

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

City of Akron
186 South High Street, Room 701
Akron, Ohio 44308

Sitetech, Inc.
35700 East Royalton Road
Grafton, Ohio 44044

and

W.G. Lockhart Construction Company
800 W. Waterloo Road
Akron, Ohio 44314

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: Jerry Lasseker Date: 8-19-14

Respondents

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 Akron (the "City") and Sitetech, Inc. ("SiteTech") and W.G. Lockhart Construction Company ("Lockhart") (collectively the "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 shall apply to and be binding upon Respondents and successors in interest liable under Ohio law. No change in the composition of Respondents, or the ownership or operation of the Site (as defined herein), 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 adopted thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. The City and SiteTech submitted a Notice of Intent application ("NOI") for coverage under Ohio's General Permit for Storm Water Discharges Associated with Construction Activity (Permit #OHC000003) ("Ohio EPA Construction Storm Water General Permit") on September 26, 2011 for the 12.99 acre Sum-Seiberling Ways Phase II construction project ("the Sum-Seiberling Site"). Coverage was granted on October 3, 2011.
2. The project involves the re-location of solid waste from the historic Goodyear industrial waste landfill. A cul-de-sac street is being constructed beginning at 210 Massillon Road and traveling west over Springfield Lake Outlet and Haley's Ditch thru the northeast portion of the landfill. The Sum-Seiberling Site discharges storm water to Haley's Ditch and Springfield Lake Outlet. Haley's Ditch and Springfield Lake Outlet are considered "waters of the state" as defined by ORC Section 6111.01.
3. Ohio EPA Construction Storm Water General Permit OHC000003 requires a Storm Water Pollution Prevention Plan ("SWP3") be completed prior to the submittal of a NOI to Ohio EPA. Respondent City of Akron has an effective Memorandum of Understanding ("MOU"), dated March 30, 2007, with the Summit Soil and Water Conservation District ("Summit SWCD") to receive and review SWP3's for all commercial, industrial, public, and residential developments in the City of Akron.
4. According to the Summit SWCD, the SWP3 was not complete and was not submitted to Summit SWCD until September 6, 2012, almost a year after the NOI. Failure to complete a timely SWP3 is in violation of the Ohio EPA Construction Storm Water General Permit and ORC 6111.07.
5. In an effort to provide guidance and facilitate a quick review of the SWP3, Ohio EPA and the Summit SWCD met with Respondents on September 10, 2012 to discuss the project.
6. According to Summit SWCD, a revised SWP3 was received at their office on September 20, 2012. In an e-mail dated October 1, 2012, the City informed Summit SWCD that the contractor was being directed to proceed with the project commencing on October 2, 2012. (Part III E.1 of the Ohio EPA Construction Storm Water General Permit OHC000003 requires the City and SiteTech to enact and enforce an ordinance concerning the construction program.) The ordinance states that soil disturbing activities shall not begin until the City and/or its authorized agent issues an approval letter. The City was in violation if its own

- ordinance as construction had already begun and actually directed the contractor to begin prior to the SWP3 being approved. The approval came in the form of an e-mail dated October 5, 2012 from Respondents. This is considered to be a violation of the City's municipal separate storm sewer system ("MS4") permit 3PI00002*CD, the Ohio EPA Construction Storm Water General Permit and R.C. 6111.07.
7. On October 31, 2012, Ohio EPA submitted a Notice of Violation letter to the City and SiteTech documenting an October 29, 2012 inspection. It was noted that a discharge of storm water from Detention Area 1 was purposely being directed to Haley's Ditch by construction personnel. The collected storm water was supposed to be pumped to the berm and storm water system per the SWP3. Haley's Ditch downstream of the sheet piling, used to isolate the stream for bridge work, was very muddy. Collected water behind the sheet piling was pumped over the sheet piling without using a required filter bag.
 8. On November 5, 2012, Ohio EPA submitted a Notice of Violation letter documenting a November 2, 2012 inspection. Respondents continued to direct collected storm water in Detention Area 1 to the isolated Haley's Ditch. This water was then pumped to Haley's Ditch through a filtersock, an unapproved method of dewatering which was creating turbid and discolored water in Haley's Ditch. Ohio EPA requested the SWP3 to be updated and to include erosion and sediment controls for areas east and west of Springfield Lake Outlet.
 9. In a Notice of Violation letter dated November 30, 2012, Ohio EPA documented a November 29, 2012 inspection, determining that the SWP3 was not being followed. Detention Area 1 was not present, but water was being directed to the isolated Haley's Ditch where collected storm water was being pumped directly to Haley's Ditch via filter bag. The discharge was causing a visual discoloring of Haley's Ditch, in violation of R.C. 6111.07 and OAC 3745-1-04. Additionally, Ohio EPA documented that silt fencing at the Sum-Seiberling Site needed repaired. Failure to maintain silt fencing is in violation of Part III.G.2.d.iii of the Ohio EPA Construction Storm Water General Permit.
 10. Ohio EPA again inspected the Site on December 19, 2012. In a December 28, 2012 Notice of Violation letter, Ohio EPA noted the failure to perform site inspections after all qualifying storm water events, in violation of Part III(G)(2)(i) of the Ohio EPA Construction Storm Water General Permit and R.C. 6111.07.
 11. On April 27, 2011, the City and Lockhart obtained coverage under the Ohio EPA Construction Storm Water General Permit (Permit #OHC000003) for the adjacent Eagle Street Project, which connects to the Sum-Seiberling Site. Ohio EPA requested a SWP3 for the adjacent Eagle Street Site numerous times as documented by November 30, 2012, December 28, 2012, and March 4, 2013

Notice of Violation letters. A SWP3 for this project was not submitted to Summit SWCD until April 9, 2013 in violation of the Ohio EPA Construction Storm Water General Permit and R.C. 6111.07. Summit SWCD sent a review letter to Respondents on April 26, 2013. To date, no revisions have been submitted by Respondents. The disturbed areas for this site subsequently received final stabilization.

12. On June 6, 2013, Ohio EPA performed an inspection of an area north of the intersection of Massillon Road and Triplett Boulevard. The site is a borrow area used to provide soils for the Sum-Seiberling Site. The site is over an acre of disturbance and not covered under a General Construction Permit nor is it covered under the SWP3 for the Sum-Seiberling Site Construction General Permit. Also on this date, while inspecting the Sum-Seiberling Site, Ohio EPA observed a storm water discharge emanating from the first manhole east of the Springfield Lake Outlet culvert. Storm water was flowing into the manhole underneath the grade ring. It then entered the catch basin located immediately north and discharged to the aforementioned stream. The storm water was not being routed to any storm water control and was visually discoloring the stream. The disturbed areas for this site subsequently received final stabilization.
13. Through the above referenced Notice of Violations letters, Respondents have been provided notice of its violations of ORC Chapter 6111, the Ohio Administrative Code, and the Ohio EPA Construction Storm Water General Permit and MS4 Permit. Respondents were provided with reasonable time periods to comply, but consistently failed to respond within the timeframes required by the Ohio EPA Construction Storm Water General Permit and Ohio EPA's notifications.
14. Respondents have violated and continue to violate ORC Chapter 6111, the rules adopted by the Director under said Chapter, and the Ohio EPA Construction Storm Water General Permit for both the Sum-Seiberling and Eagle Street Sites. Respondent is also in violation of its MS4 Permit 3PI00002*CD, effective July 1, 2011, for failing to comply with the erosion and sediment control measures outlined in the MS4 Permit.
15. Pursuant to OAC 3745-1-04, all surface waters of the state shall be free from materials entering the waters as a result of human activity producing color, odor or other conditions in such a degree as to create a nuisance.
16. ORC § 6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violating any order, rule, or term or condition of a permit issued or adopted by the Director of Environmental Protection pursuant to those sections. Each day of violation is a separate offense.

17. 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. Within fourteen (14) days of the effective date of these Orders, the City and SiteTech shall submit the most recent storm water pollution prevention plan ("SWP3") for the Sum-Seiberling Site to Ohio EPA for review and approval. Respondents shall amend the SWP3 for the Site as required by Part III.D. of the Construction 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. If applicable, Respondents shall include post-construction storm water management requirements in the SWP3 and shall amend the SWP3 to reflect any changes required by the new Construction Storm Water General Permit (Permit #OGC000004.) Detail drawings and maintenance plans for all post-construction BMPs shall be provided by Respondents to the post-construction operator of the site prior to termination of Construction Storm Water General Permit coverage.
2. Respondents shall not initiate construction activities in the state of Ohio that disturbs more than one acre of land without having first developed and implemented a SWP3 for the construction site, and obtained coverage of the construction site under a Construction Storm Water General Permit.
3. The City and/or SiteTech shall pay the total amount of twenty three thousand and nine hundred and sixteen dollars (\$23,916.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111 for the Seiberling site, including the borrow site. Within thirty (30) 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 thousand eight hundred and fifty eight dollars (\$18,702.00) of the total amount. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the City and SiteTech and the Seiberling site, to:

Ohio EPA

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

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

4. In lieu of paying the remaining five thousand two hundred and fourteen dollars (\$5,214.00) of the civil penalty under Order 3, the City and/or SiteTech 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 five thousand two hundred and fourteen dollars (\$5,214.00) to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). The City and/or SiteTech shall tender an official check(s) made payable to "Treasurer, State of Ohio" for said amount. The official check(s) shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondents and the site, to:

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

A copy of each check shall be sent to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

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

5. Should the City and SiteTech fail to fund the SEP within the required time frame set forth in Order No. 7 the City and SiteTech shall immediately pay to Ohio EPA the remaining four thousand four hundred and seventeen dollars (\$5,214.00) of the civil penalty in accordance with the procedures in Order No. 3.
5. The City and/or Lockhart shall pay the total amount of two thousand one hundred and fifty-six dollars (\$2,156.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111 for the Eagle Street site. Within thirty (30) 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". The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the City and Lockhart and the Eagle Street site, to:

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

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

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 respective obligations that have not been performed, in which case the respective 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 any of the Respondents to Ohio EPA and shall be signed by a responsible official of the respective 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 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 specified, all documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

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

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, through the date of 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 Respondent hereby waive 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 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**

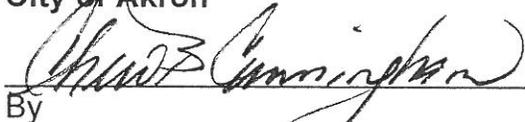


Craig W. Butler
Director

AUG 19 2014

Date

**IT IS SO AGREED:
City of Akron**



By

Cheri B. Cunningham

Printed or Typed Name

Director of Law

Title

4-16-14

Date

Sitotech, Inc.

*** SEE ATTACHED ***

By

Date

Printed or Typed Name

Title

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**

Craig W. Butler
Director

Date

**IT IS SO AGREED:
City of Akron**

By _____
Printed or Typed Name _____
Title _____

Date / /

Sitotech, Inc.

By _____
JASON FRISCOFF
Printed or Typed Name _____
Vice President
Title _____

Date 6/10/14

Lockhart Concrete Co.

A. R. Lockhart
By

JUNE 3, 2014
Date

A. R. LOCKHART
Printed or Typed Name

President
Title