BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DWA Holdings, Inc.
900 East State Street, Suite A
Athens, Ohio 45701

: 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 DWA Holdings, 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 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 of the Ohio EPA makes the following findings:

1. The Respondent is developing, Don Wood CDJR (“the Site”), a proposed car dealership in Athens County located at 207350 Darl Road, Rockbridge, Ohio 43149.

2. The Site discharges storm water associated with construction activity to an unnamed tributary to the Hocking River. The unnamed tributary to the Hocking River is considered a “waters of the state” as defined by R.C. Section 6111.01.
3. The construction activities at the Site are covered under the Construction Storm Water General Permit (NPDES Permit 0GC03077*BG). Permit coverage was originally issued on December 18, 2017.

4. On March 29, 2018, Ohio EPA conducted a construction storm water inspection of the site. As a result of the inspection, a Notice of Violation (NOV) was issued to the Respondent on April 17, 2018. Violations cited in the NOV include: a Storm Water Pollution Prevention Plan (SWP3) had not been developed for the site and sediment controls had not been implemented within seven (7) days from the start of grubbing. Respondent was given fourteen (14) days to respond to the NOV.

5. On May 10, 2018, Respondent’s project manager, responded to the NOV stating that the project engineer was not aware that anything more than what was submitted with the permit application was required and that a SWP3 was not being worked on. The letter also stated that silt fencing had been installed around the disturbed areas and where the natural grade sloped toward adjacent properties. In addition, the letter stated as structures and piping were installed, actions would be taken to prevent silt from entering the storm system.

6. On May 18, 2018 complaints were filed by two citizens with concerns. One complaint was in reference to storm water discharging into a ravine on the north side of the site that could not handle the extra flow. The second complaint had to do with turbid storm water from the site running through the complainant’s property during a rain event on May 14, 2018. A subsequent inspection was conducted by Ohio EPA on May 22, 2018.

7. As a result of the inspection, a second NOV was issued to the Respondent on May 23, 2018. Violations cited in the NOV include: the implemented controls were not minimizing discharge of pollutants from the site, areas of the site that were dormant for more than 14 days had not been stabilized, the SWPPP had still not been developed, and on-site representatives were unable to produce the inspection checklists and other documentation. Respondent was given fourteen (14) days to respond to the NOV.

8. On May 29, 2018, three additional complaints were received by Ohio EPA with regards to the site. One of the complaints came from a previous complainant who stated the rains on May 26, 2018 called erosion of the ditch, caused three trees to fall, and damaged the township road. Another complaint was received from a citizen stating that sediment from the site was migrating from the site and entering the culvert under the township road. The third complaint was received on May 31, 2018 and the citizen stated that large amounts of sediment and silt were being washed onto their property during rain events. In addition, it was stated that the storm water is damaging their property.
9. On June 5, 2018, the Manager for the Ohio EPA contacted the Respondent to schedule a meeting with upper management and to explain the NOV letters. The respondent was also notified about the outstanding violations at the site. A follow-up email was sent to the Respondent to summarize the topics discussed and deadlines set during the meeting. As a result of this meeting, the Respondent submitted the SWP3 on June 7, 2018. On June 8, 2018, a meeting was held between the Respondent and Ohio EPA Southwest District Office upper management to discuss the ongoing violations occurring at the site.

11. On June 13, 2018, Ohio EPA performed a reconnaissance inspection and identified failing erosion controls devices. Subsequently, Ohio EPA contacted the Respondent regarding the failing erosion control devices.

12. On June 14, 2018, the revised SWP3 was submitted. Respondent indicated the required sediment ponds were not constructed due to weather.

13. On June 19, 2018, Ohio EPA conducted a follow up inspection of the Site. During the inspection, the following violations were noted: failed to perform or document the required inspections after half-inch rain event, failed to stabilize barren soils, and failed to construct the sediment ponds properly. A third NOV citing these violations was issued on July 18, 2016.

14. On August 3, 2018, a response to the July 18, 2018 NOV was received by Ohio EPA. The response stated that between the second and third NOVs, additional controls were implemented, that un-stabilized stockpiles had been removed prior to receipt of the third NOV, disturbed areas near the property line were stabilized, skimmers were installed and functional, and that inspections had not been done but would be done from that point.

15. Ohio EPA conducted a follow-up inspection on September 25, 2018. During the inspection, the following violations were observed: inadequate or missing catch basin inlet controls throughout the site, sediment ponds not functioning properly, and sediment being discharged off site at the outlet.

16. 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.
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 replace and/or repair inadequate and missing catch basin inlet controls throughout the site. In addition, Respondent shall properly maintain all catch basin inlet controls until project completion as is required by the Construction Storm Water General Permit (NPDES Permit 0GC03077*BG).

2. Within fourteen (14) days of the effective date of these orders, Respondent shall repair/ maintain sediment ponds to ensure they are functioning properly to limit pollutants from being discharged off-site as is required by the Construction Storm Water General Permit (NPDES Permit 0GC03077*BG).

3. Respondent shall perform site inspections at least once every seven (7) calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24-hour period as is required by the Construction Storm Water General Permit (NPDES Permit 0GC03077*BG).

4. Respondent shall pay the amount of five thousand dollars ($5,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) 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". The official check shall be submitted to Carol Butler, or her successor, together with a letter identify the Respondent, to:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43215-1049
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A copy of the check shall be sent to Larry Reeder, Environmental Manager, Enforcement Section, or his successor, at the following address: 

Ohio EPA  
Division of Surface Water  
P O Box 1049  
Columbus, Ohio 43215-1049  

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).

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. NOTICE

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

Ohio Environmental Protection Agency
Southeast District Office
Division of Surface Water
ATTN: DSW Enforcement Unit Supervisor
2195 Front Street
Logan, OH 43138

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 XI 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 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

October 30, 2018

Date

IT IS SO AGREED:

DWA Holdings, Inc.

Signature

Date

Printed or Typed Name

President

Title