

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

FEB -8 2005

ENTERED DIRECTOR'S JOURNAL  
In the Matter of:

**Baywest Construction Group, Inc.**  
671 Columbia Road, #7  
Westlake, OH 44145

Respondent

**Director's Final Findings  
and Orders**

I hereby file to us a true and correct copy of the  
order of construction filed in the records of the Ohio  
Environmental Protection Agency.

*Dennis Jackson* 2/8/05

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Baywest Construction Group, Inc. ("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**

The Director of Ohio EPA has determined the following findings:

- 1 Respondent, an active, for profit corporation registered in the State of Ohio, is engaged in construction activities at the Chester Road Square ("Site"), a 7.5-acre commercial development located in the City of Avon, Lorain County.
2. Storm water from the Site discharges to Heider Ditch. Heider Ditch constitutes "waters of the state," as defined by ORC § 6111.01 (H). Sediment contained in said storm water constitutes "other wastes," as defined in ORC § 6111.01 (D). Placement of this waste into waters of the state constitutes "pollution," as defined in ORC § 6111.01 (A).

**Baywest Construction Group, Inc.**

Director's Final Findings and Orders

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3. Because the Site is a construction site which disturbs more than one (1) acre of land, Respondent was required to submit a Notice of Intent ("NOI") to obtain coverage under the Ohio EPA National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity ("Ohio EPA NPDES Storm Water General Permit") and to develop and implement a Storm Water Pollution Prevention Plan ("SWP3") specific to the Site.
4. On November 1, 2004, Ohio EPA conducted an inspection at the Site and determined that an estimated 7.5 acres had been disturbed. The inspection confirmed that construction activities at the Site had commenced prior to the submission of an NOI and prior to completing and implementing a SWP3, violations of ORC § 6111.07.
5. Part II.A of the Ohio EPA NPDES Storm Water General Permit requires that an operator submit a complete and accurate NOI application form and appropriate fee at least 21 days prior to the commencement of construction activity. Pursuant to Part II.B, an operator who fails to notify the Director of their intent to be covered and who discharges pollutants to surface waters of the state without an NPDES permit is in violation of ORC Chapter 6111.
6. Part III.B of the Ohio EPA NPDES Storm Water General Permit requires that a SWP3 be completed prior to the timely submittal of an NOI and updated in accordance with Part III.D. The SWP3 must be implemented upon initiation of construction activities.
7. By letter dated November 10, 2004, Respondent was notified via certified mail that the construction activities occurring at the Site were in violation of ORC Chapter 6111.
8. On November 19, 2004, Ohio EPA received a complete co-permittee NOI from Respondent to obtain coverage under the Ohio EPA NPDES Storm Water General Permit. Respondent was granted coverage on December 8, 2004 under Permit No. 3GC01251\*AG.
9. 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.
10. 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.
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 § 6111.

## **V. ORDERS**

1. Respondent shall not initiate construction activities that disturb more than one (1) acre of land without having first submitted an NOI and obtained coverage under the Ohio EPA NPDES Storm Water General Permit and has developed and implemented a SWP3 that satisfies all minimum criteria listed in Part III of the Ohio EPA NPDES Storm Water General Permit. Respondent may request termination of this 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 immediately implement the SWP3 developed by Vetrone Development LLC for the Site, as such SWP3 is reviewed and may be revised by Ohio EPA.
3. From the effective date of these Orders and until all disturbed areas on the Site meet the criteria for final stabilization as outlined in the Ohio EPA NPDES Storm Water General Permit, Respondent shall comply with the SWP3 and/or any future revisions or amendments to the SWP3, in accordance with Part III.D of the Ohio EPA NPDES Storm Water General Permit.
4. Respondent shall pay to the Ohio EPA the amount of one thousand three hundred thirteen dollars (\$1,313.00) in settlement of the 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 full amount within thirty (30) days 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 Site.

A photocopy of the check shall be sent to Ohio EPA Northeast District Office, 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 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.

## **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 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 NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

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

## **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.

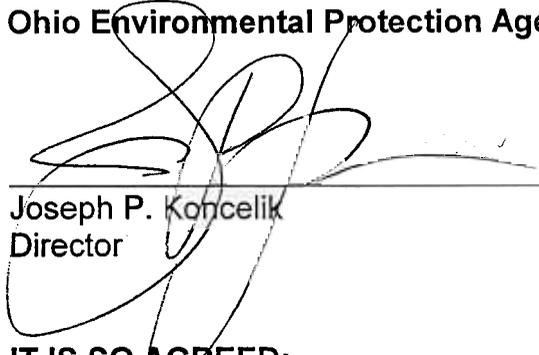
**XIII. EFFECTIVE DATE**

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 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 ORDERED AND AGREED:**  
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Joseph P. Koncelik  
Director

2/7/05  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**  
**Baywest Construction Group, Inc.**

  
\_\_\_\_\_  
Signature

1/18/05  
\_\_\_\_\_  
Date

Michael L. Marrow, Sr  
\_\_\_\_\_  
Printed or Typed Name

PRESIDENT  
\_\_\_\_\_  
Title