

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

OCT 16 2009

In the Matter of: :  
: :  
Stonebridge Land Corporation :  
By its Registered Agent :  
B. Richard Burdman :  
Agent ID: G695-0626 :  
20 Federal Plaza, W, #600 :  
Youngstown, OH 44503 :  
Respondent :

ENTERED DIRECTOR'S JOURNAL  
Director's Final Findings  
and Orders

I certify this to be a true and accurate copy of the  
official documents as filed in the records of the Ohio  
Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows:

By: Dir. Cassler Date: 10-16-09

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Stonebridge Land Corporation ("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 or the ownership or operation of the site as defined below 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 adopted thereunder.

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 6111.03, and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

**Background**

1. Respondent is a corporation for profit, in good standing with the Ohio Secretary of State's Office (Charter / Registration Number 755381), whose registered agent is B. Richard Burdman.

**Storm Water**

2. Respondent is developing Stone Bridge, a multi-phase residential development of single-family homes on approximately two hundred ten acres, on the north side of Herbert Road east of Sawmill Road in Canfield, Mahoning County, ("site").
3. The site is located in an upland area, approximately 1,100 feet east of Sawmill Creek.
4. Storm water construction activities discharge to an unnamed tributary of Sawmill Creek, which in turn flows to Meander Creek, a tributary of the Mahoning River, all of which constitutes "waters of the state" and sediment contained in that storm water constitutes "other wastes." Placement of this waste into waters of the state constitutes "pollution."
5. Ohio EPA granted Respondent coverage under Ohio EPA Authorization for Storm Water Discharges Associated with Construction Activity Under The National Pollutant Discharge Elimination System Permit ("General Permit") No. OHR100000 on three separate occasions, for construction storm water runoff from the site. The applications identified the applicant as Respondent, with the contact person Charles W. Masters. Coverage was granted as follows:

<i>Date</i>	<i>Plat No(s).</i>	<i>Total Size of Site (in Acres)</i>	<i>Start Date (Est.)</i>	<i>Completion Date (Est.)</i>	<i>Facility Permit No. (OHR)</i>	<i>Date Coverage Document Mailed by Ohio EPA</i>
03/23/96	4	14.8	06/15/96	12/01/96	104518	05/23/96
05/04/98	5 (Part of Out Lot 75)	18.8	03/15/98	07/15/98	106773	05/04/98
03/30/01	8 & 9 constitute approximately 20 acres within the area	75+/-	04/30/01	12/30/06	110106	04/03/01

6. On April 21, 2003, Ohio EPA renewed the General Permit, with its number becoming OHC000002.
7. In March, 2005, Ohio EPA notified Respondent that the General Permit had been renewed and instructed Respondent to either submit a request (by mailing the form attached to the notice) to extend coverage if the site was active, or terminate coverage if the site was complete. The notice stated that if there was no response within ninety days the coverage would be automatically terminated.

8. Ohio EPA records show that on February 23, 2006, coverage for the site was terminated due to lack of a response.
9. On August 8, 2006, Respondent submitted a request to extend site coverage by signing the form originally sent in March 2005. The construction start date was identified as April 30, 2001; completion date of December 30, 2010. Ohio EPA received the form on August 14, 2006, with coverage subsequently provided.
10. Records from the Mahoning Soil and Water Conservation District indicate that construction activities in Plats 8 & 9, the areas to which coverage was requested under General Permit OHC000002, began on or about November 1, 2006.
11. On May 24, 2007, an Ohio EPA inspector observed and notified Respondent by letter dated June 5, 2007, of the failure to comply with the following construction site runoff control requirements of General Permit OHC000002:
  - a. Construction Site Runoff Controls:
    - i. Failure to direct runoff from disturbed areas which exceed the capacity of the perimeter sediment barriers, to a sediment pond; failure to size sediment ponds to provide at least 67 cubic yards of storage per acre of total contributing drainage area. (Violation of Part III.G.2.d.ii.);
    - ii. Failure to maintain inlet protection on storm sewer curb inlets located on the extension of Timber Run Drive. (Violation of Part III.G.2.h.); and
    - iii. Failure to provide silt fencing along the stream channel and/or drainage channels feeding the stream channel which was culverted during the construction of the extension of Timber Run Drive and cul-de-sac. (Violation of Part III.G.2.d.iii.)
  - b. Post-Construction Storm Water Management: Failure of the Storm Water Pollution Prevention Plan ("SWP3") to contain a description of the post-construction BMPs that will be installed during construction for the site and the rationale for their selection. (Violation of Part III.G.2.e.)
- 11a. The SWP3 was amended so that the outlet structure of the permanent pond provides extended detention of the Water Quality Volume (WQv), in compliance with the post-construction requirements of the NPDES permit. [See Finding No. 21 and Order No. 2 regarding Ohio EPA's concerns that by constructing the outlet structure of the permanent pond in the location depicted in the SWP3, a major water supply to Wetland A is eliminated, compromising the long term viability of Wetland A.]

12. Ohio Administrative Code ("OAC") Rule 3745-38-02(A) provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without applying for and obtaining an Ohio NPDES individual permit in accordance with the requirements of OAC Chapter 3745-33, complying with the indirect discharge permit program pursuant to OAC Chapter 3745-36, or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of OAC Chapter 3745-38.
13. ORC § 6111.04 prohibits any person from causing pollution or causing any sewerage, industrial waste or other waste to be placed in any location where they cause pollution to waters of the state, except if such discharges occur in accordance with an Ohio NPDES permit issued by the Director.
14. ORC § 6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by ORC §§ 6111.01 to 6111.08, or violating 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.
15. On January 17, 2008, a revised SWP3 dated December 2007, was submitted in response to deficiencies noted in the June 5, 2007 letter.
16. On April 16, 2008, a site inspection was conducted by Ohio EPA to determine compliance with the revised SWP3. On April 25, 2008, Ohio EPA notified Respondent via letter of the following deficiencies in the implementation of the SWP3:
  - a. The temporary riser pipe in the proposed sediment basin was not anchored, and had lifted, allowing water to flow under the riser without ponding in the basin as intended;
  - b. The temporary sediment trap did not have a sediment storage volume as depicted on the detail drawing on Sheet 2 of 2 of the erosion and sediment control plan. The trap was to be undercut 1.13 feet below the rock dam outlet structure to provide a wet pool, *i.e.*, sediment storage volume;
  - c. Maintenance was required on the silt fence along the stream channel between the proposed sediment basin and proposed sediment trap; and
  - d. Silt fence around the back of the cul-de-sac on Lake Wobegon Court required extension along the entire length of the drainage channel that feeds Wetland C.

17. On May 27, 2008, Respondent provided Ohio EPA with an e-mail stating the work identified in the April 25, 2008 letter was completed.
18. The April 25, 2008 letter further advised Respondent of the following:

To improve the long-term viability of Wetland A, at least some of the runoff from proposed stormwater pond 1 will need to be discharged to Wetland A. This may require that the discharge from proposed stormwater pond 1 be relocated. Concentrated discharges from proposed stormwater pond 1 must be converted to sheet flow before discharging to Wetland A. Review the effects that this discharge will have on the natural hydrology, hydroperiod and wetland flora. Every attempt should be made to control the flow to Wetland A such that it mimics predevelopment conditions.

Wetland A is identified in Appendix A which is attached hereto and incorporated by reference herewith as if fully rewritten herein.

19. The violations identified and described in the Findings set forth in these Orders are violations of General Permit No.OHC000002 and ORC §§ 6111.04 and 6111.07.
20. An Ohio EPA inspection of the site on July 29, 2008 found that all immediate storm water issues raised in the April 25, 2008 letter were attended to in a satisfactory manner.
21. Ohio EPA is concerned that by constructing the permanent pond, a major water supply to Wetland A was eliminated and raised the issue of the long term viability of Wetland A.

#### ***Permit to Install***

22. Charles Masters & Company, a certified public accountant located at 200 Victoria Road, Building 4, Austintown, Ohio 44515-2093, and affiliated with Respondent (but not in a corporate affiliation sense), was the applicant for permit to install application number 593298 for the installation of sanitary sewers at the site. The application was dated November 6, 2006.
23. OAC Rule 3734-42-02 requires the Director's issuance of a permit to install prior to the installation of a new "disposal system," or the modification of a "disposal system."
24. ORC § 6111.07 (A) prohibits any person from violation of, or failing to perform, any duty imposed by, ORC §§ 6111.01 to 6111.08, or violating any rule adopted by the Director pursuant to those sections, including OAC Rule 3745-42-02.

25. Sanitary sewers are a disposal system.
26. A permit to install has not been issued for the installation of sanitary sewers at the site.
27. On a December 13, 2006 site inspection, Ohio EPA observed and informed Charles Masters & Company in a letter dated December 22, 2006, that sanitary sewers had been installed at the site prior to the issuance of a permit to install and approval of detailed plans by Ohio EPA, in violation of ORC Chapter 6111., and OAC Rule 3745-42-02.
28. As built plans have been received by Ohio EPA and are approvable.
29. The installation of sanitary sewers prior to the issuance of a permit to install is a violation of ORC §§ 6111.04 and 6111.07 and OAC Rule 3745-42-02.

#### ***Section 401 Water Quality Certification***

30. In December 17, 2008, Ohio EPA received an application for a section 401 water quality certification for the site, Plats 8 and 9, from Charles Masters & Company.
31. In the application the response to question 6, "(i)s there any portion of the activity for which authorization is sought complete," was "(y)es ... the site has been partially cleared, road ways have been cut (some paved), a stormwater culvert has been installed, stormwater and E&S basins have been constructed, and sanitary lines have been installed."
32. The application for the section 401 water quality certification, after preliminary review, was found to be incomplete.
33. An application for a Department of the Army Permit under the provisions of Section 404 of the Clean Water (13 U.S.C. 1344) has been submitted to the Army Corps of Engineers, Pittsburgh District, which application is a condition precedent for a section 401 water quality certification.
34. The public notice for the Department of the Army Permit stated that "(p)ortions of the project have already been completed, such as clearing of proposed roadways, installation of erosion and sediment control structures, and installation of sanitary sewer lines."
35. The altering, filling, dredging or other degrading the uses and/or existing functions or values of any portion of a wetland or stream at any location in Ohio, without first receiving prior approval from the Director as required by law, is a violation of ORC Chapter 6111.

### *Director's Consideration*

36. ORC § 3745.01 sets forth the general powers and duties of the Director, including the authority to administer the laws relating to the abatement and prevention of water pollution and the disposal and treatment of solid wastes, infectious wastes, construction and demolition debris, hazardous waste, sewage, industrial waste, and other wastes.
37. ORC § 6111.03(H), in pertinent part, provides that the Director may issue orders to prevent, control, or abate water pollution by such means as prohibiting or abating discharges of sewage, industrial waste, or other wastes into the waters of the state.
38. ORC § 6111.03(H) further provides that in making those orders, the Director shall give consideration to, and base the determination on, evidence relating to the technical feasibility and economic reasonableness of complying with those orders and to evidence relating to conditions calculated to result from compliance with those orders, and their relation to benefits to the people of the state to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.
39. 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. Respondent shall achieve and maintain compliance with General Permit No.OHC000002 and any modification or renewal thereof.
2. Within thirty (30) days after completion of site construction, the temporary sediment trap (as designed for construction erosion and sediment control) shall be removed. The construction sediment pond shall be excavated to a depth to create the appropriate water quality storage volume. The primary outfall for the permanent pond shall be directed toward Wetland A in order to maintain the wetland's primary hydrology. [Refer to Sheet 2 of the SWP3 dated July 10, 2008, prepared by Wallace & Pancher, Inc.]
3. All controls on the site shall be inspected at least once every seven (7) calendar days and within twenty-four (24) hours after any storm event greater than one-half inch of rain per twenty-four (24) hour period. Respondent shall assign qualified inspection personnel (with knowledge and experience in the installation and

maintenance of sediment and erosion controls) to conduct inspections to ensure that the control practices are functional and to evaluate whether the SWP3 is adequate and properly implemented in accordance with the schedule proposed in Part III.G.1.g of General Permit No.OHC000002 and any modification or renewal thereof, or whether additional control measures are required.

4. Respondent shall not initiate construction activities in the state of Ohio that disturbs more than one acre of land without having first developed and implemented a SWP3 for the construction site, and obtained coverage of the construction site under General Permit No.OHC000002 and any modification or renewal thereof.
5. Respondent shall not install sewerage, or treatment works for sewage disposal or new disposal systems, including, but not limited to, sanitary sewers, at any location in Ohio without first receiving prior approval from the Director as required by law.
6. Respondent shall not alter, fill, dredge, or otherwise degrade the uses and/or existing functions or values of any portion of a wetland or stream at any location in Ohio, without first receiving prior approval from the Director as required by law.
7. Respondent shall pay the amount of fifteen thousand nine hundred seventy four dollars (\$15,974.00) in settlement of Ohio EPA's claim 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" for said amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent and the site, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Ohio EPA Northeast District Office in accordance with Section X of these Orders and Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

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



8. It is hereby provided, understood and agreed that twenty percent (20%) of the total payment shall be placed in Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD), for expenditure in accordance with such fund.
9. If issued, Respondent shall attain and maintain compliance with its section 401 water quality certification

#### **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 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 responsible officials of Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03.

#### **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 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**

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

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

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent 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**

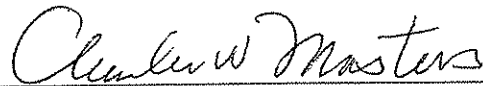
Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these orders.

**IT IS SO ORDERED AND AGREED:**  
Ohio Environmental Protection Agency

  
\_\_\_\_\_  
Chris Korleski  
Director

10/15/09  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**  
Stonebridge Land Corporation

  
\_\_\_\_\_  
By  
Charles W. Masters  
\_\_\_\_\_  
Printed or Typed Name  
Pres  
\_\_\_\_\_  
Title

9-30-09  
\_\_\_\_\_  
Date