

By: Kelly A. Mink Date: _____

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

9/15/2020

In the Matter of:

Pulte Homes of Ohio, LLC

Director's Final Findings and Orders

**275 Metro Place South Suite 200
Dublin, Ohio 43017**

**Woodward Excavating Co.
7340 Tussing Road
Reynoldsburg, Ohio 43068**

Respondents.

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Pulte Homes of Ohio, LLC ("Pulte"), and Woodward Excavating Co. ("Woodward" and collectively with Pulte "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, or the ownership or operation of the Site (as defined herein), 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 Chapter 6111 and the rules adopted thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent Pulte Homes of Ohio, LLC owns and is developing the Preserve at Raccoon Creek development, located at 100 Bigelow Drive, Johnstown, Licking County, Ohio ("the Site.") Woodward Excavating Co., is a contractor retained by Pulte operating at the Site. The Site consists of 80 acres of land that is platted for the construction of 150 homes. Pulte received coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction Activity ("General Storm Water Permit" or "CGP") on October 17, 2018.
2. On July 30, 2019, Ohio EPA inspected the Site and observed that construction of sediment basins had not been initiated nor completed, a turbid discharge to Raccoon Creek, and other inconsistencies with the CGP.
3. Ohio EPA conducted a follow-up inspection on July 31, 2019. The inspection confirmed that construction of sediment basins had not been initiated nor completed despite the fact that construction started in August 2018. Ohio EPA observed constructed ditches designed to quickly export storm water with no treatment in the location where the sediment basins should have been constructed. The ditches conveyed sediment laden water into an adjacent wooded area and into Raccoon Creek. Inspection of the weekly logs at the Site indicated that the sediment basins were acceptable even though they were not yet completed.
4. Additionally, during the July 31, 2019 inspection, Ohio EPA observed the following: barren areas of ground were located throughout the entire Site; the construction entrance did not have adequate controls to prevent mud from being tracked offsite; and sediment controls were in need of maintenance and large rills and gullies had developed throughout the Site. A Notice of Violation ("NOV") letter was issued to Pulte on August 5, 2019 documenting the violation findings made by Ohio EPA.
5. On August 16, 2019, Ohio EPA conducted another inspection and observed sediment basins under construction but not completed. Ohio EPA observed turbid discharges to Raccoon Creek from the location of two proposed basins that had not been constructed. The turbid discharges were the result of storm water being actively conveyed offsite. The turbid discharge of sediment extended at least 200 yards. The weekly inspection logs still stated that the sediment basins were determined to be acceptable even though they ~~did not exist~~. were not yet completed.
6. Ohio EPA inspected the Site again on August 23, 2019, observing that two of the three sediment basins and their outfall structures were not installed. On September 17, 2019, Ohio EPA returned and observed that all three basins had been installed. A Resolution of Violation letter was issued by Ohio EPA on September 18, 2019, which concluded that Pulte resolved all violations discovered during the previous inspections.
7. Pursuant to Ohio Revised Code Section 6111.04, no person 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 without a valid, unexpired permit.

8. Pursuant to Ohio Revised Code 6111.07(A), no person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 or division (B) of section 6111.33 of the Revised Code or violate any order, rule, or term or condition of a permit issued or adopted by the director of environmental protection pursuant to those sections. Each day of violation is a separate offense. Ohio EPA has found that Respondents violated the following CGP permit conditions:

CGP Part II.B “Soil Stabilization”: Disturbed areas shall be stabilized in accordance with CGP Table 1 (Permanent Stabilization) and CGP Table 2 (Temporary Stabilization). Violation Description: Temporary and/or permanent stabilization methods were not employed on all portions of the Site.

CGP Part II.C “Dewatering”: Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

CGP Parts II and III.G.2.d.v.: Structural practices shall be implemented to protect adjacent streams.

CGP Parts II and III.G.2.d. “Sediment Control Practices”: Structural practices shall be used on all sites remaining disturbed for more than 14 days. They shall be implemented prior to grading and within seven days from the start of grubbing. They must remain functional until the upslope area is re-stabilized.

CGP Parts II and III.G.2.d.ii.: Concentrated runoff and runoff from drainage areas that exceed the design capacity of silt fence or inlet protection shall pass through a sediment settling pond.

CGP Part III.G.2.i. “Inspections”: Inspection records must include: observations and a certification that the facility is in compliance with the SWP3 and the permit and identify any incidents of non-compliance. The record and certification must be signed in accordance with Part V.G. of the permit:

CGP Parts II and III.G.2.d.iii “Sediment Barriers and Diversions”: Sheet flow runoff from denuded areas shall be intercepted by silt fence or diversions to protect adjacent properties and water resources from sediment transported via sheet flow.

CGP Parts II and III.G.2.h. “Maintenance”: All control practices shall be maintained and repaired as needed to assure continued performance of their intended function. All sediment control practices must be maintained in a functional condition until all upslope areas they control are permanently stabilized.

CGP Part H.B. “Soil Stabilization”: Stabilization of disturbed areas shall, at a minimum, be initiated in accordance with the timeframes specified in the following tables. Where vegetative stabilization techniques may cause structural instability or are otherwise unobtainable, alternative stabilization techniques must be employed.

V. **ORDERS**

1. Within fourteen (14) days of the effective date of these Orders, Respondents shall submit a revised storm water pollution prevention plan for the Site reflecting the current conditions and consistent with the terms and conditions of the Construction Storm Water General Permit.
2. Respondents shall pay the amount of thirty six thousand five hundred dollars (\$36,500) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Payment shall be made in two equal installments of eighteen thousand two hundred and fifty dollars (\$18,250) each, payable as follows: 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" for the first installment of \$18,250, and within ninety (90) days after the effective date of the Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for the second installment of \$18,250. The official checks shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondents and the site, to:

Ohio EPA
Office of Fiscal Administration
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

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and 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 Respondents.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to the 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

Unless otherwise specified, all documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency, COO
Attn: Enforcement Supervisor
Division of Surface Water
50 W. Town Street
Columbus, Ohio 43215

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 findings of violations specifically cited in these Orders, through the date of these Orders, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically found by Ohio EPA and cited herein. The parties to these Orders do not authorize any other persons to use the findings contained herein in any matter or proceeding.

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 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**

Laurie A. Stevenson

Laurie A. Stevenson
Director

Date: 9/15/2020

**IT IS SO AGREED:
Pulte Homes of Ohio, LLC**

Matthew T. Callahan

By Matthew T. Callahan
Printed or Typed Name

Date: 6/23/20

Division VP Land Acquisition

Title

**IT IS SO AGREED:
Woodward Excavating Co.**

Clay Woodward

By Clay Woodward
Printed or Typed Name

Date: 6/23/2020

President

Title