

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

**Ohio Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223**

**Director's Final Findings
and Orders**

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Ohio Department of Transportation ("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 are binding upon Respondent and successors in interest liable under Ohio law. No change in ownership or composition of Respondent or ownership of the Site (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 determined the following findings:

1. Respondent is the co-permittee of Storm Water General Permit No.4GC00366*AD regarding the development of the State Route 161 and Interstate 270 improvement project ("Site"), a 158.49 acre construction project to increase road capacity in northeast Franklin County, Ohio.

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

Donny Jackson 6-7-05

OHIO E.P.A.
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2. Storm water from the Site discharges to Big Walnut Creek. Big Walnut Creek constitutes "waters of the state," as defined by 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. Ohio EPA estimates that approximately 100 acres have been disturbed at the Site. Because construction of the Site disturbs 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 Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (Storm Water General Permit).
4. Ohio EPA received a complete NOI for the Site on October 3, 2003 and granted Respondent coverage under Storm Water General Permit No.4GC00366*AD, effective December 3, 2003.
5. On August 24, 2004, August 30, 2004, November 15, 2004, December 16, 2004, January 4, 2005, and January 5, 2005, Ohio EPA staff conducted inspections at the Site for compliance with Ohio's Water Pollution Control Laws, documenting, in whole or in part, the violations described below.
 - A. Part III.A. of the Storm Water General Permit requires that a storm water pollution prevention plan (SWP3) be prepared to address all phases of construction. Respondent's SWP3 only addressed sediment and erosion controls and storm water management practices for the Site at final grade, in violation of ORC § 6111.07.
 - B. Part III.D. of the Storm Water General Permit requires that whenever there is a change in design, construction, operation or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or if the SWP3 proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity, the Site's SWP3 shall be amended. Respondent failed to amend the Site's SWP3 when changes in design and construction have resulted in an ineffective control of sediment-laden runoff in violation of ORC §§ 6111.04 and 6111.07.
 - C. Part III.G.2.b.i of the Storm Water General Permit requires that all disturbed areas 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.
 - D. Part III.G.2.d.i. of the Storm Water General Permit requires that sediment control structures be functional throughout earth disturbing activity.

Sediment basins and perimeter sediment barriers shall be implemented as the first step of grading and within seven days from the start of grubbing. The sediment ponds and perimeter sediment barriers shall be functional until the upslope development area has been restabilized. As construction progresses and the topography is altered, appropriate controls must be constructed or existing controls altered to address the changing drainage patterns. Respondent failed to implement many sediment basins in numerous areas of 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 exceed the design capacity of sediment barriers, in violation of ORC §§ 6111.04 and 6111.07.

- E. Part III.G.2.h. and Part III.G.2.i. of the Storm Water General Permit require 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.
 - F. Part III.G.2.d.ii. of the Storm Water General Permit 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 pond. Sediment settling ponds are to be sized to provide a minimum storage capacity of 67 cubic yards per acre of total contributing drainage. Respondent failed to implement many sediment traps in numerous areas of the Site and to ensure that the sediment traps have the required minimum storage capacity to treat concentrated storm water runoff from disturbed areas flowing at rates which exceed the design capacity of sediment barriers, in violation of ORC §§ 6111.04 and 6111.07.
 - G. Part III.G.2.g.iv. of the Storm Water General Permit prevents turbid discharges to surface waters of the state resulting from dewatering activities. If trench or ground water contains sediment, it must pass through a sediment settling pond or other equally effective sediment control device, prior to being discharged from the construction site. Respondent failed to prevent numerous discharges of sediment-laden water, resulting from dewatering activities from drilling operations, to Big Walnut Run, in violation of ORC §§ 6111.04 and 6111.07.
- 6. By letters dated September 2, 2004, December 6, 2004, and January 10, 2005, Ohio EPA notified Respondent, via Notices of Violation (NOV), that the construction activities occurring at the Site were in violation of the Storm Water General Permit.
 - 7. Respondent notified Ohio EPA, via letter dated January 12, 2005, that all noncompliance issues stated in Ohio EPA's January 10, 2005 NOV will be addressed and outlined the specific erosion and sediment control best management practices to be utilized or have been utilized since the January 5, 2005 inspection.

8. 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.
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.
11. These Orders address violations up to and including those dated January 12, 2005.

V. ORDERS

1. Within two (2) days of the effective date of these Orders, Respondent shall inspect and repair all of the Site's sediment control structures, in accordance with the Storm Water General Permit, to ensure that they remain functional throughout earth disturbing activity. All temporary and permanent control practices are to be maintained and repaired as needed to ensure continued performance of their erosion and sediment control functions.
2. Within seven (7) days of the effective date of these Orders, Respondent shall implement the erosion and sediment control best management practices (BMPs) outlined in Respondent's letter to Ohio EPA dated January 12, 2005.
3. Within fourteen (14) days of the effective date of these Orders, Respondent shall submit to Ohio EPA, in accordance with Section X. of these Orders, for approval, a revised and current SWP3 for the Site. The revised and current SWP3 shall incorporate the comments and recommendations made by Ohio EPA in the NOV's dated September 2, 2004, December 6, 2004, and January 10, 2005, (if still applicable at the Site), the erosion and sediment control BMPs outlined in Respondent's letter to Ohio EPA dated January 12, 2005, and satisfy all requirements of the Storm Water General Permit. Respondent shall continuously amend the Site's SWP3, in accordance with Part III.D. of the Storm Water General Permit, to reflect any changes in grade or the placement, installation, or removal of any erosion and sediment BMPs as construction activities progress.
4. Within ninety (90) days of the effective date of these Orders, Respondent shall develop an Environmental Compliance Response Plan for Construction Activities

that addresses, at a minimum, the following elements:

- A. A plan for education and training for Respondent's staff and contractors on construction storm water issues and compliance under ORC Chapter 6111, along with a schedule for implementation of the plan. The plan, once accepted by Ohio EPA shall be implemented according to the agreed upon schedule;
 - B. The designation of a contact at the level of Project Manager or higher within all future Sites that will serve as a liaison to Ohio EPA staff to deal with regulatory and compliance issues commonly encountered in road development including storm water issues;
 - C. Response plans that Respondent will execute upon learning of or being informed of potential violations; and
 - D. An evaluation of Respondent's contractual relationship with its contractors, and identification of means by which compliance can be facilitated through those contracts. Items to be evaluated include, but are not limited to, evaluation of the use of penalty clauses in the case of noncompliance, requiring co-permittee status by contractors, and other means for engaging contractor cooperation in maintaining compliance.
5. From the effective date of these Orders and until all disturbed areas on the Site meet the criteria for final stabilization, as established in the Storm Water General Permit, Respondent shall immediately comply with the Site's approved revised SWP3, any amendments to the SWP3, and the Site's Storm Water General Permit.
 6. Respondent shall pay or cause to be paid to the Ohio EPA the amount of forty-six thousand two hundred eighty dollars (\$46,280.00) in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 6111. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the full amount within sixty (60) days of the effective date of these Orders, to the following address: Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Site.

A photocopy of the check shall be sent to Ohio EPA, Central District Office, in accordance with Section X. of these Orders.
 7. In lieu of thirty thousand eight hundred fifty-five dollars (\$30,855.00) of the civil penalty assessed in Order No. 6, above, Respondent may implement the following supplemental environmental project ("SEP") in accordance with the following schedule:
 - A. Ohio EPA's draft 2004 Total Maximum Daily Load Report for the Big

Walnut Creek watershed provides numerous causes of impairment to Big Walnut Creek, which include habitat alteration and siltation. The sources of the impairment include channelization and urban runoff.

- i. To aid in the improvement of water quality within the Big Walnut Creek watershed, Respondent may allocate thirty thousand eight hundred fifty-five dollars (\$30,855.00) to Franklin County Metro Parks for the express purpose of purchasing land to be used in perpetuity as parkland or wetland mitigation sites within the Big Walnut Creek watershed, the purchasing of riparian property that will serve in perpetuity as a buffer to Big Walnut Creek, or the purchasing of conservation easement rights along non-impacted segments of streams located within the Big Walnut Creek watershed to protect in perpetuity areas from development. Payment shall be made by tendering an official check made payable to "Franklin County Metro Parks" within sixty (60) days of the effective date of these Orders at the following address: Cindy Lynch, Franklin County Metro Parks, 1069 West Main Street, Westerville, Ohio 43081.

A photocopy of the check for deposit shall be sent to Ohio EPA, Central District Office, in accordance with Section X. of these Orders.

8. In lieu of fifteen thousand four hundred twenty-five dollars (\$15,425.00) of the civil penalty assessed in Order No. 6, above, Respondent may implement the following SEP in accordance with the following schedule:
 - A. Spring Run Riparian Land Preservation and Restoration Project (Spring Run Project) has been identified by the City of Westerville as a priority implementation area. Ohio EPA's draft 2004 Total Maximum Daily Load Report for the Big Walnut Creek watershed provides that two of the causes of impairment to Spring Run are habitat modification and siltation and the sources of impairment are listed as urban runoff and channelization.
 - i. To aid in the improvement of water quality within Spring Run, Respondent shall allocate fifteen thousand four hundred twenty-five dollars (\$15,425.00) to the City of Westerville for the purpose of preserving land in perpetuity, through the purchase of conservation easements along Spring Run, the acquisition of riparian property along Spring Run, or the implementation of any stream bank stabilization project or projects within the Spring Run watershed, that shall consist of regrading activities, vegetative restorative practices, revegetative activities, stabilization practices, or natural stream bed restoration activities. Payment shall be made by

tendering an official check within sixty (60) days made payable to the "City of Westerville" at the following address: Mr. Gene Hollins, Metz & Bailey, 33 E. Schrock Road, Westerville, Ohio 43081.

A photocopy of the check shall be sent to Ohio EPA, Central District Office, in accordance with Section X. of these Orders.

9. If Respondent fails to pay or cause to be paid the thirty thousand eight hundred fifty-five dollars (\$30,855.00) to Franklin County Metro Parks and/or the fifteen thousand four hundred twenty-five dollars (\$15,425.00) to the City of Westerville within the time frames established in Orders No. 7 and 8, Respondent shall pay to Ohio EPA the forty-six thousand two hundred eighty dollars (\$46,280.00). Respondent shall pay the forty-six thousand two hundred eighty dollars (\$46,280.00) in accordance with the procedures set forth in Order No. 6 of these Orders. Payment shall be due no later than seven (7) days from the date the payment was due to Franklin County Metro Parks and the City of Westerville.

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 pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Central District Office
Division of Surface Water
3232 Alum Creek Drive
Columbus, Ohio 43207
Attn: DSW Enforcement 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.

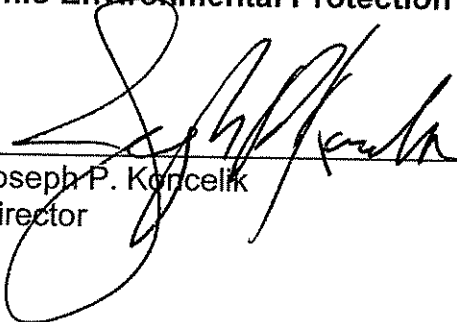
XIII. EFFECTIVE DATE

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.

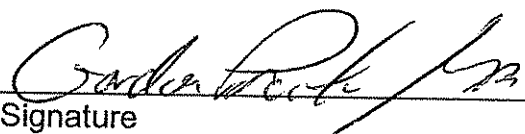
**IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency**



Joseph P. Koncek
Director

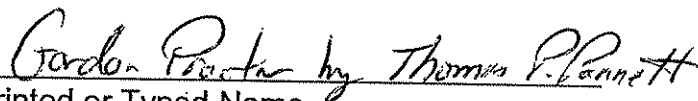
Date 6/6/05

**IT IS SO AGREED:
Ohio Department of Transportation**




Signature

Date 5/17/05



Printed or Typed Name



Title