

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
FEB 26 2003
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Preferred Development
8175 McCauly Ct
Cincinnati, Ohio 45241

JPS Development, LLC
8175 McCauly Ct
Cincinnati, Ohio 45241

Director's Final Findings
and Orders

Respondents

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Preferred Development and JPS Development, LLC ("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 their successors in interest liable under Ohio law. No change in ownership of the Respondents or of the Saddlebrook Subdivision 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 promulgated thereunder.

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.

By: Zona L. Clement Date: Feb 26, 03

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent Preferred Development and Respondent JPS Development, LLC, individually or collectively, are developing the Saddlebrook Subdivision located on State Route 22 & 3, west of Morrow, Warren County, Ohio. The Saddlebrook Subdivision is approximately sixty-eight (68) acres and is designed for individual homes.
2. Storm water from Saddlebrook Subdivision discharges to Big Foot Run. Big Foot Run constitutes "waters of the state," as defined by ORC Section 6111.01(H). Sediment contained in said storm water constitutes "other wastes," as defined in ORC Section 6111.01(D). Placement of this waste into waters of the state constitutes "pollution," as defined in ORC Section 6111.01(A).
3. Because the Saddlebrook Subdivision is a construction site which disturbs more than five (5) acres of land, Respondent Preferred Development, on or about February 8, 2000, submitted 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 (storm water general permit).
4. Ohio EPA granted Respondent Preferred Development coverage for Saddlebrook Subdivision under Permit No. OHR108887, effective February 22, 2000. Respondent Preferred Development was required to comply with the terms and conditions of the storm water general permit as of that date.
5. Pursuant to ORC Section 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.
6. Pursuant to ORC Section 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC Sections 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.
7. OAC Rule 3745-38-09(A) allows Ohio NPDES general permit coverage to be transferred. The transferor and transferee must jointly inform the Ohio EPA of the transition of responsibilities regarding general permit coverage.
8. Sometime after February 22, 2000, Respondent JPS Development, LLC became

primarily responsible for the development activities associated with Saddlebrook Subdivision, including activities requiring compliance with ORC Chapter 6111 and the administrative rules promulgated thereunder. To date, Ohio EPA has not received a notice of intent to transfer coverage of Permit No. OHR108887 from Preferred Development to JPS Development, LLC.

9. Part III.C.5.b.i.(A) of the Ohio EPA Storm Water General Permit requires the initiation of appropriate vegetative practices on all disturbed areas within seven days if they are to remain dormant (undisturbed) for more than forty-five (45) days. Inspections conducted by Ohio EPA on September 28, 2001 and May 24, 2002 and inspections conducted by Warren County Soil & Water Conservation District on or about August 12, 2001, and April 23, 2002 revealed that there were disturbed areas at Saddlebrook Subdivision which were left dormant for more than forty-five (45) days without vegetative cover, in violation of ORC sections 6111.04 and 6111.07.
10. For areas within fifty (50) feet of any stream, first order or larger, Part III.C.5.b.i.(A) of the Ohio EPA Storm Water General Permit requires that soil stabilization practices be applied within two (2) days on all inactive, disturbed areas. Inspections conducted by Ohio EPA on September 28, 2001 and May 24, 2002 and inspections conducted by Warren County Soil & Water Conservation District on or about August 12, 2001, and April 23, 2002 revealed that there were areas at Saddlebrook Subdivision within fifty (50) feet of a stream on which Respondents failed to apply soil stabilization practices on inactive, disturbed areas within the time frame set forth above, in violation of ORC Sections 6111.04 and 6111.07.
11. Part III.C.5.b.i.(A) of the Ohio EPA Storm Water General Permit requires that permanent or temporary soil stabilization be applied to disturbed areas within seven (7) days after final grade is reached on any portion of the site. Inspections conducted by Ohio EPA on September 28, 2001 and May 24, 2002 and inspections conducted by Warren County Soil & Water Conservation District on or about August 12, 2001, and April 23, 2002 revealed that there were areas of Saddlebrook Subdivision that reached final grade and were not stabilized within the time frame set forth above in violation of ORC sections 6111.04 and 6111.07.
12. Part III.C.5.b.i.(B)(1) of the Ohio EPA Storm Water General Permit requires that sediment control structures be functional throughout earth disturbing activity. Sediment ponds and perimeter sediment barriers are to be installed as the first step of grading and within seven (7) days from the start of grubbing. The controls are to continue to function until the up slope development area is re-stabilized. An inspection conducted by Ohio EPA on September 28, 2001 and October 4, 2002 revealed that the sediment ponds at Saddlebrook Subdivision did not remain

functional in the aforementioned time frame and/or have not remained functional throughout all earth-disturbing activity, in violation of ORC sections 6111.04 and 6111.07.

13. Part III.C.5.b.i.(B)(3) of the Ohio EPA Storm Water General Permit requires that sheet flow run-off from denuded areas be intercepted by sediment barriers. The barriers are to protect adjacent properties and water resources from sediment transported by sheet flow. Inspections conducted by Ohio EPA on September 28, 2001, May 24, 2002 and October 4, 2002 and inspections conducted by Warren County Soil & Water Conservation District on or about August 12, 2001, and April 23, 2002 revealed that the necessary sediment barriers were not installed at Saddlebrook Subdivision, in violation of ORC sections 6111.04 and 6111.07.
14. Part III.C.5.b.i.(B)(5) of the Ohio EPA Storm Water General Permit requires that structural controls divert runoff from disturbed areas and steep slopes where practicable. Inspections conducted by Ohio EPA on September 28, 2001 and May 24, 2002 and inspections conducted by Warren County Soil & Water Conservation District on or about August 12, 2001, and April 23, 2002 revealed that structural controls were not effectively implemented at Saddlebrook Subdivision, in violation of ORC sections 6111.04 and 6111.07.
15. Part III.C.5.b.vi of the Ohio EPA Storm Water General Permit requires that a qualified individual perform an inspection of the site once every seven (7) calendar days and within hours after any storm event greater than 0.5 inch of rain per 24-hour period. The permittee is required to keep an inspection log that summarizes the results of the inspection, name(s) and qualifications of the inspector, the dates of inspections, major observations relating to the implementation of the SWP3, a certification that the facility is in compliance with the SWP3 and permit, and an identification of any incidents of non-compliance. Respondents failed to complete the required inspections for Saddlebrook Subdivision and failed to maintain an inspection log for Saddlebrook Subdivision, in violation of ORC sections 6111.04 and 6111.07.
16. 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. As soon as expeditiously practicable but no later than fourteen (14) days of the effective date of these Findings and Orders, Respondents shall submit to Ohio EPA, Southwest District Office (Attn: Martyn Burt, DSW Enforcement Group Leader), a revised and current SWP3 for Saddlebrook Subdivision that meets the minimum standards of the construction storm water general permit.
2. From the effective date of these Orders and until all disturbed areas on the Saddlebrook Subdivision site meet the criteria for final stabilization as outlined in the storm water general permit, Respondents shall comply with the revised SWP3 and the storm water general permit.
3. Respondents shall pay twelve thousand four hundred and fifty-one dollars (\$12,451.00) in settlement of the Ohio EPA's claim for civil penalties, which may be assessed pursuant to Chapter 6111 of the Ohio Revised Code. Respondents shall pay this penalty as follows:
 - a. Respondents shall pay \$2,451.00 to the Warren County Soil and Water District (Warren County SWCD) within thirty (30) days of the effective date of these Orders for the express purpose of allowing Warren County SWCD to purchase and implement "RivrLab" educational equipment. Respondents shall provide Ohio EPA with a copy of the check and transmittal letter evidencing such payment to Warren County SWCD.
 - b. Respondent shall pay \$10,000.00 to Ohio EPA in four installments of \$2,500.00. The first installment shall be due within six (6) months of the effective date of these Orders. The second installment shall be due within twelve (12) months of the effective date of these Orders. The third installment shall be due within eighteen (18) months of the effective date of these Orders. The final installment shall be due within twenty-four (24) months of the effective date of these Orders. These payments shall be made by tendering a check payable to the **"Treasurer, State of Ohio"** to the following address:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

A photo copy of the check shall be sent to Ohio EPA's Southwest District Office at:

Ohio Environmental Protection Agency
Southwest District Office
401 East Fifth Street
Dayton, Ohio 45402

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrates to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Chief of 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 each Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(D)(1) for a corporation, OAC Rule 3745-33-03(D)(2) for a partnership, OAC Rule 3745-33-03(D)(3) for a sole proprietorship, and OAC Rule 3745-33-03(D)(4) for a municipal, state, or other public facility." or "a corporate officer who is in charge of a principal business function 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 activities occurring on or at the Saddlebrook Subdivision.

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. RESERVATION OF RIGHTS

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

XI. 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, Respondents consent 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 Respondents' liability for the violations specifically cited herein.

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.

XII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIII. 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

Christopher Jones
Christopher Jones
Director

2-18-03
Date

IT IS SO AGREED:

Preferred Development
John T. Adams
Signature
John T. Adams
Printed or Typed Name

Title

Feb 3, 2003
Date

IT IS SO AGREED:

JPS Development, LLC
John T. Adams
Signature
John T. Adams
Printed or Typed Name
member

Title

Feb 3, 2003
Date