

OHIO E.P.A.

BEFORE THE

NOV 30 2004

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the matter of:

Skilken Properties  
4270 Morse Road  
Columbus, Ohio 43230

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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 Skilken Properties ("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. No change in ownership or composition of Respondent 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 meaning as defined in ORC Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS OF FACT

The Director has determined the following findings:

1. Respondent is the developer of the Darby Town Center ("Facility"), a new commercial retail development located in Hilliard, Franklin County, Ohio.
2. Ohio Administrative Code ("OAC") Rule 3745-42-02 requires the Director's issuance of a permit to install ("PTI") prior to the installation of a new "disposal system," as such term is defined in ORC Section 6111.01 (G).

Ohio Environmental Protection Agency  
 1000 East 17th Avenue, Columbus, Ohio 43261  
 Environmental Protection Agency  
*Donna Jackson* 11-30-04

3. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC § § 6111.01 to 6111.08, or violating any rule adopted by the Director pursuant to those sections, including OAC Rule 3745-42-02.
4. PTI Application 01-11103 and detailed plans were received at Ohio EPA Central District Office, on June 23, 2004 for the installation of a sanitary sewer main extension to serve the Facility.
5. The sanitary sewer main extension proposed in PTI Application 01-11103 is a "disposal system" as defined in ORC Section 6111.01(G).
6. On October 5, 2004 and October 8, 2004, inspections of the Facility were conducted by Ohio EPA Central District Office. The inspection confirmed that the installation of the sanitary sewer main extension was completed prior to approval of the plans and issuance of a PTI by Ohio EPA. Based on Ohio EPA's investigation of this matter, it appeared that construction commenced the week of September 27, 2004 and was substantially completed by mid-October 2004.
7. By letter dated October 12, 2004, Respondent was notified via certified mail that the sanitary sewer main extension installation was in violation of ORC Chapter 6111, and OAC Rule 3745-42-02.
8. PTI Application 01-11103 was issued on October 22, 2004.
9. 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 install sewerage, or treatment works for sewage disposal or new disposal systems, including, but not limited to, sanitary sewer main extensions, at any location in Ohio without first receiving prior approval from the Director as required by law. Respondent may request termination of the Order upon a demonstration to the satisfaction of Ohio EPA that Respondent has maintained compliance with this Order for a period of three hundred and sixty-five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section VI of these Orders.

2. Respondent shall pay to Ohio EPA the amount of one thousand dollars (\$1,000.00) 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 the "Treasurer, State of Ohio" for the full amount within thirty (30) of the effective date of these Orders to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Facility (Darby Town Center).

A photocopy of the check shall be sent to Ohio EPA Central District Office at the address listed below:

Ohio Environmental Protection Agency  
Central District Office  
3232 Alum Creek Drive  
Columbus, Ohio 43207-3417  
Attn: Enforcement Supervisor, Division of Surface Water

#### **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. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function 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 Facility.

### **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. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

### **XI. 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 of 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 comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

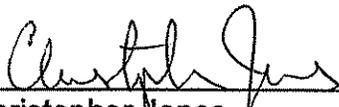
### **XII. EFFECTIVE DATE**

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

**XIII. SIGNATORY AUTHORITY**

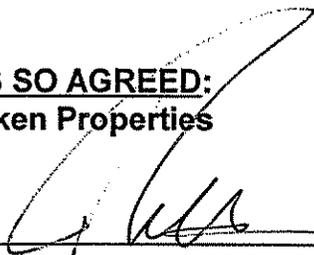
Each undersigned representative or party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:**  
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Christopher Jones  
Director

11-26-04  
Date

**IT IS SO AGREED:**  
**Skilken Properties**

  
\_\_\_\_\_  
Signature

November 22, 2004  
Date

Frank R. Petrozziello  
Printed or Typed Name

Vice President  
Title