

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: [Signature] Date: 12-29-06

OHIO E.P.A.
DEC 29 2006

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of Pickerington
100 Lockville Road
Pickerington, Ohio 43147

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Director's Final Findings
and Orders

Respondent

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Pickerington ("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 a municipality located in Fairfield County, Ohio. Respondent is the developer of a road located on property approximately bounded by Interstate 70 to the north, State Route 256 to the west and State Route 204 to the south (hereinafter known as the Property or Cycle Way Project).

2. In October, 2002, Ohio EPA granted Emerald City Investments LTD (Emerald City) coverage for development of the Property under General Storm Water Permit No. OHR111968, effective December 13, 2002. At the time of the proposed development of the Property, because more than five acres of Property would be disturbed, Emerald City was required to submit to Ohio EPA a Notice of Intent (NOI) to comply with Ohio EPA's National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (General Storm Water Permit).
3. Part V., paragraph M., *Transfers*, of the General Storm Water Permit referenced in Finding No. 2. of these Orders requires that Ohio EPA be notified in writing sixty days prior to any proposed transfer of coverage under the General Storm Water Permit and the transferee must inform Ohio EPA that it will assume the responsibilities of the original permittee transferor.
4. In the spring of 2003, Respondent purchased from Emerald City approximately 2.2 acres of the Property for construction of the Cycle Way Project. No notice of the transfer from Emerald City to Respondent was provided to Ohio EPA as required under Part B., paragraph M. of the General Storm Water Permit.
5. Storm water from the Cycle Way Project discharges directly into Lee's Creek, a tributary of Blacklick Creek. Lee's Creek and Blacklick Creek constitute "waters of the state" as defined by ORC § 6111.01(H).
6. On August 11, September 4 and September 17, 2003, Ohio EPA conducted inspections of the Property. The inspections revealed the Respondent had violated certain conditions of the General Storm Water Permit, including but not limited to the installation of a culvert across Lee's Creek which resulted in the placement of dredged or fill material below the ordinary high water elevation mark along 250 linear feet of Lee's Creek.
7. Placement of dredged or fill material into waters of the state constitutes "pollution", as defined in ORC § 6111.01(A). A §401 water quality certificate from Ohio EPA and a §404 permit from the United States Army Corps of Engineers ("Corps") are required to perform the activities described in Finding No. 6 of these Orders. At the time of the placement of the material into Lee's Creek, Respondent had not been issued such certificate or permit.
8. On or about April 12, 2004, Respondent submitted a §401 After the Fact Water Quality Certification application to Ohio EPA; and, at approximately the same time, applied for a §404 permit from the Corps.

9. On June 4, 2004, the Corps issued a §404 Permit to Respondent. On September 6, 2005, the Director issued to Respondent a §401 After the Fact Water Quality Certification.
10. On October 5, 2005, Respondent filed with the Environmental Review Appeals Commission a Notice of Appeal of the §401 Certification. Subsequently, Respondent and Ohio EPA entered into a settlement agreement pursuant to which the Director will issue a modified §401 Certification that is acceptable to Respondent and the Ohio EPA.
11. 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 complete all requirements of the §401 After the Fact Water Quality Certification referenced in Finding No. 10 of these Orders.
2. Respondent shall pay the amount of thirty-five thousand (\$35,000) 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 thirteen thousand dollars (\$13,000) no later than March 15, 2007, to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent.

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

3. In lieu of paying fifteen thousand dollars (\$15,000) of the civil penalty, Respondent shall implement the supplemental stream mitigation set out in the After the Fact Water Quality Certification referenced in Finding No. 10 and Order No. 1 of these Orders.
4. In lieu of paying the remaining seven thousand dollars (\$7,000) of civil penalty, Respondent shall, no later than March 15, 2007, fund a supplemental environmental project (SEP) by making a contribution in the amount of seven thousand dollars (\$7,000) to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer,

State of Ohio" in the amount of seven thousand dollars (\$7,000). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent to: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049. A copy of the check shall be sent to James A. Orlemann, Assistant Chief SIP Development and Enforcement or his successor, at the following address: Ohio EPA, Division of Air Pollution Control, P.O. Box 1049, Columbus, Ohio 43216-1049.

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

5. Should Respondent fail to fund the SEP referenced in Order No. 4 of these Orders within the required time frame set forth in Order No. 4 of these Orders, Respondent shall immediately pay to Ohio EPA seven thousand dollars (\$7,000) in accordance with the procedures in Order No. 2 of these Orders.

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.

This 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. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility.

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 Respondent's activities associated with the Cycle Way Project.

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 the Respondent.

IX. MODIFICATIONS

These Orders may be modified by the 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 District Office
Attn: DSW Enforcement Unit Supervisor
122 South Front Street [P.O. Box 1049]
Columbus, Ohio 43216 [43216-1049]

and to:

Ohio Environmental Protection Agency
Attn: DSW Stormwater and Enforcement Manager
122 South front Street [P.O. Box 1049]
Columbus, Ohio 43216 [43216-1049]

[For regular mail use the P.O. Box number and zip code in brackets]

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

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, law, violation or liability, and in lieu of further enforcement action by Ohio EPA for the Violations, 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.

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

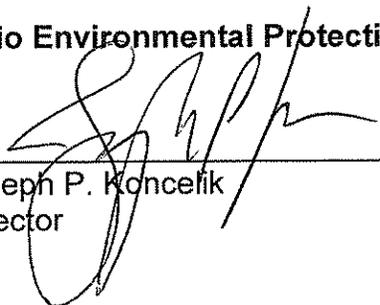
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of 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. Koncelik
Director

12/28/06

Date

IT IS SO AGREED:

City of Pickerington

Judith A. Gilleland
Signature

12-20-06
Date

Judith A. Gilleland
Printed or Typed Name

City Manager
Title