

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
SEP 10 2003
ENTERED DIRECTOR'S JOURNAL

In the matter of:

The Leslie Development Company, Inc.
5060 Parkcenter Avenue, Suite B
Dublin, Ohio 43017

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 The Leslie Development Company, 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 of the Respondent or of North Bechtle Square shall in any way alter Respondent's obligations under these Orders. Respondent's obligations under these Orders may be altered only by the written action of the Director of the Ohio EPA (Director).

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 has determined the following findings:

1. Respondent owns and is developing a site, which has been zoned for commercial development. located on North Bechtle Avenue, Springfield, Clark County, Ohio, and is approximately eighty-eight (88) acres (the Site).

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Zona L. Clement Sep 10, 03

2. Storm water from the Site discharges to a roadside ditch, which may lead to an unnamed tributary of the Mad River. The roadside ditch and unnamed tributary constitute "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).
3. As the Site is a construction site which disturbs more than five (5) acres 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 (Storm Water General Permit).
4. On or about April 5, 2001, Respondent submitted a NOI for the Site to obtain coverage under the Storm Water General Permit. The Director granted Respondent coverage for the Site under Permit No. OHR110152, effective April 16, 2001, and Respondent has been required to comply with the terms and conditions of the Storm Water General Permit as of that date.
5. Pursuant to ORC § 6111.04, no person to whom a permit has been issued 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.
6. 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 pursuant to those sections. Each day of violation is a separate offense.
7. Part III.C.5.b.i.(A) of the Storm Water General Permit requires the initiation of appropriate vegetative practices on all disturbed areas within seven days (7) if such areas are to remain dormant (undisturbed) for more than forty-five (45) days.
8. Inspections conducted by Ohio EPA on July 25, 2002 and August 7, 2002, and by Clark Soil & Water Conservation District (Clark SWCD) on or about July 6, 2001 and September 28, 2001, revealed that disturbed areas at the Site have been left dormant for more than forty-five (45) days without vegetative cover, in violation of the Storm Water General Permit and ORC §§ 6111.04 and 6111.07.
9. Part III.C.5.b.i.(A) of the Storm Water General Permit requires that permanent or temporary soil stabilization be applied to disturbed areas within seven (7) days after final grade is reached on any portion of the Site.

10. Inspections conducted by Ohio EPA on July 25, 2002 and August 7, 2002, and by Clark SWCD on or about July 6, 2001 and September 28, 2001, revealed that areas of the Site have reached final grade and have not been stabilized, in violation of the Storm Water General Permit and ORC §§ 6111.04 and 6111.07.
11. Part III.C.5.b.i.(B)(1) of the Storm Water General Permit requires that sediment control structures be functional throughout earth disturbing activity. Sediment ponds are to be installed as the first step of grading and within seven (7) days from the start of grubbing. The controls are to continue to function until the upslope development area is restabilized.
12. Inspections conducted by Ohio EPA on July 25, 2002, September 5, 2002, September 19, 2002, and November 15, 2002 revealed that the sediment pond that has been installed at the Site has not remained functional throughout all earth-disturbing activity, in violation of the Storm Water General Permit and ORC §§ 6111.04 and 6111.07.
13. Part III.C.5.b.i.(B)(1) of the Storm Water General Permit requires that sediment control structures shall be functional throughout earth disturbing activity. Perimeter sediment barriers shall be implemented as the first step of grading and within seven (7) days from the start of grubbing. The controls shall continue to function until the upslope development area is restabilized.
14. Inspections conducted by Ohio EPA on July 25, 2002 and August 7, 2002, and by Clark SWCD on or about July 6, 2001 and September 28, 2001, revealed that perimeter sediment barriers at the Site were not installed as the first step of grading and within seven (7) days from the start of grubbing, and/or have not remained functional throughout all earth-disturbing activity, in violation of the Storm Water General Permit and ORC §§ 6111.04 and 6111.07.
15. Part III.C.5.b.i.(B)(3) of the Storm Water General Permit requires sheet flow run-off from denuded areas be intercepted by sediment barriers; the barriers shall function to protect adjacent properties and water resources from sediment transported by sheet flow.
16. Inspections conducted by Ohio EPA on July 25, 2002 and August 7, 2002, and by Clark SWCD on or about July 6, 2001 and September 28, 2001, revealed that Respondent has failed to install the necessary sediment barriers at the Site to protect water resources from sediment transported by sheet flow run-off, in violation of the Storm Water General Permit and ORC §§ 6111.04 and 6111.07.
17. Part III.C.5.b.vi of the Ohio EPA Storm Water General Permit requires that a qualified individual perform an inspection of the site once every seven (7) calendar days and within hours after any storm event greater than 0.5 inch of rain per twenty-

four (24) hour period. The permittee is required to keep an inspection log that summarizes the results of the inspection, name(s) and qualifications of the inspector(s), dates of inspections, major observations relating to the implementation of the storm water pollution prevention plan (SWPPP), a certification that the site is in compliance with the SWPPP and permit, and an identification of any incidents of non-compliance.

18. At the August 7, 2002 inspection, Respondent informed Ohio EPA that the required Site inspections had not been performed, and the Site inspection log had not been maintained, in violation of the Storm Water General Permit and ORC §§ 6111.04 and 6111.07.
19. At the August 7, 2002 inspection, Ohio EPA requested that by August 16, 2002, Respondent provide a schedule by which the various tasks necessary to stabilize the soils at the Site and bring the Site into compliance with the Storm Water General Permit would be accomplished. This verbal request by Ohio EPA was memorialized in an e-mail of August 7, 2002, and a letter on August 13, 2002.
20. On August 19, 2002, Respondent provided Ohio EPA with an "Erosion Control Schedule" (Schedule) in response to Ohio EPA's requests in Finding No. 19. Pursuant to this Schedule, Respondent was to complete all tasks necessary to bring the Site into compliance with the Storm Water General Permit by September 30, 2002. A copy of the Schedule is attached to these Orders as Attachment I and incorporated by reference as if fully rewritten within.
21. An inspection conducted by Ohio EPA on July 30, 2003, evidenced that the outlet structure in the retention pond has not been installed correctly and per Respondent's plans.
22. The July 30, 2003 inspection by Ohio EPA confirmed that, with the exception of the riser pipe outlet installation in Finding No. 21 above, Respondent has sufficiently completed all of the compliance tasks as listed in the Schedule.
23. 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. Upon the effective date of these Orders, and until all disturbed areas on the Site meet the criteria for final stabilization as outlined in the Storm Water General Permit,

Respondent shall comply with all terms and conditions of the SWPPP and the Storm Water General Permit.

2. Within seven (7) days of the effective date of these Orders, Respondent shall retain a qualified individual to inspect the Site for all sediment and erosion controls once every seven (7) calendar days and within twenty-four (24) hours of 0.5 inch or greater rainfall per twenty-four (24) hour period. A written log of these inspections shall be maintained and shall include the lot number and all controls associated with each lot that has not been finally stabilized.
3. Within thirty (30) days of the effective date of these Orders, Respondent shall install the slow release riser on the retention pond outlet pursuant to Respondent's plans.
4. Within seven (7) days of each of the deadlines in Order Nos. 2 and 3 above, Respondent shall provide Ohio EPA with written notification of the compliance with the requirements of these Orders.
5. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$22,607.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$22,607.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the Site. A photo copy of the check shall be sent to Ohio EPA's SWDO to the attention of: Martyn Burt, DSW Enforcement Group Leader.

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. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(D)(1) for a corporation.

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 events or conditions 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.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications may be in writing and shall be effective on the date entered in the journal of the Director.

X. NOTICE

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

Ohio Environmental Protection Agency
Southwest District Office
Division of Surface Water
401 East Fifth Street,
Dayton, Ohio 45402
Attn: Martyn Burt, DSW Enforcement Group Leader

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

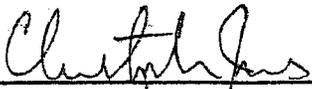
The effective date of these Orders is the date these Orders are entered into the Director's journal.

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

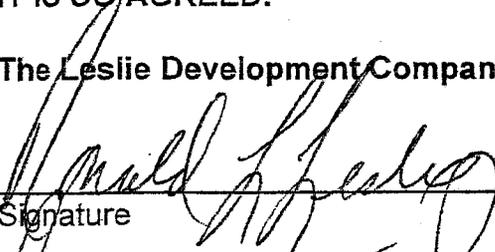


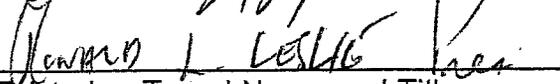
Christopher Jones
Director

9-9-03
Date

IT IS SO AGREED:

The Leslie Development Company, Inc.



Signature


Printed or Typed Name and Title

9-20-03
Date

EROSION CONTROL SCHEDULE

Project: N. Bachtie Square Run Date: 19-Aug-02
 Location: Springfield, OH Start of work week 19-Aug 26-Aug 2-Sep 9-Sep 16-Sep 23-Sep 30-Sep

	19-Aug	26-Aug	2-Sep	9-Sep	16-Sep	23-Sep	30-Sep
Initiate erosion control inspections	XXXXXXXXXX	Initiate and continue inspections until area is stabilized and NOT submitted					
Repair existing rock dams	XXXXXX						
Install check dam at property line	XXXXXX						
Install stand pipe in detention basin			XXXXXX				
Install ditch check dams	XXXXXX						
Install silt fence fill area			XXXXXX				
Install rip rap channel at box culvert		XXXXXX					
Install roadside ditch protection			XXXXXX				
Remove silt build-up in detention basin			XXXXXXXXXXXXXXXXXXXXXXXXXX				
Spread topsoil as indicated				XXXXXX			
Seed all disturbed areas					XXXXXX		
Inspect and re-seed as necessary						XXXXXX	

ATTACHMENT I

- 1 Removal of accumulated sediment from the pond to restore the required storage capacity. The removed sediment to be disposed of on the site or
- 2 Installation of a temporary dewatering riser at the pond outfall to permit ponding of water and slow dewatering. The elevation of the top of the riser
- 3 Establishment of vegetative cover over all bare soil areas and those areas with volunteer weed cover. This will probably entail regrading in the area
- 4 Filling the erosion gullies, regrading and construction of stabilized drainage ways to direct flow from off site across the site without causing further
- 5 Installation and maintenance of rock check dams as required to slow water velocity in the drainage way across the site.
- 6 Stabilization of the temporary drainage ditches on the site.
- 7 Stabilization of the roadside ditches to prevent further erosion.
- 8 Establishment of an inspection program, as required by the NPDES permit, with clear designation of the responsible company and person.