

JAN 30 2008

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the matter of:

Lincoln Electric Company
6500 Heisley Road
Mentor, Ohio 44060

Panzica Construction
735 Beta Drive
Mayfield Village, Ohio 44143

Respondents

Director's Final Findings and
Orders

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: 1-30-08

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to The Lincoln Electric Company and Panzica Construction, ("Respondents"), 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 jointly and severally shall apply to and be binding upon Respondents and successors in interest liable under Ohio law. No change in the ownership or composition of Respondents or the ownership of the Site (as defined below) shall in any way alter Respondents' obligations under these Orders.

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

1. Respondent Lincoln Electric Company is the owner of the Mentor warehouse property located at 6500 Heisley Road in Mentor, Lake County, Ohio. (The "Site.")
2. Respondent Panzica Construction is the contractor for the Mentor warehouse property located at 6500 Heisley Road in Mentor, Lake County, Ohio. (The "Site.")
3. On May 24, 2007, EDP Consultants, Inc., submitted on behalf of Respondents, an Isolated Wetland Level 2 Permit Application to the Ohio EPA in connection with the construction of the Site. The application indicated impacts to 0.95 acres of category 1 isolated wetland.
4. Between May 24 and September 7, 2007 EDP Consultants, Inc, had numerous communications with Ohio EPA to discuss the components of the application and to ensure the application was complete
5. On September 7, 2007, Ohio EPA responded by letter indicating the application was complete.
6. The project was public noticed on September 19, 2007.
7. On October 17, 2007, Ohio EPA conducted an inspection of the Site. Representatives of both Respondents and EDP Consultants, Inc., were present during the inspection. As a result of the inspection of the property, the Ohio EPA representative identified violations of ORC Chapter 6111, including Ohio's Isolated Wetland Permit laws and the Section 401 water quality certification rules. Specifically, Respondents had filled in an approximately 0.76 acre wetland at the Site prior to obtaining an Isolated Wetland Permit from Ohio EPA. Furthermore, Respondents, without authorization, impacted approximately 1.5 acres of a wetland onsite that was proposed to have been avoided. The violations in question were delineated in a Notice of Violation ("NOV") letter dated October 31, 2007, and issued to Respondent Lincoln Electric by the Ohio EPA.
8. The term "pollution" as defined in R.C. 6111.01(A) includes, but is not limited to, the placing of "other wastes" in any "waters of the State", as those terms are defined under R.C. 6111.01(D) and 6111.01(H).
9. The terms "dredged material" or "fill material" are defined under OAC 3745-32-01(E) and 3745-32-01(G) and include, but are not limited to, material that is

excavated or dredged from waters of the state (dredged material) and any pollutant used to create fill to replace an aquatic area with dry land or to change the bottom elevation of a water body for any purpose (fill material).

10. Pursuant to ORC 6111.021(B), no person shall engage in the filling of an isolated wetland unless authorized to do so by a general or individual state isolated wetland permit.
11. 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.
12. 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.
13. In filling the wetlands as described in Finding No. 6 without a Section 401 water quality certification or other permit or authorization from Ohio EPA, Respondents have caused pollution by discharging or placing or causing to be placed other wastes into waters of the state. Respondents have violated ORC §§ 6111.021, 6111.04 and 6111.07.
14. 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 purpose of ORC Chapter 6111.
15. The Director of Ohio EPA has determined the preceding findings. Notwithstanding the foregoing, the parties understand and acknowledge that these Findings are the contentions of the Ohio EPA. Nothing contained herein shall be deemed an admission of law or fact or evidence of the same, or of any violation of any federal, state or local law, statute, regulation or ordinance by Respondents.

V. ORDERS

1. Respondents shall not alter, fill, dredge or otherwise degrade the uses and/or existing functions or values of any portion of waters of the state, at any location in Ohio, without first receiving prior approval from the Director as required by law.
2. Within seven (7) days from the effective date of these Orders, Respondents shall submit a complete mitigation plan to Ohio EPA for the Site that includes a plan in accordance with the requirements in the Army Corps of Engineers' letter to Lincoln Electric from Mark Gronceski, dated December 4, 2007, including the requirements in the Ohio EPA Draft permit dated November 15, 2007, to restore the 1.5 acres of impacts to wetland area A that was to have been avoided. Respondents' mitigation plan for the Site shall also include a plan to mitigate 2.2 acres of isolated wetlands as originally proposed in Respondents' Application. Upon approval of the plan by Ohio EPA, Respondents shall complete all mitigation as described in their mitigation plan.
3. Respondents shall pay to the Ohio EPA the amount of fifty seven thousand five hundred (\$57,500) dollars in settlement of 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 forty six thousand (\$46,000) dollars within thirty (30) days of the effective date of these Orders. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent and the Site, at the following address:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 432151049

4. In lieu of paying the remaining eleven thousand five hundred (\$11,500) dollars 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 eleven thousand five hundred (\$11,500) dollars to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondents shall tender an official check made payable to "Treasurer, State of Ohio" eleven thousand five hundred (\$11,500) dollars. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondents, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 432151049

A copy of each check shall be sent to Ohio EPA, in accordance with Section X. of these Orders.

5. Should Respondents fail to fund the SEP within the required time frame established in Order No. 4, Respondents shall immediately pay to Ohio EPA eleven thousand five hundred (\$11,500) dollars of the civil penalty in accordance with the procedures in Order No. 3.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that have not been performed, in which case Respondents 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 Respondents to Ohio EPA and shall be signed by a responsible official of Respondents.

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 Respondents.

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

Unless otherwise stated herein, all documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
Attn: DSW 401 Unit Supervisor
50 W. Town Street [P.O. Box 1049]
Columbus, Ohio 43215

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents 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, Respondents consent 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 Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waives any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents 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 AGREED:
Lincoln Electric Company

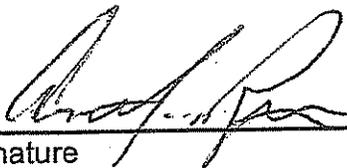
F. G. Stueber
Signature

12/31/07
Date

FREDERICK G. STUEBER
Printed or Typed Name
**Senior Vice President,
General Counsel
and Secretary**

Title

IT IS SO AGREED:
Panzica Construction



Signature

1/2/08

Date

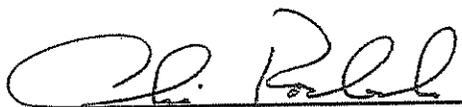
ANTHONY M. PANZICA

Printed or Typed Name

PRESIDENT/CEO

Title

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency



Chris Korleski
Director

1/28/08

Date