BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Jim Cox
3800 Old Columbus Road
Carroll, Ohio 43112

Respondent

Director's Final Findings and Orders

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Jim Cox ("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 the 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 Chapters 6111 and 3745, and the rules promulgated thereunder.

IV. FINDINGS

The Director has made the following findings:

1. The property is located at 3155 Old Columbus Road in the Village of Carroll, Fairfield County (39.7496161, -82.641103) Ohio ("the Site").

2. On March 18, 2015, Ohio EPA Storm Water Program staff conducted a site investigation and determined that approximately three acres of ground had been disturbed. A March 24, 2015 letter was sent to Respondent outlining what was found during the site investigation. Subsequent site inspections occurred on October 13, 2015, December 30, 2015 and February 4, 2016.
3. The Site discharges storm water associated with construction activity to the headwaters of the Hocking River.

4. Construction activities are occurring at the Site without General Permit Authorization for Storm Water Discharges Associated with Construction Activity under the National Pollutant Discharge Elimination System (NPDES) ("the Permit").

5. Ohio EPA was unaware that a Storm Water Pollution Prevention Plan (SWP3) has been developed for the Site.

6. During the March 18, 2015, October 13 2015, December 30, 2015 and February 4, 2016 site inspections, a SWP3 was not available for review at the Site.

7. During the March 18, 2015, October 13 2015, December 30, 2015 and February 4, 2016 site inspections, appropriate sediment and erosion controls were not implemented at the Site.

8. During the March 18, 2015, October 13 2015, December 30, 2015 and February 4, 2016 site inspections, no sediment pond was installed on the Site.

9. Notice of Violations ("NOVs") were sent to Respondent on September 17, 2015, October 15, 2015, January 5, 2016, and February 9, 2016 documenting that Construction activities were occurring at the Site without General Permit Authorization for Storm Water Discharges Associated with Construction Activity under the National Pollutant Discharge Elimination System (NPDES), and that erosion control measures had not been installed.

10. The findings above resulted in Director's Final Findings and Orders to address those violations. Mr. Cox was sent an Invitation to Negotiate Director's Final Findings and Orders on April 28, 2016.

11. Mr. Cox submitted a Notice of Intent for coverage under the Construction General Stormwater NPDES permit on June 20, 2016.

12. Site inspections were conducted September 7, 2016 and November 11, 2016. Both site inspections noted no sediment controls and disturbed areas that were not stabilized. NOVs dated September 19, 2016 and November 11, 2016 were issued for these violations requesting a response and a return to compliance.

13. Mr. Cox submitted a SWP3 on November 11, 2016.

14. Director's Final Findings and Orders were signed by Mr. Cox and entered into the Director's Journal on November 30, 2016 containing the following enforceable schedule:
a. Submit a NOI and SWP3 by 12/30/2016  
b. Install sediment and erosion controls by 12/30/2016  
c. Install sediment pond by 12/30/2016  
d. Submit a plan to comply with post construction best management practices by 12/30/2016

15. A follow up inspection was conducted on January 3, 2017. The inspector noted there were no sediment controls installed at the site and there were disturbed areas that were not stabilized. Additionally, Mr. Cox failed to comply with Orders b, c, and d (as listed above). An NOV was issued on February 21, 2017 for failure to comply with the General Construction NPDES Permit and the November 30, 2016 DFFOs.

16. Mr. Cox complied with the first order on January 6, 2017 by submitting a NOI and SWP3.

17. A follow up inspection was conducted on March 8, 2017. The inspector noted the sediment controls per the SWP3 were not installed, including the lack of a sediment berm and sediment basin. Additionally, the silt fencing was failing and allowing sediment to discharge to the Hocking River. A sediment plume was documented. The site had also not been stabilized. An NOV was issued March 16, 2017.

18. An additional inspection was conducted on April 11, 2017. The inspector noted while there was earth moving equipment on site, the sediment berm and sediment basin were not installed and work on these items had not begun. Sediment was documented leaving the site at two additional places as well as those noted above. The inspector noted sediment controls were not being maintained at the site. An NOV was issued April 20, 2017.

19. The inspector noted approximately 6 to 7 acres of soil are now disturbed.

20. Pursuant to Ohio Administrative Code (OAC) 3745-39-04(A)(1)(b), OAC 3745-39- 04(A)(7)(a)(ii) and Part I.B.1 of the Permit, construction activities disturbing one or more acres of total land, or will disturb less than one acre of land but are part of a larger common plan of development or sale that will ultimately disturb one or more acres of land shall obtain a NPDES Construction Storm Water permit. Construction activities include any clearing, grading, excavating, grubbing and/or filling activities.

21. Pursuant to Part III.A of the Permit, construction activities subject to NPDES Construction Storm Water permitting shall develop and implement a Storm Water Pollution Prevention Plan (SWP3).

22. Pursuant to Part III.C.2 of the Permit, the SWP3 shall be made available on-site immediately upon request of the director of Ohio EPA or his authorized representative and municipal separate storm sewer system (MS4) operators or their authorized representative during working hours.
23. Pursuant to Part II and Part III.G.2.d of the Permit, structural practices shall be used on all sites remaining disturbed for more than 14 days. Controls shall be implemented prior to grading and within seven days from the start of grubbing. Controls must remain functional until the upslope area is stabilized.

24. Pursuant to Part II and Part III.G.2.d.ii of the Permit, concentrated runoff and runoff from drainage areas which exceed the design capacity of silt fence or inlet protection shall pass through a sediment settling pond. Common drainage locations serving an area with 10 acres or more disturbed at one time must have a sediment settling pond until final stabilization of the site.

25. Pursuant to Part III.G.2.e of the Permit, large construction activities shall install permanent structural post-construction Best Management Practices (BMPs) to treat the water quality volume (WQv) and ensure compliance with Ohio’s Water Quality Standards in Ohio Administrative Code 3745-1.

26. 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.

27. 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 forty-five (45) days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval, an updated Storm Water Pollution Prevention Plan (SWP3). The SWP3 shall be maintained on-site and made available upon request. A copy of the NOI and letter granting permit coverage under the Permit shall also be made available at the Site.

2. Within forty-five (45) days after the effective date of these Orders, Respondent shall install and implement sediment and erosion controls as depicted in the Site's SWP3. Controls shall be maintained and remain functional until the upslope area is stabilized.

3. Within forty-five (45) days after the effective date of these Orders, Respondent shall install a sediment pond in accordance with the Permit. The sediment pond shall be maintained in accordance with the Permit.

4. Within forty-five (45) days after the effective date of these Orders, Respondent shall submit a plan to comply with the Permit's permanent structural post-construction BMP
requirements. The plan shall include a schedule for installation of selected BMP(s).

5. Respondent is assessed the amount of ten thousand dollars ($10,000), with five thousand ($5,000) suspended pending timely compliance with the Orders as listed above in settlement of Ohio EPA's claims for civil penalties. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made in the amount of five thousand dollars ($5,000) by an official check made payable to "Treasurer, State of Ohio". The official check shall be submitted to Carol Butler, or her successor, together with a letter to identify the Respondent, to:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to Larry Reeder, Environmental Manager, Compliance and Enforcement Section, or his successor, at the following address:

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

6. Should Respondent fail to implement Orders 1 through 5 within the deadlines set therein, Respondent shall be assessed one thousand dollars ($1,000) the first fourteen (14) days of non-compliance, and two thousand dollars ($2,000) for each subsequent fourteen (14) day period of non-compliance until the remainder of the five thousand dollar ($5,000) suspended penalty is assessed. These payments must be made in the same fashion as is listed in Order number 5 above.

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 defined in OAC Rule 3745-33-03(F)(1) for a corporation, OAC Rule 3745-33-03(F)(2) for a
partnership, OAC Rule 3745-33-03(F)(3) for a sole proprietorship, and OAC Rule 3745-33-03(F)(4) for a municipal, state, or other public facility.

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.

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 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.
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 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

Date: 6/20/17

IT IS SO AGREED:

Jim Cox

Signature

Date: 6/26/17

Printed or Typed Name

Title