

JAN 22 2009

REVISED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

NP LIMITED PARTNERSHIP

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:

Director's Final Findings and
Orders

8800 Lyra Drive Suite 550
Columbus, OH 43240

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to NP Limited Partnership ("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 the Site 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.

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.

By:  Date: 1/22/09

IV. FINDINGS

The Director of Ohio EPA has made the following findings. Nothing in the findings shall be considered to be an admission by Respondent of any fact, violation or liability:

1. Respondent is the developer of an approximately 15.59-acre commercial development project located off of Polaris Parkway and Olde Worthington Court in Columbus, Delaware County, Ohio, hereinafter known as the "Site". The Site was issued coverage under the General Storm Water Permit Associated with Construction Activities on July 5, 2006 for 15.59 acres of disturbance for the construction activities associated with Polaris Neighborhood Center 4. The Facility Number is 4GC01846*AG. The permit was issued to Franz Geiger of N.P. Limited Partnership, located at 8800 Lyra Drive Suite 550, Columbus, OH 43240. Because the site was over the 5 acre threshold, it is subject to post construction storm water requirements Part III.G.2.e for "Large Construction Activities".
2. Subsequent to receiving coverage for the 15.59 acres for Polaris Neighborhood Center 4, Respondent applied for and was issued a General Storm Water Permit associated with Construction Activities for the development of Polaris Neighborhood Center IV Strip Center. This NOI addressed a total land disturbance of 2.92 acres of land and was originally permitted under Polaris Neighborhood Center 4. The permit was issued on October 23, 2006 for 2.92 acres of disturbance. The Facility Permit number is 4GC02005*AG.
3. Subsequent to receiving coverage for the 15.59 acres for Polaris Neighborhood Center 4, Mark Yates of P&P Real Estate LLC applied for and was issued a General Storm Water Permit for Construction Activities of a Gold's Gym, Ohio EPA Facility Permit Number 4GC02087*AG, for 4.55 acres of disturbance. This NOI was initially covered under the General Storm Water Permit for Polaris Neighborhood Center 4. The permit was issued on December 13, 2006 for 4.55 acres of disturbance. The Facility Permit number is 4GC02087*AG.
4. Storm water from the Site discharges directly to a tributary to Alum Creek which constitutes "waters of the state" and sediment contained in that storm water constitutes "other wastes" as those terms are defined in ORC § 6111.01. ORC § 6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code 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.

5. Part I.B.1. of the Ohio EPA Construction Storm Water General Permit provides that construction activities include any clearing, grading, excavating, grubbing and/or filling activities that disturb the threshold acreage of one or more acres are required to obtain coverage under this permit.
6. Part III.A. of the Ohio EPA Construction Storm Water General Permit requires that an operator develop a storm water pollution prevention plan (SWP3) for each site covered by this permit. The SWP3 must, among other things, describe and ensure the implementation of best management practices ("BMPs") that reduce the pollutants in storm water discharges during construction and pollutants associated with post-construction activities to ensure compliance with ORC § 6111.04, OAC Chapter 3745-1 and the terms and conditions of this permit.
7. Part III.G. of the Ohio EPA Construction Storm Water General Permit requires the SWP3 contain certain minimum erosion and other sediment controls.
8. Part III.G.2.b.i. of the Ohio EPA Construction Storm Water General Permit requires that Respondent stabilize any disturbed areas that will be dormant for more than 21 days but less than one year, and for areas not within 50 feet of a stream, within seven days of the most recent disturbance within the area.
9. Part III.G.2.b.i. of the Ohio EPA Construction Storm Water General Permit requires that Respondent stabilize any areas within 50 feet of a stream and at final grade within two days of reaching final grade.
10. Part III.G.2.d. of the Ohio EPA Construction Storm Water General Permit requires that Respondent implement structural practices that will store runoff allowing sediments to settle and/or divert flows away from exposed soils or otherwise limit runoff from exposed areas. Structural practices shall be used to control erosion and trap sediment from a site remaining disturbed for more than 14 days. The Ohio EPA Construction Storm Water General Permit further provides that all sediment control practices must be capable of ponding runoff in order to be considered functional. Earth diversion dikes or channels alone are not considered a sediment control practice unless those are used in conjunction with a sediment settling pond.
11. Part III.G.2.d.i. of the Ohio EPA Construction Storm Water General Permit requires that Respondent's sediment control structures shall be functional throughout the course of earth disturbing activity. Sediment basins and perimeter sediment barriers shall be implemented prior to grading and within seven days from the start of grubbing. They shall continue to function until the up slope development area is restabilized. As construction progresses and the topography is altered, appropriate

controls must be constructed or existing controls altered to address the changing drainage patterns.

12. Part III.G.2.d.iii. of the Ohio EPA Construction Storm Water General Permit requires that Respondent install silt fence or diversions to intercept the sheet flow runoff from denuded areas to protect adjacent properties and water resources from sediment transported via sheet flow. Storm water diversion practices shall be used to keep runoff away from disturbed areas and steep slopes where practicable. Such devices, which include swales, dikes or berms, may receive storm water runoff from areas up to 10 acres.
13. Part III.G.2.h. of the Ohio EPA Construction Storm Water General Permit requires that Respondent shall maintain and repair all temporary and permanent control practices as needed to ensure continued performance of their intended function. The Ohio EPA Construction Storm Water General Permit further provides that sediment control practices must be maintained in a functional condition until all up-slope areas they control are permanently stabilized.
14. Part III.G.2.e of the Ohio EPA General Storm Water Permit requires Respondent to implement post construction Best Management Practices which are specific to large construction activities. The post construction BMP(s) chosen must be able to detain storm water runoff for protection of the stream channels, stream erosion control, and improved water quality. Structural (designed) post-construction storm water treatment practices shall be incorporated into the permanent drainage system for the site. The BMP(s) chosen must be sized to treat the water quality volume (WQ_v) and ensure compliance with Ohio's Water Quality Standards in OAC Chapter 3745-1.
15. A permittee may request approval from Ohio EPA to use alternative structural post-construction BMPs if the permittee can demonstrate that the alternative BMPs are equivalent in effectiveness to those listed in Part III.G.2.e, Table 2 of Ohio EPA General Storm Water Permit.
16. The Director finds that for purposes of Part III.G.2.e, the 15.59 site, as originally proposed, is determinative of purposes of establishing the acreage threshold under Part III.G.2.e of the permit.
17. Ohio EPA inspected Respondent's site on March 14, 2006, April 17, 2006, May 24, 2006, October 24, 2006, May 23, 2007 and June 6, 7, and 12, 2007 to determine compliance with requirements of the Ohio EPA General Storm Water Permit.

18. The March 14, 2006, inspection revealed that Respondent failed to install perimeter silt fence and a centralized sediment basin in violation of Part III.G.2.d.ii of the Permit.
19. The April 17, 2006 inspection revealed that Respondent failed to install perimeter silt fence in violation of Part III.G.2.d.iii of the Permit and failed to install a centralized sediment basin in violation of Part III.G.2.d.ii of the Permit. A representative of Respondent was present during this inspection and was instructed to stabilize the area and install the silt fence.
20. The May 24, 2006 inspection revealed that there were no improvements since the last onsite inspection on April 17, 2006.
21. The October 24, 2006 inspection revealed that the Site was partially stabilized, however, significant portions were established with a weed cover. Ohio EPA expressed concerns that the weed cover would not be suitable for effective erosion control for the upcoming winter months.
22. The May 23, 2007 inspection revealed that the Site was not in compliance with the Storm Water Permit Associated with Construction Activities. Specifically there was no sediment and erosion controls in association with the fill placement across the tributary of Alum Creek in violation of Part III.G.2.d and Part III.G.2.b.i of the permit.
23. On June 16, 2006, Respondent was issued a Notice of Violation from the City of Columbus for failing to implement the required sediment and erosion controls.
24. The June 6, 7, and 12, 2007 inspections revealed that the Site was void of sediment and erosion controls, specifically the implementation of the centralized sediment basins in violation of Part III.G.2.d.ii of the Permit. Ohio EPA indicated that post construction measures for large construction sites would be required for the Gold's Gym portion of the Site.
25. On June 12, 2008, Ohio EPA was informed that a post construction BMP designed in accordance with Part III.G.2.e, Table 2 of Ohio EPA General Storm Water Permit would be installed on property owned by NP Limited.
26. 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. From the effective date of these Orders, whenever Respondent files an NOI that involves the disturbance of five or more acres of land or involves the disturbance of less than five acres, but is a part of a larger common plan of development or sale which will disturb five or more acres of land, Respondent shall comply with post construction structural controls for "Large" construction sites as required by the Ohio EPA Construction Storm Water General Permit. By no later than March 1st of each year, Respondent shall schedule a meeting with Ohio EPA, DSW, CDO to discuss anticipated development and potential NOIs for Respondent's projects in the Polaris area for the upcoming construction season. Respondent may request termination of this Order in accordance with Part VI of these Findings and Orders upon demonstrating compliance with said Order for a period of three years from the effective date of these Findings and Orders.
2. Respondent shall pay the amount of \$3,000.00 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 the total amount. The official \$3,000.00 check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, 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 Central 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 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

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Central District Office
Attn: Enforcement Supervisor
Division of Surface Water

122 South Front Street
Columbus, OH 43215

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI. 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

Laura Powell

Laura Powell
Assistant Director

1/17/09

Date

IT IS SO AGREED:

NP Limited Partnership, ~~LLC~~

By Franz A. Geiger

Franz A. Geiger

Printed or Typed Name

12/17/08

Date

Managing Director
Title and Partner Representative

