a site must seek coverage under the permit. Where one operator has already submitted an NOI, the additional operator must request modification of coverage to become a co-permittee.

10. Part VII.O. of the Construction Storm Water NPDES General Permit defines "operator" as follows:

"Operator" means any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with an SWP3 for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).

As set forth in Part II.A, there can be more than one operator at a site and under these circumstances, the operators shall be co-permittees.

11. Fairfield Union Local Schools District submitted an NOI application to obtain authorization to discharge under the Construction Storm Water NPDES General Permit on August 23, 2007 for the high school construction, and on May 20, 2009 for the middle school construction and US Route 22 widening. Permit coverage was granted on August 30, 2007 for the high school construction project, and on May 28, 2009 for the middle school construction and US Route 22 widening project.
12. Loveland Excavating of Columbus, Inc. submitted a co-permittee NOI application on October 23, 2007. Coverage as a co-permittee under Fairfield Union Local Schools District's permit was granted on October 31, 2007.
13. Claggett & Sons, Inc. submitted a co-permittee NOI application on May 24, 2011. Coverage under Fairfield Union Local Schools District's permit was granted on June 2, 2011.
14. Respondent, as the Construction Manager as defined in ORC § 9.33(A), is an "operator" as that term is defined in Part VII.O. of the Construction Storm Water NPDES General Permit, and was, therefore, required by Part II.A. of the permit to submit a co-permittee NOI application.
15. Respondent failed to submit a co-permittee NOI application as required by Part II.A. of the Construction Storm Water NPDES General Permit, in violation of ORC § 6111.07.
16. Respondent received NOVs dated June 20, 2011, June 28, 2011, July 20, 2011, and November 4, 2011, which specifically stated that Respondent was required to submit a co-permittee NOI application.
17. Respondent did not submit a co-permittee NOI application, and by letter dated June 27, 2011, provided the following explanation of its duties under its agreement with the OSFC: "We are obliged to help in procuring the NPDES permit but, along with the design professional, we do not have any direct contractual relationships to the trade contractors but rather assign the work to them for execution. For this reason, we will be unable to submit as a co-permittee as requested." This explanation is evidence that Respondent, under its agreement with OSFC, meets the definition of "operator" in Part VII.O. of the

Construction Storm Water NPDES 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 submit an NOI or a co-permittee NOI application at any site in Ohio at which coverage under a Construction Storm Water NPDES General Permit is required and at which Respondent is an owner or an "Operator" as defined in Part VII.O. of the Construction Storm Water NPDES General Permit.
2. Respondent shall ensure compliance with the terms and conditions of the Construction Storm Water NPDES General Permit at all construction sites at which it is an owner or an "Operator" as defined in Part VII.O. of the Construction Storm Water NPDES General Permit.
3. Respondent shall pay the amount of eleven thousand dollars (\$11,000.00) 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 eight thousand eight hundred dollars (\$8,800.00). The official check shall be submitted to Carol Butler, 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

4. In lieu of paying the remaining two thousand two hundred dollars (\$2,200.00) 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 two thousand two hundred dollars (\$2,200.00) 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 two thousand two hundred dollars (\$2,200.00). The official check, together with a letter identifying Respondent and the Site, shall be submitted to Carol Butler, 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.

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 4, Respondent shall immediately pay to Ohio EPA two thousand two hundred dollars (\$2,200.00) of the civil penalty in accordance with the procedures in Order No. 3.

#### **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 the Chief of 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

#### 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**

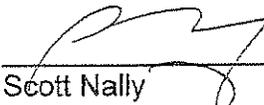
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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:**

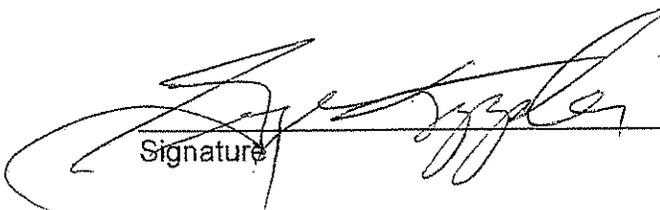
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Scott Nally  
Director

3/1/13  
Date

**IT IS SO AGREED:**

**Lend Lease (US) Construction Inc.**

  
\_\_\_\_\_  
Signature

2/18/13  
Date

GEORGE KEPPLER  
Printed or Typed Name

SVP  
Title

