BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Elizabeth Fitch and Ryan Trecartin
15825 South Canaan Road
Athens, Ohio 45701

Respondents

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 Elizabeth Fitch and Ryan Trecartin (“Respondents”) 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 Respondents and successors in interest liable under Ohio law. No change in the composition of Respondents shall in any way alter Respondents’ 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. Respondents are developing a property in Athens County, the South Canaan Road Site Development also referred to as “the lazy river project,” as a proposed site for a future art film located at 15825 South Canaan Road, Athens, Ohio (“Site”).
2. The Site discharges storm water associated with construction activity to the Hocking River. 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 currently covered under the National Pollutant Discharge Elimination System (“NPDES”) Construction Storm Water General Permit under permit number 0GC03197*AG. Permit coverage was originally issued on June 12, 2018.

4. On January 9, 2018, Ohio EPA received a complaint regarding sediment entering a roadside ditch from the Site. Ohio EPA met with the complainant on January 10, 2018 and observed construction activity at the Site disturbing more than one acre.

5. On January 18, 2018, Ohio EPA met with a representative at the Site to provide compliance assistance.

6. On January 22, 2018, Ohio EPA received a second complaint regarding sediment entering a roadside ditch from the Site and sediment tracking onto South Canaan Road.

7. On January 23, 2018, Ohio EPA met with the complainant and the Site representatives. Ohio EPA informed the Site representatives that a Notice of Violation (“NOV”) letter would be issued for lack of coverage under an NPDES permit. Site representatives informed Ohio EPA that local engineering firms had been contacted to develop a Storm Water Pollution Prevention Plan (“SWP3”) and Notice of Intent (“NOI”) application.


9. On February 26, 2018, Ohio EPA received a response to the January 29, 2018 NOV letter from the Operations Manager for the Site. It was stated that Triad Engineering would develop the SWP3, however, no schedule for completion was provided at this time.

10. On March 5, 2018, Ohio EPA requested interim sediment and erosion controls be provided while the SWP3 was being developed, along with a project timeline. It was also stated that the Site would be in noncompliance until the SWP3 was developed and the NOI submitted. The same day, Triad Engineering provided Ohio EPA with a tentative timeline for the site survey, interim plan, and development of the SWP3.
11. On April 16, 2018, Ohio EPA contacted Triad Engineering for an update on the site survey and SWP3 and NOI submittals. On April 17, 2018, Triad Engineering informed Ohio EPA that the site survey was completed on April 3, 2018 and that a preliminary construction package was complete. The NOI and SWP3 were expected to be completed in one to two weeks.

12. On May 31, 2018, Ohio EPA sent a 2nd NOV letter to Respondents for earth disturbance over one acre without coverage under an NPDES Construction Storm Water General Permit, due to the untimely completion of the NOI and SWP3.

13. On June 12, 2018, Ohio EPA received the NOI for the NPDES Construction Storm Water General Permit and issued the permit (number 0GC03197*AG) the same day. The NOI was submitted five (5) months after the initial complaint was investigated and compliance assistance was provided to the Site representatives.

14. On June 18, 2018, Ohio EPA received a third complaint regarding sediment in the roadside ditch from the Site.

15. On June 26, 2018, Ohio EPA received a response to the May 31, 2018 NOV letter from the Operations Manager for the Site. Additionally, Ohio EPA was contacted by the Athens County Soil and Water Conservation District (“SWCD”) regarding a complaint that was received pertaining to the Site. The complainant alleged there was dirt on the road and no sediment controls present at the Site.


17. On July 13, 2018, Ohio EPA sent the first post-permit NOV letter to Respondents for the findings from the June 29, 2018 inspection. The violations cited include:
   (1) The absence of written documentation containing signatures of the contractors and subcontractors involved in implementing the SWP3.
   (2) The lack of earth-disturbing activity limits at the Site.
   (3) Onsite sediment barriers that were undersized, not properly installed, and not capable of ponding water.
   (5) Poorly maintained sediment and erosion controls throughout the Site.
   (6) No recorded inspections of the Site as required by the Construction Storm Water General Permit.

18. On July 30, 2018, Ohio EPA received a response to the July 13, 2018 NOV letter from the Operations Manager for the Site.
19. On August 1, 2018, Ohio EPA conducted a follow-up construction storm water inspection to determine compliance with the July 13, 2018 NOV letter. During this inspection, stream filling activities were also observed.

20. On August 3, 2018, Ohio EPA conducted a 401 wetlands inspection, prompted by the stream filling activities observed on August 1, 2018, and subsequently called the Operations Manager to schedule a high-level meeting to address violations from two program areas within Ohio EPA's Division of Surface Water.

21. On August 9, 2018, Ohio EPA sent the 2nd post-permit NOV letter to Respondents for recurring storm water violations, in addition to one new violation for disturbed areas where stabilization was not initiated. Ohio EPA also sent a separate NOV letter on this date for the unauthorized placement of soil into an unnamed tributary of the Hocking River and an adjacent wetland.

22. On August 10, 2018, Ohio EPA held a high-level meeting in the Southeast District Office ("SEDO"). The Operations Manager for the Site was in attendance as the representative for Respondents. Storm water violations were identified, and an agreement was reached to resolve the violations by August 17, 2018. The Operations Manager agreed to the resolve the 401 violations.

23. On August 28, 2018, the Huntington District U.S. Army Corps of Engineers ("USACE") issued Respondent Elizabeth Fitch an After-The-Fact ("ATF") Nationwide Permit 42. Ohio EPA subsequently issued an ROV letter on August 31, 2018 for the August 9, 2018 NOV letter citing the 401 Wetlands violation.

24. On September 25, 2018, Ohio EPA conducted a construction storm water inspection at the Site, and determined the dewatering activity was not being managed by appropriate controls.

25. On October 5, 2018, Ohio EPA send a 3rd post-permit NOV letter to Respondents for recurring violations regarding the lack of post-construction BMPs listed in the SWP3, as well as a new violation for turbid water being pumped into the stream without first passing through an appropriate control.

26. On October 23, 2018, Ohio EPA received an email from the Operations Manager with a description of the controls for the post-construction BMPs that would be added to the SWP3.

27. On November 9, 2018, Ohio EPA sent an email to the Operations Manager requesting detail drawings for the sediment ponds. No response was received.
28. On December 10, 2018, Ohio EPA sent another email to the Operations Manager requesting detail drawings for the sediment ponds. The Operations Manager responded the same day, stating that detail drawings were not available and that the slope above the holding area was still being regraded to address instability.

29. On December 11, 2018, Ohio EPA sent an email to the Operations Manager providing the post-construction requirements. EPA also stated that based on the information provided in the October 23, 2018 email, a contractor would not have adequate information to construct the dry basins for the Site.

30. On January 10, 2019, Ohio EPA conducted a construction storm water inspection at the Site. The post-construction ponds had not been implemented and Ohio EPA also noted the pump at the dam was not in operation. Ohio EPA reminded the Operations Manager to perform site inspections as specified in the Construction Storm Water General Permit and to provide the post-construction BMPs design work as soon as possible.

31. In February 2019, Ohio EPA received an updated SWP3 for the Site containing the required post-construction BMPs. The post-construction BMPs were submitted nearly eight (8) months after the Construction Storm Water General Permit 0GC03197*AG was issued.

32. 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.

33. The Director has given consideration to, and based her 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. Respondents 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 0GC03197*AG).

2. Respondents shall repair/maintain sediment controls 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 0GC03197*AG).
3. Respondents shall comply with all remaining applicable requirements in the Construction Storm Water General Permit (NPDES Permit 0GC03197*AG).

4. Respondents shall pay the amount of three thousand dollars ($3,000) in settlement of Ohio EPA’s claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment to Ohio EPA shall be made in two, equal installments, in accordance with the schedule below, each by official checks made payable to “Treasurer, State of Ohio”. The official checks shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondents, to:

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

A copy of the checks 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 43216-1049

Payment of the three thousand dollars ($3,000) civil penalty shall be made in two, equal installments within a one-hundred eighty (180) day period, pursuant to the following schedule:

- The first payment of one thousand five hundred dollars ($1,500) shall be due within ninety (90) days after the effective date of these Orders.
- The second payment of one thousand five hundred dollars ($1,500) shall be due within one-hundred eighty (180) days after the effective date of these Orders.

VI. TERMINATION

Respondents’ obligations under these Orders shall terminate when Respondents certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that have not been performed, in which case Respondents 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 Respondents to Ohio EPA and shall be signed by a responsible official of the Respondents. 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 Respondents.

**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 Respondents 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 Respondents 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, Respondents consent 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 Respondents’ liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents 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

[Signature]
Laurie A. Stevenson, Director

[Signature]
[Date]

IT IS SO AGREED:

Elizabeth Fitch

[Signature]
[Date]

[Printed or Typed Name]
Title

Ryan Trecartin

[Signature]
[Date]

[Printed or Typed Name]
Title