

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

APR 30 2013

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Fairfield Union Local Schools District : Director's Final Findings and Orders  
6417 Cincinnati-Zanesville Road NE :  
Lancaster, Ohio 43130-9323 :

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By: [Signature] Date: 4-30-13

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Fairfield Union Local Schools District (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, its parents, subsidiaries, affiliates, members, officers, agents, 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 § 6111.01 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent Fairfield Union Local Schools District owns and operates several schools in Fairfield County, Ohio. In 2007, Respondent began constructing a new high school at 6675 Cincinnati-Zanesville Road, and a new middle school at 6401 Cincinnati-Zanesville Road, Lancaster, Fairfield County, Ohio (which two locations are hereinafter referred to together as the "Site"). This was a multi-phase construction project.

2. Storm water from the Site discharges to Rush Creek. Rush Creek 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 other wastes into waters of the state constitutes "pollution," as defined in ORC § 6111.01 (A).
3. Ohio Administrative Code (OAC) § 3745-38-02(A) 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 Chapter 3745-33 of the Administrative Code; complying with the indirect discharge permit program pursuant to Chapter 3745-36 of the Administrative Code, or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of Chapter 3745-38 of the Administrative Code.
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, dischargers of storm water associated with construction activity that disturbs more than one (1) acre of land are required to obtain an individual NPDES permit or coverage under a storm water general permit.
5. Because the Site was a construction site which disturbed 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 (NPDES) General Permit for Storm Water Discharges Associated with Construction Activity (Construction Storm Water NPDES General Permit) and to develop and implement a Storm Water Pollution Prevention Plan (SWP3) specific to the Site prior to initiating construction activity.
6. On August 23, 2007, Respondent submitted an NOI to be covered under the Construction Storm Water NPDES General Permit for the high school construction project.

7. Coverage under Construction Storm Water NPDES General Permit No. 4GC02437\*AG for the high school construction project was approved on August 30, 2007.
8. On May 19, 2009, Respondent submitted an NOI to be covered under the Construction Storm Water NPDES General Permit for the middle school construction and U.S. Route 22 widening project.
9. Coverage under Construction Storm Water NPDES General Permit No. 4GC03053\*AG for the middle school construction and U.S. Route 22 widening project was approved on May 28, 2009.
10. Respondent prepared one SWP3 for the Site, but has not consistently followed the SWP3, in violation of the permit and of ORC §§ 6111.04 and 6111.07.
11. Ohio EPA inspected the Site on January 16, 2008, November 14 2008, May 18, 2009, September 28, 2009, March 3, 2010, April 7, 2010, July 7, 2010, April 26, 2011, May 19, 2011, June 9, 2011, June 21, 2011, June 28, 2011, November 1, 2011, and May 2, 2012. While the Site was basically in compliance with requirements in the Construction Storm Water NPDES General Permit during the 2008 inspections, violations were found during all subsequent inspections.
12. Following the inspections listed in Finding No. 11, Ohio EPA sent notices of violation ("NOVs") or letters enumerating violations to Respondent on September 30, 2009, December 15, 2009, March 10, 2010, April 14, 2010, July 7, 2010, May 9, 2011, June 7, 2011, June 20, 2011, June 28, 2011, July 20, 2011, November 4, 2011, and May 3, 2012. In addition, an "Enforcement Warning Notice for Violations of National Pollutant Discharge Elimination System (NPDES) permit numbers 4GC02437 and 4GC03053" was sent to Respondent on June 20, 2011. Respondent forwarded the NOVs to the Construction Manager for the middle school and high school construction projects, Bovis Lend Lease (now known as Lend Lease (US) Construction, Inc.), for implementation of corrective actions.
13. Violations of the Construction Storm Water NPDES General Permit included failure to stabilize barren areas and failure to install and maintain erosion controls (noted in almost every NOV and letter), failure to install and maintain silt fence (noted in several NOVs and letters), failure to remove excessive sediment from sediment ponds (noted in all NOVs and letters during 2011 beginning with the June 7, 2011 NOV), and various other occasional violations such as fugitive dust, and the discharge of pollutants to waters of the state by concrete wash out discharging to a roadside ditch, a spill in the roadside ditch between the high

school and the middle school, and a sewage overflow from the lift station wet well. These are all violations of ORC §§ 6111.04 and 6111.07.

14. Fairfield Soil and Water Conservation District also inspected the Site numerous times for compliance with the storm water requirements in the Construction Storm Water NPDES General Permit, including but not limited to September 2, 2009, September 7, 2009, September 11, 2009, September 15, 2009, September 28, 2009, October 5, 2009, October 21, 2009, November 6, 2009, March 12, 2010, May 7, 2010, May 14, 2010, June 1, 2010, June 17, 2010, June 30, 2010, July 16, 2010, August 4, 2010, August 26, 2010, September 17, 2010, October 26, 2010, October 29, 2010, November 23, 2010, December 22, 2010, April 11, 2011, and May 19, 2011.
15. Letters were sent to Respondent's construction manager, Bovis Lend Lease, by Fairfield Soil and Water Conservation District on at least September 2, 2009, September 7, 2009, September 11, 2009, September 15, 2009, September 28, 2009, October 9, 2009, October 21, 2009, November 9, 2009, November 20, 2009, December 2, 2009, December 10, 2009, December 28, 2009, February 2, 2010, March 16, 2010, April 2, 2010, April 9, 2010, April 16, 2010, April 23, 2010, May 10, 2010, May 17, 2010, June 2, 2010, June 17, 2010, July 16, 2010, August 9, 2010, August 26, 2010, September 17, 2010, October 26, 2010, October 29, 2010, November 23, 2010, December 22, 2010, April 12, 2011, and May 20, 2011. The letters included recommendations of actions to take to comply with the Construction Storm Water NPDES General Permit requirements, including but not limited to installation and maintenance of silt fences, erosion control, stabilization of bare areas, installation of sediment basins, and many other specific recommendations.
16. Construction of the school buildings at the Site is complete.
17. Pursuant to ORC § 3318.08(F), ownership of or interest in school construction projects during the period of construction is divided between the Ohio School Facilities Commission ("OSFC") and the school district board in proportion to their contributions to the school district's project construction fund. In this case, OSFC's contribution and, therefore, percentage ownership, was 72% and Respondent's was 28%.
18. Storm water passed over all or part of the disturbed portions of this construction site and picked up dirt and soil which was discharged off site to waters of the state. The discharge, at least in part, was from bulldozers and/or other earthmoving equipment, and/or from piles of earth and land clearing debris

formed by such equipment and earthmoving activity and/or left the site in discrete conveyances such as drains, ditches, fissures, rills and gullies and/or trenches. The discharges from the Site were point source discharges.

19. ORC § 6111.04 prohibits any person from causing pollution or causing any sewerage, industrial waste or other waste to be placed in any location where they cause pollution to waters of the state, except if such discharges occur in accordance with a valid, unexpired NPDES permit issued by the Director.
20. 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.
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 purposes of ORC Chapter 6111.

#### **V. ORDERS**

1. Respondent shall submit an SWP3 and an NOI application at any site in Ohio at which it will require coverage under a Construction Storm Water NPDES General Permit at least twenty-one (21) days prior to commencement of construction activity.
2. Respondent shall ensure compliance with the terms and conditions of the Construction Storm Water NPDES General Permit at all construction sites at which it is a permittee.
3. Respondent shall pay the amount of forty-six thousand four hundred fifty dollars (\$46,450.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within fourteen (14) 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 thirty-seven thousand one hundred sixty dollars (\$37,160.00). The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent and the Site, to:

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

4. In lieu of paying the remaining nine thousand two hundred ninety dollars (\$9,290.00) of civil penalty, Respondent 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 nine thousand two hundred ninety dollars (\$9,290.00) to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for nine thousand two hundred ninety dollars (\$9,290.00). The official check, together with a letter identifying Respondent and the Site, shall be submitted to Carol Butler, or her successor, to:

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

A photocopy of both checks shall be sent to Ohio EPA in accordance with Section X of these Orders and to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the address listed below:

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

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 4, Respondent shall immediately pay to Ohio EPA nine thousand two hundred ninety dollars (\$9,290.00) of the civil penalty in accordance with the procedures in Order No. 3.

## **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 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  
Central Office  
Division of Surface Water  
Storm Water Section  
50 West Town Street, Suite 700  
Columbus, Ohio 43215  
Attn: Storm Water 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:**

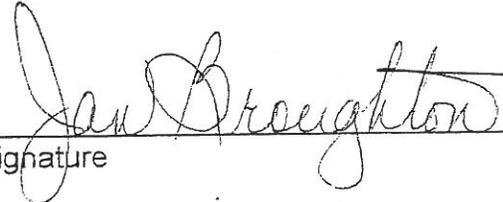
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Scott Nally  
Director

8/24/13  
Date

**IT IS SO AGREED:**

**Fairfield Union Local Schools District**

  
\_\_\_\_\_  
Signature

4-12-13  
Date

Jan Broughton  
Printed or Typed Name

Interim Superintendent  
Title

