OHIO E.P.A.
SEP 19 2016
ENTERED DIRECTOR'S JOURNAL

**BEFORE THE**
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

| | | |
|---|---|---|
| In the Matter of | : | |
| | : | |
| Metro Materials Corp. | : | Director's Final Findings |
| 4636 Shuster Road | : | and Orders |
| Columbus, Ohio 43214 | : | |
| | : | |
| Respondent | : | |

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: 9-19-16

## PREAMBLE

It is agreed by the Parties hereto as follows:

## I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Metro Materials Corp. ("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 of Respondent or the Site (as hereinafter defined) 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 Chapters 6111 and 3745, and the rules promulgated thereunder.

## IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent owns and operates an aggregate crushing operation located at 6055 and 6055B Westerville Road, Westerville, Franklin County, Ohio ("Site").

2. Storm water from the Site discharges to Alum Creek. Alum Creek constitutes "waters of the state," as defined in ORC § 6111.01(H). "Industrial waste" or "other wastes," as defined in ORC § 6111.01, are contained in the storm water. Placement of this waste into waters of the state constitutes "pollution," as defined in ORC § 6111.01(A).

3. Ohio Administrative Code (OAC) Rule 3745-38-02 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 OAC Chapter 3745-33, complying with the indirect discharge permit program pursuant to OAC Chapter 3745-36 or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of OAC Chapter 3745-38.

4. 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 and OAC 3745-39-04(A)(1)(b), dischargers of storm water associated with an industrial activity are required to obtain an NPDES permit. Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.

5. Because the Site is considered to be engaging in "industrial activity" as defined in OAC 3745-39-04(B)(14), Respondent was required to submit a Notice of Intent ("NOI") to obtain coverage under the Ohio EPA's Authorization to Discharge Storm Water Associated with Industrial Activity under the National Pollutant Discharge Elimination System Multi-Sector General Permit ("MSGP") prior to commencement of the discharge from the Site.

6. In addition to submitting an NOI to obtain coverage under the MSGP, the requirements under the MSGP include implementing storm water management controls to minimize discharges of pollutants from the Site, preparing an approvable Storm Water Pollution Prevention Plan ("SWPPP"), and commencing sampling requirements.

7. Respondent is an "operator" as defined in the MSGP.

8. In early August 2014, Ohio EPA received a complaint from a neighboring property owner alleging turbid discharges onto his property from the Site. Ohio EPA evaluated the neighboring property and the Site on August 22, 2014.

9. During the inspection on August 22, 2014, Ohio EPA discovered that the Site was not permitted pursuant to 40 CFR 122.26 and OAC 3745-39. The Site requires coverage under Ohio EPA's NPDES Multi Sector General Permit ("MSGP"). Ohio EPA noted turbid discharges from the Site resulting in a Notice of Violation ("NOV") to the Respondent.

10. An NOV was sent to Respondent on September 8, 2014 in follow up to the industrial storm water inspection conducted at the Site on August 22, 2014. The NOV explained that Respondent was required to obtain a Multi Sector General Storm Water (MSGP) permit for the storm water discharges associated with the industrial activities at the Site. The NOV also explained that Respondent was required to develop a Storm Water Pollution Prevention Plan (SWPPP), install and maintain appropriate storm water controls, and to complete benchmark monitoring of all storm water outfalls associated with the Site. A written response was requested within 10 days of receipt of the NOV. No written response was received.

11. Email correspondence from Ohio EPA to Respondent occurred on August 27, 2014 to further explain the need to obtain coverage under the MSGP.

12. Ohio EPA contacted Respondent via telephone on December 24, 2014 and explained at length the permitting requirements. Respondent indicated that a permit would be obtained. The internet links to the permitting information to procure the MSGP were sent to Respondent via email on December 24, 2014.

13. Ohio EPA continued to receive additional complaints regarding the Site with concerns associated with permitting and drainage on and off the Site.

14. A letter was sent to the Ohio EPA Central District Office on January 5, 2015 from the original complainant stating that discharge events were still occurring at his property and there had been no improvement to abate the situation.

15. On January 22, 2015, an email was sent to Ohio EPA from another complainant inquiring about the permitting status of the Site.

16. On or about June 17, 2016, Respondent submitted a SWPPP to Ohio EPA. By letter dated July 1, 2016, Ohio EPA sent written comments notifying Respondent of deficiencies in the plan and requesting a revised SWPPP to be submitted within thirty (30) days.

17. To date, Ohio EPA has not received an NOI from Respondent to obtain coverage under the MSGP in order to authorize the discharge of storm water to waters of the state.

18. 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, and 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 in excess of the permissive discharges specified under an existing permit.

19. 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.

20. By way of storm water discharges Respondent is discharging wastes and pollutants into waters of the state without an appropriate permit or authorization in violation of ORC §§ 6111.04 and 6111.07, OAC §§ 3745-38-02(A) and 3745-39-04, and 40 C.F.R. 122.26.

20. Compliance with ORC Chapter 6111 is not contingent upon the availability or receipt of financial assistance.

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 purpose of ORC Chapter 6111.

## V. ORDERS

1. Within fourteen (14) days of the effective date of these Orders, Respondent shall provide to Ohio EPA, in accordance with Section X. of these Orders, a revised Storm Water Pollution Prevention Plan ("SWPPP") addressing the comments on

deficiencies specified in the notification from Ohio EPA dated July 1, 2016.

2. Within thirty (30) days of Ohio EPA's acceptance of the SWPPP, Respondent shall implement storm water management controls to minimize sediment laden discharges from the Site in accordance with Sector J of Ohio EPA's MSGP.

3. Within seven (7) days of the effective date of these Orders, Respondent shall submit a Notice of Intent (NOI) application for coverage under Ohio EPA's MSGP.

4. Within sixty (60) days of the effective date of these Orders, Respondent shall commence the sampling requirements associated with Subsector J2 of Ohio EPA's MSGP.

5. Respondent shall pay to the Ohio EPA the amount of sixteen thousand twenty dollars ($16,020.00) 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 "Treasurer, State of Ohio" for the amount of sixteen thousand twenty dollars ($16,020.00) within thirty (30) days of the effective date of these Orders. The official check shall be submitted to Carol Butler, 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 43216-1049

A photocopy of the check shall be sent to Ohio EPA, in accordance with Section X. 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.

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 the Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(E).

## 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 activities occurring on or at 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 or the Site.

## 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 District Office
Division of Surface Water
Attn: DSW Enforcement Unit Supervisor
50 West Town Street, Suite 700
[P.O. Box 1049]
Columbus, Ohio 43215 [43216-1049]

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Surface Water
Attn: Manager, Enforcement Section
50 West Town Street, Suite 700
[P.O. Box 1049]
Columbus, Ohio 43215 [43216-1049]

[For mailings use the post office 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, 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 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

9/16/16
Date

**IT IS SO AGREED:**
**Metro Materials Corp.**

Signature

8-30-16
Date

Martin Savko Sr.
Printed or Typed Name

Officer
Title