In the Matter of:
Avon Land Group LTD.
7530 Lucerne Drive
Suite 101
Middleburg Heights, Ohio 44130

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Avon Land Group LTD. ("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 Respondent or the Site (as hereinafter defined) 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 Chapter 6111., and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent is the developer of the Vineyard Estates Subdivision, a 44-acre development consisting of single family residences, located in the City of Avon, Lorain County, Ohio, ("Site"). Respondent's ownership or control over the unsold individual building lots or common areas of the Site, as of the effective date of these Orders, is set forth in Exhibit 1 attached hereto ("Owned Site").

2. Storm water from the Site discharges to a tributary of French Creek known as Schwartz Ditch. Schwartz Ditch constitutes "waters of the state," as defined in
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. Because construction of the Site disturbed more than one acre of land, Respondent was required to submit to Ohio EPA a Notice of Intent ("NOI") to obtain coverage under Ohio EPA’s National Pollution Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity ("Storm Water General Permit").

4. Ohio EPA received an NOI for the Site on February 7, 2001, and granted Respondent coverage for the Site, effective on February 13, 2001, under Storm Water General Permit No. OHR109929. On September 22, 2003, Ohio EPA received an NOI for Phases 4, 5, and 6 of the Site and granted Respondent coverage for the Site, effective on September 25, 2003, under Storm Water General Permit No. 3GC00372*AG.


A. Part III.C.5.b.i.(A) of Storm Water General Permit No. OHR 109929 requires that all disturbed areas that would remain dormant for more than forty-five (45) days be stabilized within seven (7) days of the most recent disturbance. The Storm Water General Permit also requires that all disturbed areas within fifty (50) feet of a stream be stabilized within two (2) days of the most recent disturbance. Respondent failed to implement the required vegetative stabilization practices on numerous disturbed areas at the Site, in violation of ORC §§ 6111.04 and 6111.07.

B. Part III.C.5.b.i.(B)(1) of Storm Water General Permit No. OHR 109929 requires that sediment control structures be functional throughout earth disturbing activity. Sediment ponds and perimeter sediment barriers are to be implemented as the first step of grading and within seven days from the start of grubbing. The sediment ponds and perimeter sediment barriers are to be functional until the upslope development area had been restabilized. Respondent failed to implement the sediment pond at the Site in accordance with the timing condition of the Storm Water General Permit to treat concentrated storm water runoff from disturbed areas flowing at rates which exceeded the design capacity of sediment barriers and failed to ensure that silt fence and inlet protection were functioning in many locations at the Site, in violation of ORC §§ 6111.04 and 6111.07.
C. Part III.C.5.b.i.(B)(2) of Storm Water General Permit No. OHR 109929 requires that concentrated storm water runoff from disturbed areas flowing at rates which exceeded the design capacity of sediment barriers pass through a sediment settling pond. Respondent failed to have sediment ponds constructed at the Site to treat concentrated storm water runoff flowing at rates which exceeded the design capacity of sediment barriers, in violation of ORC §§ 6111.04 and 6111.07.

D. Part III.C.5.b.i.(B)(2) of Storm Water General Permit No. OHR 109929 requires that a sediment settling pond have a storage capacity of sixty-seven (67) cubic yards per acre of total drainage area. Until the date the Site reached final stabilization, Respondent failed to construct the sediment settling pond at the Site to have a storage capacity of sixty-seven (67) cubic yards per acre of drainage area, in violation of ORC §§ 6111.04 and 6111.07.

E. Part III.C.5.b.i.(B)(4) of Storm Water General Permit No. OHR 109929 requires that structural practices be designed and implemented on Site to protect all adjacent streams from the impacts of sediment runoff. Respondent conducted dewatering activities of the sediment basin that discharged sediment laden water directly into Schwartz Ditch without proper treatment to prevent turbid discharges, in violation of ORC §§ 6111.04 and 6111.07.

F. Part III.C.5.b.i.(B)(5) of Storm Water General Permit No. OHR 109929 requires that erosion control practices be installed to stabilize channels from erosive flows. Respondent failed to install erosion control practices at the Site to stabilize the channel of the sediment basin's outfall to Schwartz Ditch from erosive flows, in violation of ORC §§ 6111.04 and 6111.07.

G. Part III.C.5.b.v. of Storm Water General Permit No. OHR 109929 requires that all temporary and permanent control practices be maintained and repaired as needed to assure continued performance of their intended function. Respondent failed to maintain and repair many of the Site's temporary and permanent control practices to ensure continued performance, in violation of ORC §§ 6111.04 and 6111.07.

H. Part III.C.5.c. of Storm Water General Permit No. OHR 109929 requires that all erosion and sediment control practices used to satisfy the conditions of the permit meet the standards and specifications in the current edition of Rainwater and Land Development, previously Water Management and Sediment Control in Urbanizing Areas. Respondent's erosion and sediment control practices at the Site failed to meet the standards and specifications in the current edition of Rainwater and Land Development, previously Water Management and Sediment Control in Urbanizing Areas, in violation of ORC § 6111.07.
On June 17, 2004, July 7, 2004, August 4, 2004, October 19, 2004, and March 16, 2005, Ohio EPA staff conducted construction storm water inspections at Phases 4, 5, and 6 of the Site for compliance with Ohio's Water Pollution Control Laws under Storm Water General Permit No. 3GC00372*AG, documenting the violations described below:

A. Part III.G.2.b.i. of Storm Water General Permit No. 3GC00372*AG requires that all disturbed areas 50 feet or more from a stream that will remain dormant for more than twenty-one (21) days be temporarily stabilized within seven (7) days of the most recent disturbance. Respondent failed to stabilize dormant areas within seven days of the last disturbance, in violation of ORC §§ 6111.04 and 6111.07.

B. Part III.G.2.d.ii. of Storm Water General Permit No. 3GC00372*AG requires that concentrated storm water runoff and runoff from drainage areas, which exceed the design capacity of silt fence or inlet protection, shall pass through a sediment settling pond. For common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary (or permanent) sediment settling pond must be provided until final stabilization of the Site. Respondent failed to direct concentrated storm water runoff and runoff from drainage areas to a temporary sediment settling pond, in violation of ORC §§ 6111.04 and 6111.07.

C. Part III.G.2.d.v. of Storm Water General Permit No. 3GC00372*AG requires that if construction activities disturb areas adjacent to streams, structural practices shall be designed and implemented on Site to protect all adjacent streams from the impacts of sediment runoff. No structural sediment controls (e.g., the installation of silt fence or a sediment settling pond in-stream) shall be used in a stream. Respondent failed to protect Schwartz Ditch from the impacts of sediment runoff and also installed a retention pond or sediment settling pond within Schwartz Ditch, both in violation of ORC §§ 6111.04 and 6111.07.

D. Part III.G.2.g.ii. of Storm Water General Permit No. 3GC00372*AG requires that off-Site vehicle tracking of sediments and dust generation shall be minimized. Respondent failed to minimize off-Site vehicle tracking of sediment resulting in large amounts of sediment accumulating in streets off-Site, in violation of ORC §§ 6111.04 and 6111.07.

E. Part III.G.2.h. and Part III.G.2.i. of Storm Water General Permit No. 3GC00372*AG require that all temporary and permanent control practices be inspected, maintained and repaired as needed to assure continued performance of their intended function. Respondent failed to maintain and repair many of the Site’s temporary and permanent control practices to
ensure continued performance, in violation of ORC §§ 6111.04 and 6111.07.

F. Part III.G.2.i. of Storm Water General Permit No. 3GC00372*AG requires the permittee to maintain until three years following the submittal of a notice of termination form, a record summarizing the results of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the Storm Water Pollution Prevention Plan (SWP3) and a certification as to whether the facility is in compliance with the SWP3 and the permit and identify any incidents of non-compliance. Respondent failed to maintain a record for the Site, in violation of ORC §§ 6111.04 and 6111.07.

G. Part III.G.2.i.i. of Storm Water General Permit No. 3GC00372*AG requires that if an inspection reveals that a control practice is in need of repair or maintenance, with the exception of a sediment settling pond, it must be repaired or maintained within three days of the inspection. Sediment settling ponds must be repaired or maintained within 10 days of the inspection. Respondent failed to repair or maintain best management practices ("BMPs") in accordance with the Storm Water General Permit No. 3GC00372*AG time frames, in violation of ORC §§ 6111.04 and 6111.07.

7. On July 6, 2004, Ohio EPA Division of Emergency and Remedial Response (DERR) received a complaint that Schwartz Ditch had been discolored a chocolate brown color for the past several days and had had an abnormally high flow. On July 7, 2004, DERR investigated the complaint and documented that sediment was entering Schwartz Ditch at a newly installed culvert. Failing sediment barriers were also discovered along Schwartz Ditch. A Notice of Violation of ORC Chapter 6111 was issued to Respondent on July 7, 2004.


9. On October 1, 2003, the United States Army Corps of Engineers, Buffalo District Office (USACOE) conducted a jurisdictional wetland determination on the Site at the request of Respondent. The USACOE determined that 2.004 acres of jurisdictional wetlands and 3,031.25 linear feet of jurisdictional streams existed on the Site that were subject to the regulation of the Clean Water Act. Respondent has disagreed that some of the streams are jurisdictional.
10. On July 7, 2004, Ohio EPA's 401 Section conducted a pre-application inspection of the Site to determine the quality of the wetlands present on Site. The inspection revealed that fill had been illegally placed into jurisdictional wetlands and streams located on the Site. Ohio EPA estimates that 1.7 acres of category II wetland and 1333 linear feet of stream have been impacted.

11. A Section 401 water quality certificate or other authorization from Ohio EPA is required to perform the activity described in Finding No. 10.

12. Respondent has not obtained a Section 401 water quality certificate or such other authorization, as would authorize the activity described in Finding No. 10, nor has Respondent applied for such certificate or other authorization.

13. By a Notice of Violation dated July 13, 2004, Ohio EPA notified Respondent that fill had been illegally placed into wetlands and streams at the Site in violation of ORC § 6111.04.

14. By letter dated July 29, 2004, Respondent responded to Ohio EPA's letter, as described in Finding No. 13, stating that "it was our understanding that a submittal was being prepared to obtain a permit which included mitigation of the fill areas. Because of the timing, we felt we needed to proceed."

15. 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 and also provides that no person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state unless the person holds a valid, unexpired permit, a renewal of a permit, or if the person's application for renewal of such a permit is pending.

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.

17. Respondent has caused pollution by discharging or placing or causing to be placed other wastes into waters of the state in violation of Storm Water General Permits and without a Section 401 water quality certificate or other authorization from Ohio EPA, in violation of ORC §§ 6111.04 and 6111.07.

18. 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. Within fourteen (14) days of the effective date of these Orders, Respondent shall implement the following best management practices (BMPs) to bring the Owned Site into compliance with Storm Water General Permits No. OHR 109929 and No. 3GC00372*AG:

a. Phases 1, 2, and 3
   i. Stabilize all disturbed areas of the Owned Site, in accordance with the specifications of Storm Water General Permit No. OHR 109929, to prevent discharges of sediment-laden storm water runoff to Schwartz Ditch.
   ii. Install silt fence along the retention basins and along the drainage channels and jurisdictional wetlands and streams that divert surface flows to the retention basins.

b. Phases 4, 5, and 6
   i. Stabilize all disturbed areas of the Owned Site, in accordance with the specifications of Storm Water General Permit No. 3GC00372*AG, to prevent discharges of sediment-laden storm water runoff to Schwartz Ditch.
   ii. Install silt fence along the retention basins and along the drainage channels and jurisdictional wetlands and streams that divert surface flows to the retention basins.
   iii. Install curb inlet protection to remove sediment from storm water prior to it entering the Site’s storm sewer system and discharging to Schwartz Ditch.
   iv. Assure that all disturbed areas on individual building lots currently owned by Respondent (as set forth in Exhibit 1) are stabilized in their entireties in accordance with the specifications contained in Rainwater and Land Development and within the time frames specified in Table 2 of Part III.G.2.b.i. of Storm Water General Permit No. 3GC00372*AG, or no later than seven (7) days prior to the transfer of ownership of the individual building lot, whichever comes first.
c. The fourteen (14) day time period specified in Order No. 1 above may be extended due to specific site conditions that prohibit implementation only with written approval of the extension of time from the Division of Surface Water in the Northeast District Office of Ohio EPA.

2. Respondent's revised and current SWP3 for the Site, approved for the phase of the development as of the effective date of these Orders, is attached hereto as Exhibit 2 and incorporated as if fully rewritten herein. Respondent shall continuously amend the Site's SWP3, in accordance with Part III.D. of the Storm Water General Permit No. 3GC00372*AG, and in accordance with Part III.C.3. of Storm Water General Permit No. OHR 109929, to reflect any changes in grade or the placement, installation, or removal of any erosion and sediment BMPs, as defined in the Storm Water General Permit, as construction activities progress.

3. Until all disturbed areas at the Owned Site meet the criteria for final stabilization as set forth in the applicable Storm Water General Permit, Respondent shall comply with the Site's SWP3 as amended in accordance with Order No. 2, above, and the Storm Water General Permits.

4. By August 31, 2007, Respondent shall complete installation of structural post-construction BMPs as required in Part III.G.2.e. of Storm Water General Permit No. 3GC00372*AG. Any structural post-construction BMP installed to satisfy this Order shall be physically separated from Schwartz Ditch so as to treat storm water runoff prior to its discharge to waters of the state. Respondent shall include post-construction storm water management requirements in the SWP3 for the Site. Detail drawings and maintenance plans for all post-construction BMPs shall be provided by Respondent to the post-construction operator of the Site prior to termination of Storm Water General Permit No. 3GC00372*AG.

5. Respondent shall submit a Notice of Termination (NOT) for each individual building lot that Respondent has sold as of the effective date of these Orders or sells after the effective date of these Orders, in accordance with Part 1.D. of Storm Water General Permit No. 3GC00372*AG. As required by Part 1.D. of Storm Water General Permit No. 3GC00372*AG, Respondent shall inform the individual lot owner of the obligations under the Storm Water General Permit and ensure that the Individual Lot NOI application is submitted to Ohio EPA.

6. Respondent shall obtain easements from individual building lot owners if necessary to access, construct, or maintain BMPs for the Owned Site.

7. By August 31, 2007, Respondent shall remove the retention pond or sediment settling pond that was installed within Schwartz Ditch and complete the restoration of Schwartz Ditch in accordance with the plans approved by Ohio EPA, attached hereto as Exhibit 3 and incorporated as if fully rewritten herein.
8. By August 31, 2007, Respondent shall complete mitigation of 1,502 linear feet of stream segments within the Site, including 175 linear feet of Schwartz Ditch, in accordance with a Stream Mitigation Plan (SMP) approved by Ohio EPA, attached hereto as Exhibit 3 and incorporated as if fully rewritten herein.

9. Respondent shall also provide for 500 linear feet of stream segment preservation with a minimum of fifty (50) foot buffers on either side of the stream within the Beaver Creek Club (also called Beaver Creek Shooting Club) mitigation site located within the Black River watershed, near Amherst in Lorain County (the "Beaver Creek Club Mitigation Site"). Within thirty (30) days of the effective date of these Orders, Respondent shall provide to Ohio EPA in accordance with Section X. of these Orders, a letter of agreement from the Beaver Creek Club confirming that the mitigation will occur on its site and a map of the location of the segment to be preserved.

10. Ohio EPA and Respondent agree that it is not practical to perform wetland mitigation on Site. In satisfaction of Respondent’s wetland mitigation obligations for the Site, Ohio EPA approves Respondent’s acquisition of 1.8 acres of forested category II wetland at the Wellington Reservoir Mitigation Bank and the mitigation of 4.3 acres of forested category II wetland compensation at the Beaver Creek Club Mitigation Site. Wetland compensation may include restoration and/or creation and/or enhancement of forested category II wetlands and upland buffers. Within thirty (30) days of the effective date of these Orders, Respondent shall provide to Ohio EPA in accordance with Section X. of these Orders, proof that the credits at the Wellington Reservoir Mitigation Bank have been purchased.

11. Within sixty (60) days of the effective date of these Orders, Respondent shall use its best efforts to enter into a contract (the "Contract") with the Beaver Creek Club for the mitigation of 4.3 acres of forested category II wetland compensation at the Beaver Creek Club Mitigation Site. Prior to execution of the Contract, it shall be submitted to Ohio EPA’s 401 Section for approval in accordance with Section X. of these Orders. A copy of the executed Contract shall be submitted to Ohio EPA’s 401 Section in accordance with Section X. of these Orders. At a minimum:

a. The Contract shall include a provision requiring the Beaver Creek Club to develop and implement a Wetland Mitigation Plan (WMP) for 4.3 acres of forested category II wetland compensation at the Beaver Creek Club Mitigation Site.

b. The Contract may include a provision acknowledging that Ohio EPA is a third party beneficiary of the wetland mitigation to be provided by the Beaver Creek Club and that Ohio EPA is entitled to directly enforce the obligations of the Beaver Creek Club under the Contract.

c. The Contract shall require that within one hundred twenty (120) days of the effective date of these Orders, Respondent shall submit or require the
Beaver Creek Club to submit the WMP for the 4.3 acres of forested category II wetland compensation to Ohio EPA’s 401 Section for approval in accordance with Section X. of these Orders. The WMP shall, at a minimum, include the following:

i. An approved delineation of waters of the state at the Beaver Creek Club Mitigation Site;

ii. Description of the location of the project Site on a USGS quadrangle;

iii. Description of the category II forested wetland habitat restoration or enhancement proposed;

iv. A five (5) year monitoring plan that will focus on the re-establishment of habitat and other water quality functions for the wetland mitigation project to ensure the achievement of an Amphibian Index of Biotic Integrity (AmphIBI) representative of a category II wetland or higher. The monitoring plan shall meet the following requirements at a minimum:

(a) Monitoring shall occur in the first, third and fifth year after construction. Monitoring reports shall be submitted to Ohio EPA in accordance with Section X. of these Orders by December 31 of each of those years.

(b) Monitoring reports shall include values for the raw data collected as well as calculated areal cover percentages of invasive species and AmphIBI (Amphibian IBI) scores.

(c) Representative observation points shall be selected in each plant community type in each wetland mitigation area. This shall be a point which best represents the characteristics of the entire plant community. The observation points shall be marked on the base map.

Photographs shall be taken from these observation points during each monitoring event. The photographs shall be included in the monitoring report.

(d). Wetland delineation using the United States Army Corps of Engineers 1987 Wetland Delineation Manual (or successor document) shall occur at the end of the monitoring period and the results, including a map showing wetland boundaries, shall be reported in the fifth year report.
v. Performance standards which must be met for the mitigation areas to receive wetland restoration, creation or enhancement credits shall include:

(a) Mitigation areas shall meet wetland criteria in the 1987 Army Corps of Engineers Wetland Delineation Manual (or successor document);

(b) A planting plan under which the mitigation site shall not include more than five percent (5%) areal coverage of the invasive species listed in Table 1 of the ORAM Version 5.0; and

(c) AmphIBI scores of 20 or greater.

vi. If the mitigation area is meeting all performance standards in Order No. 11.b.v. at the end of the five year monitoring period, Respondent and the Beaver Creek Club shall be released from further mitigation obligations at the Beaver Creek Club Mitigation Site. If the mitigation areas are not performing as required by the end of the fifth year of post construction monitoring, the monitoring period may be extended and/or corrective actions may be required.

vii. Authorized representatives from Ohio EPA shall be allowed access to the mitigation site at all reasonable times to monitor the progress of the restoration and compliance with these requirements.

d. The Contract shall require the execution, within one hundred twenty (120) days of the effective date of these Orders, of a mechanism for preserving the 4.3 acres of forested category II wetland compensation in perpetuity, such as an environmental covenant among the Beaver Creek Club, Ohio EPA, and Respondent or other third party Holder, identical in substance to Exhibit 4, which is attached hereto and incorporated as if fully rewritten herein. Such an environmental covenant shall be executed, recorded, and submitted to Ohio EPA as set forth in Order No. 13 of these Orders.

e. If the Contract does not include a provision like that set out in Order No. 11.b. of these Orders, Respondent shall ensure that the Beaver Creek Club complies with the terms of the Contract and completes the mitigation of 4.3 acres of forested category II wetland compensation at the Beaver Creek Club Mitigation Site.

12. Respondent shall notify Ohio EPA in writing in accordance with Section X. of these Orders if Respondent is unable to reach an agreement with the Beaver Creek Club on the terms of a contract within sixty (60) days of the effective date of these Orders despite good faith efforts to do so. If Ohio EPA agrees that
agreement between Respondent and the Beaver Creek Club on terms of a contract will not be reached, and the Contract is not executed within seventy-five (75) days of the effective date of these Orders, by no later than the seventy-fifth day after the effective date of these Orders Respondent shall deposit one hundred seven thousand five hundred dollars ($107,500.00) into an escrow account. The funds in the escrow account shall be disbursed, as directed by Ohio EPA’s 401 Section, by no later than December 1, 2007, and shall be used only for wetland mitigation in the Ohio Department of Natural Resources Vernal Pool Mitigation Program at one or more sites chosen by Ohio EPA’s 401 Section. Respondent shall notify Ohio EPA’s 401 Section in writing in accordance with Section X. of these Orders within seven (7) days of the deposit of the money into an escrow account.

13. Within sixty (60) days of the effective date of these Orders, Respondent shall ensure execution of the following environmental covenants, identical in substance to Exhibit 4, which is attached hereto and incorporated as if fully rewritten herein, pursuant to the requirements of ORC § 5301.80 to ORC § 5301.92: (1) among Respondent, Ohio EPA, and a third party Holder to preserve the 1,502 linear feet of mitigated stream on Site in perpetuity; and (2) among the Beaver Creek Club, Ohio EPA, and Respondent or another third party Holder to preserve the 500 linear feet of stream at the Beaver Creek Club Mitigation Site in perpetuity. After each Environmental Covenant is executed, Respondent shall record it or ensure that the Beaver Creek Club records it with the Lorain County Recorder. Respondent shall submit to Ohio EPA a certified copy of each Environmental Covenant as recorded with the County Recorder.

14. Respondent shall pay to Ohio EPA eighty-seven thousand dollars ($87,000.00) in settlement of Ohio EPA’s claims for civil penalties, which may be assessed pursuant to Chapter 6111. of the Ohio Revised Code. The penalty shall be paid by tendering official checks payable to the “Treasurer, State of Ohio” in accordance with the schedule below. The official checks shall be submitted to Brenda Case, or her successor, together with letters identifying the Respondent and the Site, at the following address:

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

a. Within sixty (60) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of twenty-six thousand one hundred dollars ($26,100.00).

b. Within one hundred twenty (120) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of forty-three thousand five hundred dollars ($43,500.00).
15. In lieu of paying the remaining seventeen thousand four hundred dollars ($17,400.00) of civil penalty, Respondent shall fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of seventeen thousand four hundred dollars ($17,400.00) to the Ohio EPA Clean Diesel School Bus Fund (Fund 5CD). Within sixty (60) days after the effective date of these Orders, Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for seventeen thousand four hundred dollars ($17,400.00). The official check and a cover letter identifying the Respondent and the Site shall both reference the Ohio EPA Clean Diesel School Bus Fund (Fund 5CD), and shall be submitted to Brenda Case, or her successor, at the following address:

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

A photocopy of each check shall be sent to Mark Mann, Manager, Stormwater and Enforcement Section, or his successor, at the following address:

Ohio Environmental Protection Agency
Division of Surface Water
P.O. Box 1049
Columbus, OH 43216-1049

16. Photocopies of the checks submitted pursuant to Orders Nos. 14 and 15 shall be sent to Ohio EPA's Northeast District Office at:

Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: DSW Enforcement Coordinator

17. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 15, within fourteen (14) days of the date the SEP payment was due, Respondent shall pay to Ohio EPA seventeen thousand four hundred dollars ($17,400.00) as a civil penalty in accordance with the procedures in Order No. 14.

18. Respondent shall not make any distributions to its members that causes the net worth of Respondent to fall below the aggregate value of the uncompleted obligations of these Orders. Respondent shall not make any distributions to its members prior to making the payments required for (a) the wetland mitigation at the Wellington Reservoir Mitigation Bank; (b) the stream preservation and
wetland mitigation at the Beaver Creek Club Mitigation Site; (c) the escrow account, if required, in accordance with Order No. 12; (d) the stream mitigation on Site; and (e) the civil penalty in accordance with Orders Nos. 14 and 15 of these Orders.

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(D)(1).

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 Orders Nos. 1 through 7 shall be addressed to:

Ohio Environmental Protection Agency  
Northeast District Office  
Division of Surface Water  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: Enforcement Coordinator

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

All documents required to be submitted by Respondent pursuant to Orders Nos. 7 through 13 shall be addressed to:

Ohio Environmental Protection Agency  
Division of Surface Water  
401 Section  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: 401 Section Manager

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 Ohio EPA 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

[Signature]
Joseph P. Koncelik
Director

Date: 1/31/06

IT IS SO AGREED:
Avon Land Group LTD.

[Signature]
By: Flair Realty, L.L.C., Member

Date: 12/29/2006

[Signature]
By

Paul Madow
Print Name

Member

Title
RECOMMENDED PROCEDURE FOR SCHWARTZ DITCH RECONSTRUCTION:

1. Excavation: Dig out the existing ditch to the required depth and width. Ensure that the ditch is lined with appropriate base material to prevent soil erosion.
2. Placement of Base: Install a layer of base material to support the structure and prevent water seepage. Ensure the base is compacted to prevent settlement.
3. Plumbing: Install the new piping system in the excavated ditch. Ensure proper alignment and attachment to existing connections.
4. Gravel Backfill: Backfill the ditch with gravel to prevent erosion and provide support for the new ditch wall.
5. Temporary Fencing: Place temporary fencing along the ditch to prevent accidental damage during construction.
6. Final Inspection: Conduct a final inspection to ensure the ditch meets all required specifications.

NORTH

Scale: 1" = 10'
Permanent Storm Water Drainage System Design

1. Site Analysis:
   - Topographic surveys and soil tests should be conducted to determine the site's slope and soil type.

2. Design Criteria:
   - The storm drain system should be designed to handle the maximum 24-hour rainfall event within the site's drainage area.
   - The system should be designed to convey runoff to a point where it can be safely disposed of, such as a storm drain or a pond.

3. Drainage System Components:
   - Inlets: Transfer runoff from impervious areas to the main drain system.
   - Main Drains: Carry runoff to a point where it can be disposed of safely.
   - Storm Water Detention Ponds: Temporarily store excess runoff during high rainfall events.

4. Material Selection:
   - PVC pipes are commonly used for storm water drainage systems due to their durability and flexibility.

5. Construction:
   - The system should be constructed to meet all local building codes and regulations.
   - Proper drainage and slope should be maintained to prevent water from pooling.

6. Maintenance:
   - Regular inspections and cleaning of inlets and downstream areas are necessary to ensure proper functioning.
   - Regular hydrology studies should be conducted to monitor the system's performance and adjust as needed.
### Post-Construction Water Quality Design - Northwest Beach

<table>
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<tr>
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<th>Value 3</th>
<th>Value 4</th>
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### Post-Construction Water Quality Design - Southwest Basin

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### Water Quality Specifications

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<td>Sediment</td>
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<tr>
<td>Other</td>
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**Note:** Water quality values per OWRP remote data sheet.
ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into pursuant to Ohio Revised Code ("R.C.") §§ 5301.80 to 5301.82 by ____________, a ____________ (the "Owner"), having an address of ____________ and ____________, a ____________ (the "Holder"), having an address of ____________, and the Ohio Environmental Protection Agency ("Ohio EPA"), as a non-holder agency, for the purpose of subjecting certain property ("the Covenant Area") to the activity and use limitations set forth herein.

[Insert appropriate background information here. By way of example only, as your situation may differ.]

WHEREAS, the Owner is the owner in fee of certain real property, which contains the Covenant Area and is situated in ____________ County, Ohio, in the ____ watershed;

WHEREAS, Company X (either a third party doing the project needing the 401, which sometimes could be the Owner) has proposed to construct a certain project on certain other real property ("the Company X Property"), [also] located in ____________ County, Ohio ("the Project"), which Project impacts certain surface water features located on the Company X Property and the approvals for which project required that Company X obtain a water quality certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1344 from the Ohio EPA and Nationwide Permit ("NWP") coverage from the Army Corps of Engineers ("the Army Corps");

WHEREAS, in order to mitigate such impacts on the Company X Property and as a condition of being issued the 401 water quality certification [or state isolated wetland permit], Ohio EPA ID No. ____________ (the "401 Certification") and the NWP, the Army Corps and the Ohio EPA have required that Company X obtain mitigation property and to protect this property in perpetuity with an environmental covenant;

WHEREAS, to meet the conditions in the 401 Certification, Company X has entered into an agreement with the Owner which provides, among other things, that Company X will construct and implement the mitigation requirements contained in Company X's 401 Certification and the mitigation plan on a specific area ("the Covenant Area") of the Owner's property;

WHEREAS, the Covenant Area possesses substantial value in conserving and protecting the physical, biological and chemical integrity of XYZ Stream and is important in the protection of the existing or designated use of the waters of the state pursuant to § 303 of the Clean Water Act, 33 U.S.C. § 1313 and § 611.041 of the Ohio Water
Pollution Control Act. The specific conservation values (hereinafter "Conservation Values") of the Covenant Area have been documented in a document entitled "Wetland and Stream Mitigation Plan, Proposed Company X Building, ______ Township, ______ County, Ohio, XYZ File # 20221, [month and day], 200___" (the "Mitigation Plan").

WHEREAS, Company X proposes to fulfill its obligation to ensure the Covenant Area and the Covenant Area's Conservation Values are protected in perpetuity by this Environmental Covenant.

Now therefore, Owner and Holder and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to R.C. §§ 5301.80 to 5301.92.

2. Covenant Area. The Covenant Area is [an approximately ___ acre tract of real property; OR real property parcels numbered ____________], located at __________, in _______ County, Ohio, and more particularly described in Exhibit A [narrative] and Exhibit B [map] attached hereto and hereby incorporated by reference herein ("the Covenant Area").

3. The Owner is the fee simple owner of the Covenant Area.

4. The Holder is the holder of this Environmental Covenant. [There may be more than one holder. The Owner may be a holder.]

5. Activity and Use Limitations. As part of the conditions set forth in the 401 Certification issued to Company X and given the conservation values of the Covenant Area, the Owner hereby imposes and agrees to comply with the following activity and use limitations on the Covenant Area:

a. Division: Any division or subdivision of the Covenant Area is prohibited;

b. Commercial Activities: Commercial development or industrial activity on the Covenant Area is prohibited;

c. Construction: The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots on the Covenant Area is prohibited, other than construction activities that are authorized by the 401 mitigation plan approved by the Ohio EPA;

d. Cutting and Other Control of Vegetation: Any cutting of trees, ground cover or vegetation, or destroying by means of herbicides or
pesticides on the Covenant Area is prohibited, other than the removal or control of invasive and noxious species and control activities that are authorized by the 401 mitigation plan approved by the Ohio EPA;

e. **Dumping**: Waste, garbage and unsightly or offensive materials are not permitted and may not be accumulated on the Covenant Area; and

f. **Water Courses**: Natural water courses and streams and adjacent riparian buffers may not be dredged, straightened, filled, channelized, impeded, diverted or otherwise altered on the Covenant Area, other than as part of activities that are authorized by the 401 mitigation plan approved by the Ohio EPA.

6. **Running with the Land**. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to R.C. § 5301.85, subject to amendment or termination as set forth herein. The term “Transferee” as used in this Environmental Covenant, shall mean any future owner of any interest in the Covenant Area or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

7. **Compliance Enforcement**. Compliance with this Environmental Covenant may be enforced pursuant to R.C. § 5301.91 or other applicable law. Failure to timely enforce compliance with this Environmental Covenant or the use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party’s right to take action to enforce any provision of this Covenant. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law in order to protect public health or safety or the environment.

8. **Rights of Access**. Owner hereby grants to Ohio EPA, its agents, contractors, and employees and the Holder or its agents the right of access to the Covenant Area in connection with the implementation or Enforcement of this Environmental Covenant.

9. **Compliance Reporting**. Owner and any Transferee shall submit to Ohio EPA, upon request by the Ohio EPA, written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. **Notice upon Conveyance**. Each instrument hereafter conveying any interest in the Covenant Area or any portion of the Covenant Area shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

    THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN
ENVIRONMENTAL COVENANT, DATED _______, 200_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE ___________ COUNTY RECORDER ON ___________, 200_, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

[In the notice, restate restrictions from Paragraph 5 of this Covenant]

Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Covenant Area. Owner's notice shall include the name, address and telephone number of the Transferee, and a copy of the original document that imposed restrictions on the Covenant Area.

11. Representatives and Warranties. Owner hereby represents and warrants to the other signatories hereto:

a. that the Owner is the sole owner of the Covenant Area;

b. that the Owner holds fee simple title to the Covenant Area that is free, clear and unencumbered and, for example, is not subject to any utility, road or other easement;

c. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and

d. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated only by consent of all of the following: the Owner or a Transferee, the Holder[s]/, and the Ohio EPA, pursuant to R.C. §§ 5301.89 or 5301.90 and other applicable law. “Amendment” means any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. “Termination” means the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. Amendment or termination shall not affect Company X’s obligations pursuant to the 401 Certification.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA, the Holder[s]/, and the Owner[s]/ or Transferee[s]/ of the Covenant Area or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this
Environmental Covenant, the Owner[s] or Transferee[s] shall file such instrument for recording with the County Recorder’s Office, and shall provide a true copy of the recorded instrument to Ohio EPA.

13. **Severability.** If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. **Governing Law.** This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

15. **Recordation.** Within [thirty (30)] days after the date of the final required signature upon this Environmental Covenant, the Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the property, with the County Recorder’s Office.

16. **Effective Date.** The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Covenant Area with the County Recorder.

17. **Distribution of Environmental Covenant.** The Owner[s] shall distribute a file-and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the [City, County, Township, Village] of; [any “Holder,” any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by Ohio EPA; see ORC § 5301.83].

18. **Notice.** Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

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[title or position]
Division of [__________]
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049
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[title or position]
[address]
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19. **Counterparts.** This Covenant may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Covenant. *(This section is optional. To be used where there are numerous parties and forwarding a single original copy to each party in series will be*
difficult and having each copy sign a signature page to be assembled in one original is acceptable to all parties.}

The undersigned [representatives of] the Owner[s] and Holder[s] represent and certify that they are authorized to execute this Environmental Covenant.

IT IS SO AGREED:

OWNER:

[E.g., The covenant area owner]

By: ________________________________

Its: ________________________________

Date: ________________________________

State of __________________________ )

County of __________________________ ) ss:

Before me, a notary public, in and for said county and state, personally appeared __________________________, a duly authorized representative of __________________________, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of __________________________.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____day of ______, 200_.

__________________________________
Notary Public
HOLDER:

[E.g., An Ohio not-for-profit corporation]

By: ____________________________
Its: ____________________________
Date: ____________________________

State of ________________________ )
County of ________________________ )

ss:

Before me, a notary public, in and for said county and state, personally appeared
_________________ , a duly authorized representative of_________________, who acknowledged to
me that [he/she] did execute the foregoing instrument on behalf of ____________________.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal
this _____ day of _____, 200_.

________________________________________________________________________
Notary

________________________________________________________________________
Public
OHIO ENVIRONMENTAL PROTECTION AGENCY

By: ____________________________
    Director

Date: ____________________________

State of Ohio )                 ss:
County of Franklin )

Before me, a notary public, in and for said county and state, personally appeared __________________, the Director of Ohio EPA, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____day of __________, 200_.

________________________________________
Notary Public