

OHIO E.P.A.  
AGENCY 5 2007

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Millersburg Growth Ltd. :  
P.O. Box 127 :  
31 North Mad Anthony Street :  
Millersburg, Ohio 44654 :

Director's Final Findings and  
Orders

Respondent

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: David Weeks Date: 11-15-07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Millersburg Growth Company, Limited ("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.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC § 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is the developer of an approximately twelve (12) acre commercial development, located south of a former Carter Lumber Company store on State Route 83 in the Village of Millersburg, Holmes County, Ohio ("the Site").
2. Storm water from the Site discharges to Killbuck Creek. Killbuck Creek constitutes "waters of the state," as defined by ORC § 6111.01 (H). Sediment contained in storm water constitutes "other wastes," as defined in ORC § 6111.01 (O). Placement of this waste into waters of the state constitutes "pollution," as defined in ORC § 6111.01 (A).

3. Because the Site is a construction site which disturbs more than one (1) acre of land, Respondent was required to submit a Notice of Intent ("NOI") to obtain coverage under the Ohio EPA National Pollutant Discharge Elimination System ("NPDES") General Permit for Storm Water Discharges Associated with Construction Activity ("NPDES Storm Water General Permit") and to develop and implement a Storm Water Pollution Prevention Plan ("SWP3") specific to the Site.
4. On June 22, 2005, Ohio EPA conducted an inspection at the Site and determined that an estimated 13.0 acres had been disturbed. Follow-up inspections on August 24, 2005 and September 13, 2005 confirmed that construction activities were ongoing at the Site without the submission of an NOI and prior to completing and implementing a SWP3, in violation of ORC § 6111.07. Respondent was notified of these violations by letters dated July 18, 2005, August 30, 2005, and October 4, 2005.
5. On September 27, 2005, Respondent submitted to Ohio EPA a Notice of Intent ("NOI") for the Site. On November 16, 2005, the Director granted Respondent coverage under the NPDES Storm Water General Permit No. 3GC02087\*AG.
6. Part II.A of the NPDES Storm Water General Permit requires that an operator submit a complete and accurate NOI application form and appropriate fee at least 21 days prior to the commencement of construction activity. Pursuant to Part II.B, an operator who fails to notify the Director of their intent to be covered and who discharges pollutants to surface waters of the state without an NPDES permit is in violation of ORC § 6111.
7. Part III.B of the NPDES Storm Water General Permit requires that a SWP3 be completed prior to the timely submittal of an NOI and updated in accordance with Part III.D. The SWP3 must be implemented upon initiation of construction activities.
8. Pursuant to ORC § 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.
9. 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.
10. 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 § 6111.

#### V. ORDERS

1. Respondent shall not initiate construction activities that disturb more than one acre of land without having first developed and implemented a SWP3 that satisfies all minimum criteria listed in Part III of the NPDES Storm Water General Permit and obtained an NPDES Storm Water General Permit. Respondent may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondent has maintained compliance with this Order for a period of three hundred and sixty five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section VI. of these Orders.
2. Within fourteen (14) days of the effective date of these Orders, Respondent shall develop a current SWP3 for the Site that satisfies all minimum criteria listed in Part III of the NPDES Storm Water General Permit. Respondent shall submit a copy of the current SWP3 to Ohio EPA Northeast District Office, in accordance with Section X of these Orders, for review and approval.
3. If the SWP3 that is submitted by Respondent is deemed deficient by Ohio EPA, Respondent will immediately revise the SWP3 to incorporate Ohio EPA's recommendations. Respondent shall then immediately implement the SWP3. Respondent shall submit a copy of the revised SWP3, in accordance with Section X of these Orders, to Ohio EPA Northeast District Office.
4. From the effective date of these Orders and until all disturbed areas on the Site meet the criteria for final stabilization, as outlined in the NPDES Storm Water General Permit, Respondent shall comply with the current SWP3 and/or any future amendments to the SWP3, in accordance with Part III.D of the NPDES Storm Water General Permit.
5. Respondent shall pay the amount of six thousand dollars (\$6,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within fourteen (14) 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 two thousand dollars (\$2,000.00) of the total amount. Payment of the remaining \$4,000 shall be made in two installments of \$2,000 made every two months thereafter until the entire \$6,000.00 has been paid. The official checks shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and the Site, to:

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

A photo copy of the check shall be sent to Ohio EPA's Northeast District Office in accordance with Section X 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 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 Respondent.

#### **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**

All documents required to be submitted by Respondent shall be addressed to:

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

#### **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

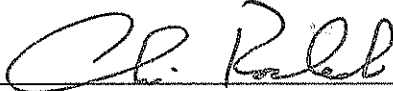
Ohio EPA Director's journal.

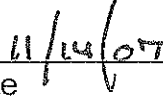
**XIV. SIGNATORY AUTHORITY**

Each undersigned representative or 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**

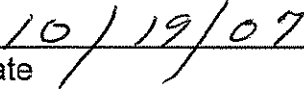
  
\_\_\_\_\_  
Chris Korleski  
Director

  
\_\_\_\_\_  
Date

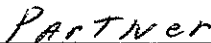
**IT IS SO AGREED:**

**Millersburg Growth Company, Ltd.**

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Printed or Typed Name

  
\_\_\_\_\_  
Title